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CHAPTER

Measuring Political Preferences 🔓

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Abstract

Almost all theories of judicial behaviour ascribe a key role to political preferences. The idea is that the judges want to align the law with their political commitments—whether ideological or partisan. This chapter explores strategies for measuring and estimating the judges' political preferences. It consists of two major parts: exogenous measures of political preferences (those that are based on information causally prior to any votes cast or other choices the judges make) and endogenous measures (those that depend on revealed behaviour). The authors detail the strengths and weaknesses of the various measures, and offer suggestions for forward movement. Mostly, though, they encourage readers to keep an open mind as to the best ways to measure political preferences in their own applications.

Keywords: political preferences, ideal point estimates, partisan identity, partisanship, ideology

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1 Introduction

Almost all theories of judicial behaviour ascribe a key role to the judges' preferences. In some accounts, personal or institutional preferences move to the fore,[1] but even those approaches leave room for political preferences. The idea is that judges want to align the law with their political commitments—whether ideological or partisan.

Because ideology and partisanship are covered elsewhere,[2] we forego a discussion of the key empirical findings (there are many!), and instead take a deep dive into strategies for measuring and estimating the judges' political preferences. To that end, the chapter consists of two major parts: exogenous measures of political preferences (those that are based on information causally prior to any votes cast or other choices

the judges make) and endogenous measures (those that depend on revealed behaviour). Along the way we detail the strengths and weaknesses of the various measures, and offer suggestions for forward movement.

2 Partisan Identity Does Not Equal Ideology

Before turning to the measures of political preferences, we should identify what we're trying to measure. This seems like a reasonable starting point because when it comes to empirically assessing the judges' political preferences, contemporary studies tend to treat political goals, policy goals, partisan goals, and ideological goals as interchangeable. This move opens the door for researchers to measure ideology—the more common preference of interest—as the judge's (or the appointers') partisan identity. In other words, partisanship becomes a proxy for ideology because under the literature's conceptualization, ideology and party identity are fungible measures of the judges' political preferences.

We question this treatment; party identity and ideology are not the same, especially not in a world where affective polarization—favourable evaluations of co-partisans and negative evaluations of opposing partisans—is on the rise (Westwood et al. 2018; Reiljan 2019; Kekkonen and Yiä-Anttila 2021). Our view is that researchers should decide whether they're interested in partisanship or ideology, and develop their measures accordingly.

Early on in the study of judicial behaviour, scholars did just that (Schubert 1959; Nagel 1961; Ulmer 1962; Vines 1964). Especially compelling was Schmidhauser's 1961 study. Published just a year after *The American Voter*, which demonstrated 'the role of enduring partisan commitments in shaping attitudes toward political objects' (Campbell et al. 1960, 135), Schmidhauser argued that litigation related to the US 'sectional crisis' of 1837–1860 triggered a partisan response: justices affiliating with the Whigs more often favoured the North, and the Democratic justices favoured the South.

Schmidhauser made deft use of qualitative and quantitative evidence to build his case for the importance of partisan (and regional) identity as opposed to ideology. And yet Schubert, in his classic book *The Judicial Mind*, dismissed Schmidhauser's findings in a single sentence: 'The author's conclusion, although stated by him in terms of the political party affiliations of the justices, clearly supports the finding that it was the attitudes of the justices … that dominated their behavior.' Schubert's response should come as no surprise. Following in the tradition established by the founder of the study of judicial behaviour (Pritchett 1941, 1948), Schubert's goal was to link the justices' *ideology* and their votes.[3] *The Attitudes and Ideologies of Supreme Court Justices* is the subtitle of his book, not *The Partisan Identities of Justices*.

The debate between Schmidhauser and Schubert—two pioneers of judicial behaviour—is instructive because it acknowledges a conceptual difference between ideology and partisanship. In the ensuing decades, however, this difference grew murkier as scholars concentrated on the judges' ideology, not their partisanship, as a driver of judicial behaviour—but they nonetheless sometimes used 'political party' to measure ideology (see Pinello 1999; Peretti 2020). Sunstein et al. (2006, 6) express the conventional view when they write: 'We focus throughout on the political affiliation of the appointing president. But that affiliation is only a proxy for judicial ideology.'

