INTRODUCTION

Understanding Judicial Behavior—A Work in Progress

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What Is Judicial Behavior?

What is judicial behavior? Jeffrey Segal, whose chapter starts this volume, has defined judicial behavior as

> what courts and judges do. The extent to which judges choose to move beyond their policy preferences divides the field of law and politics. Normatively, influences over what judges ought to do include evaluating legal rules such as precedent or legislative intent in an attempt to find the best answers to cases before them. Thus, in addition to the judges' own preferences, legal influences should be useful in explaining judicial behavior, though the extent to which it does undoubtedly varies throughout the judicial system. Judicial politics can be law or politics, but frequently it is both, with the mixture dependent on the type of court and the context of the case.
>
> (Segal 2008)

So, what do we know about judicial behavior? How do judges balance policy preferences, politics and the law? In 1997, Larry Baum, another contributor to this volume, wrote a seminal book entitled *The Puzzle of Judicial Behavior*, which summarized existing research. Baum's premise was that scholars had made only limited development in understanding judicial behavior. The result was "only in small part from weaknesses of research in the field; . . . its primary source is inherent difficulties of explanation" (3). In his review of existing research, Baum tried to determine what existing scholarship had done and what it had not done, before concluding that although much progress has been made, ultimately the puzzle of judicial behavior remains unsolved and will always remain so despite the significant scholarly progress.

Baum focused his examination of existing research on three major areas. The first was research on the goals of judges. The second was the choices judges confront between making good policy and law, including the differences between Supreme Court justices and lower court judges. Finally, Baum observed the then-emerging research on strategic choice.

In the ensuing twenty years, the study of judicial behavior has moved well beyond analyzing the motives of Supreme Court justices. While there continues to be significant scholarly work

in those areas that were the focus of Baum's book, there has been major research in several areas of judicial behavior that were not emphasized in *The Puzzle of Judicial Behavior*. Significant scholarship has emerged to help us better understand lower federal court and state behavior, and scholarship has boomed in analyzing judicial politics research through a comparative lens. In addition, we have seen significant advances in our understanding of judicial behavior through progress in the measurement of ideology and law.

When published, *The Puzzle of Judicial Behavior* looked back on almost fifty years of scholarship in judicial behavior. Several of our authors provide more information on the emergence of judicial behavior scholarship, but all agree that the subfield began with the publication of the now classic 1948 C. Herman Pritchett book *The Roosevelt Court: A Study in Judicial Politics and Values, 1937–1947*. Pritchett's early work, in turn, led to many other important early studies, including the next prominent work, *The Judicial Mind* by Glendon Schubert, as well as research by Harold Spaeth, Sidney Ulmer and other "pioneers of judicial behavior" (see Maveety 2003). These scholars and their research helped establish the subfield of the empirical study of judicial behavior. By the time of Baum's book in 1997 no one questioned the value of research on judicial behavior, and several political science departments had emerging reputations for empirical analyses of law and courts.

This book presents the most up-to-date examinations and analyses that we have on judicial behavior, and the authors offer suggestions for future endeavors and scholarly research. We have a broad cross-section of essays written by several of the more prominent names in judicial behavior research. Of course, while many of our authors are senior scholars with prominent and accomplished publication records, many of our authors are in mid-career, and we are very pleased to have a number of junior scholars and graduate students who will examine and analyze many of the suggested areas of research offered here over the next several decades. We have no doubt many of the junior scholars and graduate students will be represented in another handbook of judicial research two decades from now.

Our book is divided into four sections, representing the four major areas of judicial behavior research. We begin with an overview of the major theories about judicial behavior. Our authors in this section review, discuss and argue for the motivations behind judicial voting and other judicial actions. Our authors discuss the three major explanations for judicial behavior—attitudes, law and strategic behavior. This section also presents us with analyses of the difficulties and different ways to measure attitudes and law.

Our second part examines the U.S. Supreme Court. We provide overviews of the history of scholarship in this area, as well as a discussion of the competing influences on decision making that are discussed in Part 1. From there our authors examine issues of legitimacy, selection and opinion writing, as well as the influence of lawyers and the public.

In our third part, our authors examine other courts in the United States. These include lower federal courts, specialized courts and state courts. We also examine selection mechanisms to lower federal courts and state courts.

Finally, in Part 4 we move to an area that has seen little scholarly examination by American political scientists and other scholars of judicial behavior—analyses of the courts of other countries as well as transnational courts. We start with an analysis of the meaning and measure of judicial independence, and then examine strategic behavior by judges and courts in other countries. From there we examine courts in developing as well as developed countries, courts in autocratic countries and three transnational courts. We now turn to the specifics of each part and provide a summary of the contributions.

Themes and Contributions

Part 1: Theoretical and Methodological Perspectives

In Part 1, our authors offer new insight on some of the issues raised by Baum and also examine some of the questions left unanswered. Finding answers to these questions is fundamental to our understanding of judicial behavior. These early chapters also offer a history of judicial behavior from its origins in the legal realism of the 1920s to the early scholarship of Pritchett, Schubert, Spaeth and others.

Chapter 1 is an analysis of the still-dominant paradigm in judicial scholarship, the Attitudinal Model, and is authored by Jeffrey A. Segal and Alan J. Champlin. The Attitudinal Model posits that judges decide cases in light of their sincere ideological values juxtaposed against the factual stimuli presented by the case. Simply put, a liberal justice will vote in a liberal direction because she is a liberal, while a conservative justice will vote conservatively because he or she is conservative. Segal and Champlin provide a brief synopsis of the history of judicial behavior scholarship and the development of the compelling notion that Supreme Court justices are motivated primarily by policy preferences or attitudes. Segal and Champlin marshal impressive evidence that, despite all the other impressive research compiled in this handbook, attitudes are still very strong determinants of voting behavior by the Supreme Court justices. The authors then suggest new frontiers of research to merge attitudinal research on voting behavior with the current research on opinion writing.

The Attitudinal Model was developed by political scientists as a counterpoint to the more traditional notion that courts and judges decide cases based upon the facts of the case and the law. That is, judges decide cases using precedent, or *stare decisis*, and text. This means a judge will examine the plain or fair meaning of whatever the relevant document, whether it is a statute, regulation, or the Constitution, actually says. The judge will also take into account the intent of the framers of the Constitution or the drafters of legislation as a guide in formulating the rule or holding.

Political scientists referred to this method of decision making as the Legal Model. In Chapter 2, "Law and Politics in Judicial and Supreme Court Decision Making" by J. Mitchell Pickerill, associate professor of political science at Northern Illinois University, and Christopher Brough, a graduate student at Northern Illinois University, examine and defend this concept. Pickerill and Brough argue that the law-versus-politics distinction is a false dichotomy and contend that we need a reconceptualization of our understanding of how we think of law. Among other things, the authors show that new empirical research using new methodologies has shown that law influences judicial behavior, at least some of the time.

The authors conclude that the prior conceptualizations of the legal model offered a formalistic and deterministic version which could not be falsified, and this formulaic version did not hold up to the type of empirical scrutiny that was used to test the Attitudinal and Strategic models. One result of the path this research took was to conclude that law is either irrelevant or that it is simply the same thing as politics. However, scholarship responded by demonstrating that law and politics may intersect in multiple ways, but they are not one in the same, and today even legal scholars do not accept the formalistic version of the Legal Model.

Scholars label the third component of judicial choice the Strategic Model, and that is the subject of Chapter 3. There is some dispute whether strategic choice is another paradigm of judicial behavior or simply another variable to account for in a range of judicial action. In either case, in Chapter 3, "Strategic Accounts of Judging," Lee Epstein, the Ethan A.H. Shepley

Distinguished University Professor at Washington University, St. Louis, and Jack Knight, the Frederic Cleaveland Professor of Law and Political Science at Duke University Law School, revisit their classic, award-winning 1998 book, *The Choices Justices Make*. As the authors note in their chapter in this volume, "unlike the attitudinal model, which holds that judges (really just justices) pursue policy goals and only policy goals (Spaeth and Segal 2002), strategic accounts enable the researchers to posit any motivations they believe judges hold" (48).

The Strategic Model posits that judges' actions are, to some extent, premised on their expectations about the actions of others. To say that a judge acts strategically is to say that she realizes that her success depends on the preferences of other relevant actors and the actions she expects them to take, not just on her own preferences and actions. However, in contrast to their earlier work, which agreed that maximizing policy was of paramount concern, Epstein and Knight now argue that "the policy goal is hardly the only one; it may not even be dominant for many judges" (48). The authors argue for examination of many different motivations, including such factors as job satisfaction and promotion, in addition to the more common notions of law and policy.

Of course, our ability to understand these competing factors is dependent upon accurate measurements of concepts such as attitudes and law. The final two articles in our initial section, Chapters 4 and 5, attempt to do so. In Chapter 4, Michael A. Bailey, the William J. Walsh Professor of American Government and chair of the Department of Government at George Washington University, discusses and presents a measure of court ideology. In Chapter 5, "Measuring Law," Tom S. Clark, the Asa Griggs Candler Professor of Political Science and associate professor in the Department of Political Science at Emory University, discusses the tricky concept behind conceptualizing and measuring law.

Two decades ago, the emerging standard for court ideology was the Segal-Cover (1989) scores, a measure of ideology not dependent upon the circularity of using actual voting to determine ideology. Since its introduction, many other measures have been introduced and used for both the Supreme Court and lower courts. In his chapter, "Measuring Ideology on the Courts," an earlier version of which won the Neal Tate Award for the best paper on law and courts presented at the 2016 Annual Meeting of the Southern Political Science Association, Bailey notes the challenges in measuring judicial ideology and reviews many of these measures. Among his findings are noting that not all ideological measures are appropriate in all research contexts. He also argues that ideology on the court is distinctive from ideology among elected officials, particularly on the Supreme Court, not only because justices are influenced by legal factors, but also because the small size of the Court makes the idiosyncratic world views of the justices (and median justices in particular) decisive. Finally, the author analyzes the competing and evolving measures of ideology for the Roberts Court.