Sunstein et al. (2006) is a study of US appellate courts, but scholars studying courts throughout the world have done much the same, using the judges' party or the party of the appointing regime as a stand-in for ideology. To provide but a few examples:

> *Belgian Constitutional Court*: 'We show that judicial review of federalism is contaminated by *ideological* and strategic aspects that cannot be explained by purely legalistic accounts.' Ideology is proxied through various *partisan* measures (Dalla Pellegrina et al. 2017).

Canadian Supreme Court: 'Absent a more refined measure, we employed an oft-used construct to estimate the preferences of the individual justices: *the party* of the appointing executive/Prime Minister (PM)' (Szmer, Johnson, and Sarver 2007).

French Constitutional Council; *German Constitutional Court*: We test 'the correlation between the *party affiliation* of the pivotal judge and oppositional success .... In both countries the likelihood of an oppositional victory or defeat varies with the *ideological position* of the pivotal judge' (Hönnige 2009).

Italian Constitutional Court: 'Our work is part of the literature that recognizes that personal ideology (partially) explains the behaviour of constitutional judges.' *Ideology* is measured by whether the judge is a supporter of the right-wing political coalition or the left-wing coalition based on their *political background* (Dalla Pellegrina and Garoupa 2013).

Norwegian Supreme Court: *Ideology* is a significant predictor of the economic votes of the justices. A justice *appointed by a social-democratic government* has a higher probability of voting for the public interest than justices appointed by non-socialist governments (Grendstad, Shaffer, and Waltenburg 2011b, 2015).

Spanish Constitutional Court: 'The level of consensus among [the] justices [is expected] to depend on their *ideology*.' Ideology is measured by whether a majority of justices share the same *political party affiliation* (either the left-wing Spanish Socialist Workers' Party or right-wing Partido Popular) (López-Laborda, Rodrigo, and Sanz-Arcega 2019).

We are in no position to criticize studies using party to proxy ideology; we have made a similar move in our research (e.g. Epstein, Landes, and Posner 2013). Moreover, because various analyses show that party can be 'a dependable yardstick for ideology', equating party and ideology isn't without merit (Pinello 1999).

But a yardstick is one thing; treating party and ideology as fungible is quite another. Truth be told, such treatment would be a serious transgression in research on the citizens' behaviour—and also should be, we believe, in studies of the judges' behaviour.[4] That is because partisanship and ideology are conceptually distinct, and so using partisanship as a proxy for ideology is concerning. To provide an illustration of the difference, in a well-known experiment, Cohen (2003) presented participants with one of two versions of a welfare policy report: one recommending generous benefits and the other more limited benefits. Cohen also manipulated the endorsers of the report: 95 per cent of US congressional Democrats versus 95 per cent of congressional Republicans. It turned out that the effect of the partisan endorser was stronger than the effect of the policy (ideological) content; that is, regardless of the proposal's content, respondents adjudged more favourably the one endorsed by their partisan 'team'. Party trumped policy (see also Hawkins and Nosek 2012; Munro et al. 2013).

Because affective polarization is so pervasive, it is more than ever imperative to separate partisanship and ideology. Assuming party identity is an important form of social identity for judges (Peretti 2020), just as it is for many members of the public (e.g. Iyengar and Westwood 2015; Mason 2015), judges should be equally as susceptible to affective polarization, responding favourably to arguments made by co-partisans and antagonistically to those offered by opposing partisans. Which opens the door to all kinds of compelling research projects if only because partisanship—separate and distinct from ideology—has been mostly ignored as a determinant of judicial behaviour. Does partisan identity have distinct effects on judicial behaviour? Is ideology versus partisanship more influential in certain kinds of disputes? Are particular types of judges more susceptible to ideological or partisan effects? Do different selection systems amplify the effect of party, ideology, or both? And on and on.