In Chapter 5, Clark has the difficult task of measuring law. As Clark notes, and as confirmed by other chapters in this handbook, most scholars examine the tension between legal determinants of judicial choices, and that the debate is frequently cast as one of "law versus ideology." Of course that begs the question of the primary empirical challenge facing such analyses: how can one systematically measure the law and thus distinguish it from ideology?

Clark lays out a theoretical framework for conceptualizing law and legal ideas, finding that no single theoretical model can possibly capture or implicate all of the relevant dimensions. As such, no single measure of law is appropriate in all contexts. Rather, Clark argues, a measurement strategy of law has to follow from the theoretical framework particular to each research question.

Part 2: The U.S. Supreme Court

With our theoretical and methodological underpinnings presented, our next sections are devoted to specific research on courts. In Part 2, our authors focus on the U.S. Supreme Court. Research

on this court dominates judicial behavior research. We start with an overview of the research in this area and then move to analyses of judicial legitimacy, judicial selection and opinion writing. We finish Part 2 with chapters on the potential influences on judicial behavior that are external to the individual justices and their own interactions. These include the impact of public opinion, the Solicitor General and oral arguments.

We begin with the "Historical Development of Supreme Court Research," by Christopher Krewson, a graduate student in the Department of Political Science at the University of Wisconsin–Madison, and Ryan J. Owens, the Lyons Family Faculty Scholar and Associate Professor in the Department of Political Science at the University of Wisconsin–Madison. Krewson and Owens's chapter title does not do justice to their work in Chapter 6. After noting there are several excellent reviews of the development of behavioral research on the Supreme Court, the authors actually predate this research and start at the beginning of a more scientific study of law, namely the introduction of the case study method for teaching law, introduced by Christopher Columbus Langdell at Harvard Law School in 1870.

From this beginning, the authors proceed to show the development of research over the ensuing century and a half—from legal realism, to attitudes, to strategic modeling and finally back to measuring and understanding the impact of law and other factors on Supreme Court behavior. In their concluding section, the authors even discuss the potential utility of evolutionary biology to the study of judicial behavior.

Chapter 7 leads us back to Lawrence Baum, now a professor emeritus in the Department of Political Science at The Ohio State University, and his discussion of attitudes versus law. Baum, in "Law and Policy in Decision Making," acknowledges that there might be, as Epstein and Knight argue, other incentives, such as workload, that motivate judicial behavior. However, to Baum the key motivations for judicial actors remain law and policy, along with the potential for strategic choice.

One of the most interesting sections of Chapter 7 is Baum's argument that law is more than just text, intent and precedent, but also includes such elements as the structure of government, for example, federalism and separation of powers. Baum argues that law-oriented behavior could occur when judges limit their opinions and holdings to prevent the judiciary from intervening in the policies made elsewhere in government. Baum reviews research involving law and policy over the past several decades and finds that the research reinforces his conclusion of twenty years ago. Although Baum concedes we have learned a great deal about law and policy considerations, we should not expect to develop a definitive picture of the absolute and relative importance of law and policy in decision making.

In Chapter 8, "U.S. Supreme Court Legitimacy: Unanswered Questions and an Agenda for Future Research," Michael J. Nelson, an assistant professor in the Department of Political Science at Pennsylvania State University, and James L. Gibson, the Sidney W. Souers Professor of Government in the Department of Political Science at Washington University in St. Louis, discuss and review judicial legitimacy. Although we have focused on decision making to this point, Nelson and Gibson argue that research on legitimacy has consumed as many intellectual resources as has research on judicial decision making. The authors note that institutional legitimacy is important for all political institutions and not just the U.S. Supreme Court or other lower courts. Institutions "perceived as legitimate have a widely accepted ability to make judgments for a political community; those without legitimacy find their authority contested" (133).

Nelson and Gibson argue that research on legitimacy is particularly timely in an era of protests against the police in Ferguson, Missouri; Baltimore, Maryland; and other areas. The authors pay special attention to how individual-level legitimacy judgments are formed by life

experiences. These types of experiences lead to shorter-term evaluations of institutional performance, such as displeasing decisions and perceptions of politicization. These, in turn, may (or may not) harm institutional support. Nelson and Gibson report several interesting findings in the literature and note the increasing politicization of the Supreme Court. In fact, they find that the literature suggests that the real danger to the Court's legitimacy comes not from political decision making, but rather from *politicized* decision making (emphasis added).

Chapter 9 moves from issues of decision making and legitimacy to the question of judicial selection. "The Selection of U.S. Supreme Court Justices" is co-authored by James ben-Aaron, a lecturer in the Department of Political Science at the University of Massachusetts Amherst; Paul M. Collins, director of legal studies and professor in the Department of Political Science at the University of Massachusetts Amherst; and Lori A. Ringhand, professor of law at the University of Georgia Law School. The authors discuss the interaction of the president, the Senate, the Court and public opinion in the process of the nomination and confirmation of U.S. Supreme Court justices. In this chapter, the authors follow the general order of the process and its three major aspects: nomination by the president, hearings by the Senate Judiciary Committee and the confirmation vote by the full Senate.

As to the first part of the process, the nomination by the president, the authors find that there is scholarly consensus that qualifications, politics and personal connections influence the presidential selection process. However, scholars remain unsure of the relative weight of each factor. For the second part the process, the Senate Judiciary Committee hearings, the authors note that initially at least much of the evidence was anecdotal. However, lately understanding of the Senate Judiciary Committee hearings of Supreme Court nominees has greatly improved, aided in part by a freely available, large-scale database constructed by two of the authors. The final part, confirmation, agrees with the scholarly consensus that nominee qualifications and nominee ideology are important to the confirmation process. However, these two considerations are not the only factors driving Senate support for Supreme Court nominees. The authors find that studies reveal that "strong" presidents, as defined as presidents whose party controls the Senate and who are not in their fourth year in office, have greater success than do "weak" presidents, and that other factors such as interest groups, nominee testimony and nominee demographic characteristics, such as gender and race, can all be important.

Chapter 10 presents "Opinion Writing in the U.S. Supreme Court," by Pamela C. Corley, associate professor in the Department of Political Science at Southern Methodist University, and Artemus Ward, professor of political science at Northern Illinois University. Several of our authors discuss the determinants of vote choice. However, voting is only part of the process in which Supreme Court justices engage. After the justices vote, a majority opinion is written. Corley and Ward argue that while the voting outcome is important, the opinion matters. Both scholars and practitioners study and analyze opinion language. Practitioners do so to advise clients, while the scholarly community does so in order to understand the legal reasoning and legal basis for the vote. The majority opinion written by Chief Justice Roberts in *National Federation of Independent Business v. Sebelius* (2012) demonstrates the importance of legal reasoning in the opinion. While the opinion upheld the Affordable Care Act, the judgment did so on Tax and Spending, but not Commerce Clause, grounds. This has important implications for the future of legislation premising governmental action on the Commerce Clause.

In reviewing research in this area, Corley and Ward find that opinion writing is a continuous process through multiple points, including agenda setting, oral argument, opinion assignment, coalition formation and dissents and concurrences. They also find that multiple actors can influence the opinion during each of these points in time, including other justices, both in the majority and in dissent; law clerks; the parties, through briefs and oral arguments; and amici briefs.

Our last three chapters on the Supreme Court deal with external influences on the Court—public opinion, the Solicitor General and oral arguments. Chapter 11, "Making Sense of the Supreme Court—Public Opinion Relationship," is by Peter K. Enns, associate professor in the Department of Government and executive director of the Roper Center for Public Opinion Research at Cornell University, and Patrick C. Wohlfarth, assistant professor in the Department of Government and Politics at the University of Maryland, College Park. Here the authors discuss whether popular opinion shapes the content of Supreme Court decisions.

The authors find that existing literature has not fostered much agreement. One of the difficulties in analyzing public opinion and the Supreme Court is finding a causal influence. Some scholars argue that public opinion does not influence the Supreme Court. This is because Supreme Court justices hold lifetime unelected positions and thus have no reason to care about public opinion. Instead, one can explain shifts in Supreme Court rulings by changes in appointments or even by fact that over time Supreme Court justices, like the public, can change their opinions on issues. The authors present evidence that public opinion can constrain Supreme Court decisions. They acknowledge that challenges exist for this theory and seek new measures of policy preferences that can help settle the debate.

In Chapter 12, "Of Political Principals and Legal Principles: The Solicitor General of the United States," Richard L. Pacelle, Jr., chair of and professor in the Department of Political Science at University of Tennessee at Knoxville, acknowledges the importance of the Solicitor General, or "Tenth Justice," on the Supreme Court and the overall development of law. As Pacelle observes, virtually the entire literature agrees that the Solicitor General is very successful as an advocate before the Court.

What is not clear, however, is why this is so. Pacelle argues that the literature is divided in part because political scientists analyze the Solicitor General through the lens of the decision-making models discussed in this book, namely the Attitudinal Model, the Strategic Model and the Legal Model. Because of this, the "models used to explain the behavior and success of the [Solicitor General] reflect very similar attributes" (198). Pacelle argues that the Solicitor General is a strategic actor, but unlike other actors, the Solicitor General has multiple principals—Congress, the Court and the president. While contending with all of these principals, the Solicitor General tries to balance politics and the law. Pacelle finds that the demands on the office and the responses will continue to change as the law and politics change.