Answering many of these questions requires researchers to develop strategies that mirror Cohen's experiment. Of course, we can't ask judges to decide a case with a policy endorsed by one political party and then reverse time and ask them to decide exactly the same case only now the policy is endorsed by another

party. Even the usual modus operandi in the political behaviour literature—conducting lab experiments on the influence of party versus policy—is beyond the pale.[5]

Observational studies are feasible, though tricky. If the idea is to mirror Cohen's experiment, one possibility would be to identify cases where the partisan stimuli is clear. Election and voting disputes are reasonable candidates if the political parties vary in their degree of support for, say, expansive voting rules (Lloyd 1995; Peretti 2020). Ditto for policies defended by the government in court, again assuming that governments composed of leftist political parties sometimes take conservative positions and that right-of-centre parties sometimes take liberal positions.

These are just a few possibilities to distinguish party and ideology, but it's the larger point that requires underscoring: the two should be distinguished.

3 Exogenous Measures of Ideology and Partisanship

Measures of political preferences come in roughly two varieties: exogenous measures, which are composed of information causally prior to any votes the judges cast or other choices they make, and endogenous measures, which rely on revealed behaviour. When the goal is to explain the effect of the judges' ideology or partisanship on their votes, scholars tend prefer exogenous measures because explaining votes with measures derived (even in part) from those very same votes involves a degree of circularity. For example, if we classify Judge X as conservative because she casts conservative votes, all we can say is that Judge X's votes predict her votes. But for studies that take the effect of ideology or partisanship as a given and wish to describe how it works—for example, whether liberals or conservatives are most likely to support free expression, whether ideology changes over time—endogenous approaches may be preferable because they are more precise.

In keeping with the conceptual difference between party and ideology, in what directly follows we consider two sets of exogenous approaches: one related to partisanship and the other, to ideology.[6] Section 4 of this chapter turns to the most common contemporary endogenous measures: ideal point estimates.

3.1 Partisanship

For studies theorizing about the role of party identity in judging, there are two obvious measures: the partisanship (i) of the judges and (ii) of their appointers. From what we can gather, the first is not easy to ascertain in many countries (Dalla Pellegrina and Garoupa 2013; Alarie and Green 2017). And even in the United States, where information about the judges' partisanship is fairly readily available, complications can arise (e.g. judges who affiliate with neither major party; judges who switched parties).

For these reasons, scholars often look to the appointers' party. For example, in the United States, the president; in Canada, the prime minister (Alarie and Green 2017); in Germany, the nominating political party (Hönnige 2009). Even when appointment is done by committee, the partisanship of the regime in power has been used to assess the judges' partisan leanings (Grendstad, Shaffer, and Waltenburg 2015).

Whether focusing on judges or appointers, the party-based approach has several nice features. Chief among them is that it produces a reliable measure. Assuming researchers have a list of the party affiliations of every judge (or appointer), no judgment calls are required. On the downside, partisan measures operate under an assumption that often goes untested: that all judges are equally committed to advancing their party's agenda. It seems likely that judges who were elected to office or held high-level positions in a regime could be strongly partisan, but what of judges who had little to do with party politics? Likewise, as Solberg and

Waltenburg (2023, this volume) point out, there are questions about whether the 'political partisan connection' makes sense for ordinary court judges in civil law societies (but see Ceron and Mainenti 2015).

These are not fatal flaws. Assuming biographical information is available, studies could attend to the intensity of the judges' party identity. Dalla Pellegrina et al. (2017) follow this path in their study of the Belgian Constitutional Court:

> Judges' political preferences have been assigned as follows. If a judge is a former member of parliament, a preference is associated according to the political party he belonged to ... We followed a different approach when ... aligning, preferences for judges with a legal background. For these judges, we used elements imputing a specific political orientation expressed prior to the judge's appointment to the Court for all judges with a legal background, we also allowed for political neutrality in the interest of empirical robustness.