Our final chapter in this section, Chapter 13, is "Oral Arguments" by Timothy R. Johnson, Morse Alumni Distinguished Teaching Professor of Political Science at the University of Minnesota, and Thomas K. Pryor, a graduate student at the University of Minnesota. The importance of oral arguments to Supreme Court decision making has long been thought to exist, but it is only since the discovery of the late Justice Harry Blackmun's grades for lawyers arguing in front of the Supreme Court that scholars have been able to examine this influence systematically.

Johnson and Pryor identify three reasons for the importance of oral arguments, noting first that justices use oral arguments to gather information. Next, the justices use the proceedings as a "pre-conference" conversation to help in coalition formation. Finally, the justices can be influenced and persuaded by these arguments. The authors conclude that improved research methods will improve our understanding of the importance of oral arguments.

Part 3: Other U.S. Courts

In Part 3, our authors move beyond the Supreme Court. This part examines other courts in the United States. Our first two chapters, chapters 14 and 15, analyze the two judicial levels below the Supreme Court in the federal judicial system: the Courts of Appeals, the appellate courts

directly below the Supreme Court, and the U.S. District Courts, the basic trial courts of general jurisdiction in the federal court system. The Courts of Appeals chapter is written by former students of Donald Songer, the dean of political science research on the U.S. Courts of Appeals. Before his untimely passing, Don was to author this chapter, and we are greatly pleased that his former students carry on his work and honor his memory in such a fitting manner.

Chapter 16 is a hybrid, examining the specialized courts of both federal and state systems. These courts are courts of limited jurisdiction and provide particular expertise or solutions to a particular set of problems or issues. We then move to an examination of state court systems in Chapter 17, before examining judicial selection for lower federal (Chapter 19) and state courts (Chapter 20).

Chapter 14 is co-authored by Susan Haire, professor of political science at the University of Georgia; Reginald S. Sheehan, professor of political science at Michigan State University; and Ali S. Masood, assistant professor of political science at California State University, Fresno. Created in the late nineteenth century, the U.S. Courts of Appeals include twelve regional circuits, and, by the end of 2015, 273 men and women were seated on the circuit bench, a figure that includes judges with senior status. These courts handle over 60,000 appeals per year, and with mandatory jurisdiction, the rotating three-judge panels on these courts address appeals across a broad range of areas of the law. Over the years, these courts have moved from addressing mostly private law questions to public law issues dealing with public and social policy.

Haire, Sheehan and Masood provide a broad overview of the literature in this area, from agenda setting for lower courts, through litigant and attorney decision and influence, to judicial behavior, all the while noting the differences in workload and constraints that confront Courts of Appeals judges, as opposed to justices on the Supreme Court. The authors suggest that future research examine, among other issues, the influence of these courts on policy makers and argue for continued updates to Donald Songer's Multi-User Database of Courts of Appeals decisions, last updated through 2002.

Chapter 15, "U.S. District Courts," by Christina L. Boyd, assistant professor of political science at the University of Georgia, and Ethan D. Boldt, a PhD student in the Department of Political Science at the University of Georgia, examines the workhorses of the federal judicial system. The U.S. District Courts terminate over 350,000 civil and criminal cases per year, and most cases never move beyond these courts. Approximately 11 percent are appealed, and only about 3 percent of all decisions at this level are ever successfully appealed.

Studying these ninety-four semi-autonomous courts can be quite difficult. Among other things, the vast majority of disputes never reach a filing level, and of those that do, the vast majority of cases rarely go to trial today. By 2004, less than 2 percent of all civil cases went to trial, and for criminal cases, the rate was below 5 percent. The first part of Chapter 15 examines the litigant, court and attorney dynamics that lead to settlement or trial and shows that the judge can be a strong influence on settlement.

Turning to decision making, Boyd and Boldt note that ideology and partisanship are not the only decision-making factors that district court scholars have examined. Instead, scholars examine geography, judges' community ties and demographics, in particular gender and race, as factors to be taken into consideration. In addition, the position of these courts in the judicial hierarchy and external constraints factor into the examination of judicial behavior at this level.

The authors urge caution in examining all these findings, noting that much of our knowledge about district courts and district court judging comes from a very small subset of cases: the U.S. district court cases published in the *Federal Supplement*. Many more cases, rulings and opinions are not published in the *Federal Supplement* and therefore are often omitted from scholarly analysis. This can lead to misleading results and conclusions in our examinations of the judges

on these courts. Finally, the authors call for additional research into the role of magistrates and of those district court judges either serving on an appellate court by designation or acting as an appellate judge. The latter can occur in some circuits, for example, in bankruptcy cases. Here the district judge can review the bankruptcy court's initial findings.

In Chapter 16, "What Is So Special about Specialized Courts in the United States?," Isaac Unah, associate professor of political science at the University of North Carolina, and Ryan Williams, a graduate student in the Department of Political Science at the University of North Carolina, examine courts with limited or special subject-matter jurisdiction. As the authors show, these courts have been mostly ignored by political scientists in the United States, in large measure because of the narrow subject-matter concentration of these courts "in a universe where judges are typically viewed as generalists as opposed to specialists" (280). However, with the increased specialization in government and society and the need for expert-based solutions, these courts are both growing in responsibilities, and more scholars are researching them.

One of the more intriguing questions posed by Unah and Williams is whether the study of these specialized courts poses a threat to traditional understandings of the more generalized courts and their judges, or instead, whether the behaviors of these judges are similar to the behaviors and attitudes of generalist judges. While finding that much of the literature supports the notion that the decision making and other behaviors of these judges mirror the behaviors of generalist judges, the authors argue that much more work is needed. They note, for example, that judicial selection to these courts has, with the exception of a few studies, been virtually ignored.

Chapter 17 presents us with "Decision Making in State Supreme Courts" by Melinda Gann Hall, professor of political science at Michigan State University. The vast majority of cases involve state courts. Most lawyers spend their careers dealing with state, not federal, law and issues. Despite this practitioner and actual workload imbalance between state and federal courts, the bulk of scholarly research has focused on federal, not state, courts. Understanding state courts is vital to understanding judicial behavior. However, with the exception of a few scholarly efforts, it was not until a little more than three decades ago that systematic research began in earnest on these courts. Hall, an early, and still prominent, scholar in this area notes this growth. One of her intriguing points is that unlike studies of the federal courts, state court scholarship is much more unified in approaches and research.

Hall points out that scholars of state supreme court decisions have always accepted that state courts are political and that neither the Attitudinal nor the Legal Model exclusively represents judicial choice for state supreme court justices. Scholars of state court behavior accept rational choice theory with its multiple focus on preferences and institutional arrangements, and accept the broader political, economic and social contexts within which state courts operate. That is, scholarship in this area is concordant that multiple goals drive state court justices and that justices regularly engage in strategic behavior.

Our last two chapters in this section focus on judicial selection. Chapter 18 is "Lower Federal Court Confirmations: Motivations and Strategies" by Amy Steigerwalt, associate professor of political science at Georgia State University, and Wendy L. Martinek, associate professor of political science at the State University of New York (SUNY) at Binghamton. Judicial selection is another area that has seen a rise of both political and scholarly interest over the past quarter century.

Steigerwalt and Martinek review the constitutional and statutory provisions and basic framework of the nomination process, including the Judiciary Act of 1789 and the Judiciary Act of 1891 (the Evarts Act), which set what is more or less the existing structure of lower federal courts to this day. They then review the key actors and key facets and factors in the nomination process. Interestingly, for a chapter in a volume of judicial behavior, the authors argue for many

other subfields of political science to engage in judicial selection research. They note that most of the research in lower court selection is by courts scholars and that too many other subfields yield research to judicial behavior analyses. The authors argue that understanding lower court confirmations should be of interest to presidency, congressional and interest group scholars, in addition to public law researchers. They end the chapter by questioning the assumption that nominees are merely passive actors with little or no ability to influence the outcome. They seek additional research on the ability of the nominees to affect the selection and confirmation process.

Our final contribution in this section is Chapter 19, "Judicial Selection in the States: A Look Back, A Look Ahead" by Christopher W. Bonneau, associate professor of political science at the University of Pittsburgh, and Heather Marie Rice, assistant professor of political science at Slippery Rock University. As we noted for Chapter 17 on state supreme court decision making, there are far more judges in the state system and many different selection methods for state courts. One state can have different selection methods for different courts. For example, a state might have elections for trial court judges and a merit appointment system for appellate justices. Thus, a review of judicial selection in the states presents several unique challenges in both describing the selection methods used and in summarizing the literature.

Bonneau and Rice review several interesting items of information that, while not surprising to those who follow the literature in this area, nonetheless contradict the often prevailing narrative that judicial elections are normatively bad for democracy. For example, judicial elections are often highly salient and competitive. As one bit of evidence for this, the authors note that the reelection rate for incumbent state supreme court justices is lower than that for members of the U.S. House and Senate. While elections at the trial court level are less competitive, Bonneau and Rice assert that one explanation is that the electorate is happy with its trial court judges and thus sees no need to replace them. In fact, this lack of challenge shows responsiveness to the electorate and electoral accountability.

On the all-important question as to whether judges are influenced by those who contribute to their campaigns, the authors find that the empirical evidence is mixed and that uncovering the causal relationship (if any) between campaign contributions and judicial decision making is neither straightforward nor simple. The authors call for research to move beyond finding simple correlation between spending and voting.

Part 4: Comparative Judicial Politics and Transnational Courts

Our last section is one that has not appeared in earlier summaries of judicial behavior: comparative judicial politics analyses and examinations of transnational courts.

Chapter 20, "Judicial Independence Research Beyond the Crossroads," is by Jeffrey Kaplan Staton, associate professor and Winship Distinguished Research Professor of political science at Emory University. As Staton notes, the scholarly community, as well as political actors, see judicial independence as a normative goal and as a key element of democratic governance. However, as the author points out, while there is broad agreement on this normative good, empirical research on this question and defining the exact meaning of judicial independence has been much more troublesome.

Staton shows that along with the growth of comparative judicial scholarship, scholars have produced many different measures of judicial independence, and that these measures have been validated and used successfully in many research projects. However, the measure used often depends on the concept of independence, for example, judicial autonomy as opposed to judicial

power. Staton demonstrates how each of these concepts can lead to less than normatively desirable outcomes, depending upon other circumstances. The author then asserts that we still need better measurement of judicial independence and better understanding of, among other things, issues of selection bias and concerns of reverse causality.

Chapter 21 presents "Strategic Behavior of Comparative Courts" by Brad Epperly, assistant professor in the Department of Political Science at the University of South Carolina, and Monica Lineburger, a doctoral candidate in the Department of Political Science at the University of South Carolina. Here the authors take a concept developed out of the American political system and apply it in a comparative context. The authors examine the strategic behavior of political actors toward the judiciary and the strategic behavior of judges. Epperly and Lineberger argue that, unlike the focus in strategic studies in American scholarship, the primary motivating issues in the comparative literature are the conditions under which political actors allow courts to operate independently and therefore are able in varying degrees to check the powers, policies and prerogatives of the executive and legislative branches.

In contrast to the study of judicial politics in the American context, most comparative literature sees judges as secondary actors. Here scholarly attention focuses on the strategic incentives and constraints confronting non-judicial political actors. The strategic behavior of the judges themselves is more often than not treated as a secondary consequence of the behavior of other state actors. In addition, the authors note that political features, such as levels of consolidation, the nature of electoral politics or the forms of democracy, can provide a basis for the theoretical discussions behind comparative strategic accounts of how judges are affected by strategic interactions with other judges and with other political institutions. Thus, exploring courts outside of the United States allows scholars to study variations of institutional structures and political environments that can shape judicial behavior.

In Chapter 22, "Courts in Developed Countries," Michael C. Tolley, associate professor in the Department of Political Science at Northeastern University, notes that the idea that courts are political institutions and judges are political actors is just the beginning of the analysis when it comes to understanding the roles and functions of courts in developed countries. Although there is considerable variation in the configurations and forms of judicial authority, adjudicatory systems are the result of constitutional and statutory design, as well as informal norms, traditions and the "logic of the triad" (391). This is the idea that two people agree to take their dispute to a neutral party for resolution. Since one person must win, consent is crucial to the legitimacy of the process. This agreement is the basis of the political authority of courts and judges in society and legitimizes their work.

Tolley also notes that over the course of the twentieth century, court power increased, a phenomenon that scholars have called the "judicialization of politics." There are many theories as to why this occurred, and Tolley carefully reviews them and shows how the concept of judicial review contributed to the increased power of courts in developed countries. While most of the political actors and the general public in the United States regard judicial review as a normative good, Tolley demonstrates that scholarship is divided on the issue. For future research, the author sees a need for, among other things, testing whether the research on U.S. courts is generalizable to other countries.

In contrast to Tolley's chapter, chapter 23 examines "Courts and Decision Making in Developing Democracies." In this chapter, Lee Demetrius Walker, associate professor in the Department of Political Science at the University of North Texas, posits that courts in developing countries are strategic. While the concept of strategic courts might not be unique to developing nations, the concept of what being strategic entails is different for courts in developing countries than for courts in developed democracies.

Courts in developed democracies have the capacity to draw on higher levels of judicial independence and institutional legitimacy. Unlike courts in developed countries, courts in developing nations often lack independence and legitimacy. Therefore, courts and judges in developing democracies must act strategically to build institutional capacity to improve both their independence and their legitimacy. Scholars of courts in these nations must account for the court's relative level of legitimacy to gain a better understanding of judicial decision making in these types of environments.

In chapter 24, "Law and Courts in Authoritarian Regimes," Tamir Moustafa, associate professor of international studies and Stephen Jarislowsky Chair at Simon Fraser University, examines courts that are viewed as lacking judicial independence. As with many of the contributions to this volume, Moustafa shows how research in this area has mushroomed over the past quarter century.

In contrast to courts in developed and developing nations, courts in authoritarian countries serve very different roles. As Moustafa notes, authoritarian regimes deploy the courts as an additional instrument of governance. The governing coalition uses the courts to exercise power and maintain discipline within state institutions and over factions within the ruling coalition. In addition, the courts facilitate market transitions, contain majoritarian institutions through authoritarian enclaves and bolster regime legitimacy. The author calls for greater "cross-fertilization" among courts scholars of these different types of courts and for recognition that these courts provide important cautionary lessons for courts in developed and developing countries.

Our final three chapters examine transnational courts. We begin these examinations with Chapter 25, "The International Court of Justice," by Sara McLaughlin Mitchell, professor of political science and department chair at the University of Iowa, and Andrew P. Owsiak, associate professor in the Department of International Affairs at the University of Georgia. Mitchell and Owsiak show that the concept of a transnational or world court is not new. The idea of an international system of "legal-institutional authority" was first proposed by British Foreign Secretary Robert Stewart, Viscount Castlereagh during negotiations to end the Napoleonic Wars. The current International Court of Justice derives from its predecessor, the Permanent Court of International Justice, which had adjudicated interstate disputes since 1922.

Having an international court leads to several issues and several areas of scholarly examination. Scholars have analyzed, among other things, issues of participation, compliance, case management and influence. Mitchell and Owsiak note that participating states still find the International Court of Justice relevant—even major powers. In addition, they show that although not bound by precedent, the Court is very consistent in its rulings.

They also argue that much work needs to be done. This includes collecting data on diplomatic conflicts in other issue areas to see whether the court's influence is similar or different across the issues that come before it, conducting more research on why countries select specific forums for adjudication or arbitration, and finally, examining how optional clause declarations influence bargaining.

Chapter 26, "The European Court of Justice," is by Jay N. Krehbiel, a doctoral candidate at Washington University; Matthew J. Gabel, a professor in and associate chair of the Department of Political Science at Washington University; and Clifford J. Carrubba, chair and professor of political science and professor of law by courtesy at Emory University. The European Court of Justice (ECJ) is the high court for the European Union, and the prominence of the ECJ has placed it at the fore of many debates covering a broad range of public policy issues, from the free movement of goods to environmental protection and data rights. This in turn has led to significant scholarly attention.

After providing an overview of the existing literature, the authors turn to theoretical explanations for the existence of such a court. They find that explanations include the ability of the court to resolve disagreements among members and resolve collective action problems. This in turn leads to questions as to why states would empower the court to the extent that it interferes with state sovereignty. The authors then examine questions of effectiveness and influence. Finally, the authors finish with a plea to encourage scholars interested in this court to understand the connection between the European Court of Justice and the broader study of courts.

Our final substantive chapter is Chapter 27, "Turning to Regional Courts: The Inter-American Court of Human Rights," by Rebecca Reid, assistant professor of political science at the University of Texas at El Paso. The Inter-American Court of Human Rights (IACHR) is the prominent human rights court for resolving conflicts in the Americas. Reid states that scholars avoid courts like the IACHR because of the assumption that these courts exert little meaningful influence.

Focusing on the issue of compliance, Reid argues that this assumption is largely unfounded. For example, she argues that general compliance rates paint only a partial picture of the influence of the IACHR, one that overlooks the significant influence of and changes induced by the court. She then presents data revealing a significantly higher rate of compliance to IACHR domestic legal reform reparations than previously observed or assumed across states and across rights. Of course, this finding leads to the next questions as to why there is such significant compliance. The author states that scholars need to examine the judicial decision making, judicial composition and selection, judicial ideology, strategic judicial behavior, principle-agent or hierarchical dynamics or even outcomes of this court in a systematic manner.

The Past and Present of Judicial Behavior Research

In the early 1990s most judicial behavior scholarship focused on the decision making of American courts. Most of the attention was on the Supreme Court and, to a much lesser degree, decision making in lower federal courts. The major debates centered on the extent to which attitudes or policy preferences mattered to all judges, and in particular to the justices of the Supreme Court. While some initial work existed positing the strategic interaction of Supreme Court justices, a broad theory of strategic interaction was just beginning to enter into the debate on judicial motivations.

While there was some scholarship on state courts, it was much less extensive than scholarship on the federal courts. Comparative scholarship on judicial behavior was in its infancy, and much less was known about opinion writing, judicial selection and specialized courts. After almost fifty years of empirical scholarship on judicial behavior, one could assert that judicial behavior remained a "puzzle."

Since then, as shown by the chapters in this volume, there has been an explosion of research. Few scholars question the idea that attitudes influence judges. Rather, the debates center on how much and to what extent judges are influenced. The idea that judges are strategic actors is broadly accepted, so now the debate has moved to motivations beyond law and policy that might influence judicial behavior. Empirical scholarship through more sophisticated measurement of law and ideology has resurrected the importance of law and shown that while judges are political actors, they confront different pressures and constraints than actors in the legislative and executive branches do.

Comparative scholars have been using these concepts and tools to examine judicial behavior in a comparative context. These analyses offer complexities and insights not available to scholars

of American courts, even those who study state courts in a comparative context. Comparative analysis allows scholars to examine courts in developing and authoritarian countries, as well as courts in developed countries. In addition, we now have research on transnational courts.

Have we solved the "puzzle" of judicial behavior? To the extent that research continues in the areas first examined in a systematic manner seven decades ago, along with all these new areas of scholarship, the obvious answer is no. A review of all the new areas to examine and analyze shows that we still have much work to do. Perhaps the better question is not whether we have solved the puzzle, but are we making progress toward the unattainable goal of a complete answer to the puzzle. We think, and we hope the reader agrees, that the answer is yes.

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