Dalla Pellegrina et al. (2017) then took the additional step of verifying the judges' political affiliations with local experts.

3.2 Ideology

When it comes to ideology, two exogenous approaches seem plausible, though perhaps are underexploited: expert judgments (the individual judge's ideology) and regime voting patterns (the appointer's ideology).

3.2.1 Expert Judgments of Judge Ideology

Expert judgment plays an important role in measuring preferences in many pockets of the social sciences—the study of judicial behaviour not excepted. But the projects on judges are less capacious, relying almost exclusively on some variant of the 'Segal–Cover scores' (Segal and Cover 1989). That approach entails analysing newspaper editorial content ('expert judgments'), written before the judges' appointment, to develop an ideology score for each judge, ranging from, say, 0 (unanimously rated conservative) to 1 (unanimously rated liberal).

Perhaps because editorial scores are one of the few validated exogenous measures of judicial ideology, they make appearances in many studies on US justices (Segal and Cover's initial target), as well as in research on Canadian and Australian justices (Ostberg and Wetstein 2007; Weiden 2011). But the approach is not without its share of drawbacks. One is that the editorial scores are better surrogates for ideology in cases involving civil rights and liberties than in litigation in areas such as federal taxation and intellectual property (see generally Epstein and Mershon 1996). This is hardly surprising. When evaluating the ideology of would-be judges, newspaper editors are far more likely to focus on, say, religion or immigration than on the tax code.

Second, once computed the scores they do not vary over the course of judges' career. That may not matter much for judges who serve for relatively short, non-renewable terms, but it could present a problem in life-tenure countries where judges could (and do) 'evolve' in their thinking, growing more liberal or conservative over time (Epstein et al. 2007b; Alarie and Green 2009). Finally, the approach is best suited to highly visible courts/judges. In the US, for example, scholars have found it nearly impossible to calculate scores for judges serving in the lower federal courts or on state benches because of a shortage of editorials.

For these reasons, we propose an alternative approach: expert surveys. This approach is common in the financial sector (e.g. the World Bank), and it plays a role in various indices of governance (e.g. the BTI Transformation Index) and in many scholarly studies. To provide a few examples, Clinton and Lewis (2008), in an effort to measure US government agency preferences, 'identified experts in bureaucratic politics

among academics, journalists, and Washington think tanks'. They sent each expert a list of agencies, and asked:

> I am interested to know which of these agencies have policy views due to law, practice, culture, or tradition that can be characterized as liberal or conservative. For [each agency] does it 'slant Liberal, Neither Consistently, slant Conservative, Don't Know.'

With these responses, along with objective data on the agencies, Clinton and Lewis (2008) used a multi-rater item response model to develop preferences estimates (and measures of uncertainty). Likewise, comparativists studying political parties have lone relied expert judgments, gathered from surveys, to estimate the parties' positions in political space (Castles and Mair 1984; Ray and Narud 2000; Benoit and Laver 2006; Baker and Green 2011). Finally, it is worth noting that a major scientific project seeking to measure democracy throughout the world (V-Dem)[7] develops its estimates by aggregating expert judgments (about five experts per-country-year observation).

Using experts to rate judges is not unknown in the study of judicial behaviour but the ratings are usually about 'greatness' or 'impact' (e.g. Blaustein and Mersky 1972). A notable exception is Grendstad, Shaffer, and Waltenburg (2011a), in which the researchers asked Norwegian lawyers who had passed the Supreme Court bar to rate the justices along a radical (liberal) to conservative scale. The data resulted in a measure of ideology with acceptable face validity.[8]

As Grendstad, Shaffer, and Waltenburg (2011a) suggest, developed and analysed with care, there seem to be few downsides to applying the expert strategy to measure the judges' ideology.[9] And better still, the upsides are many: the estimates obtained from the surveys could be updated annually and could be developed for less visible judges. So too surveys need not be general; researchers could ask experts about ideology in particular areas of the law, thereby overcoming the problem of the newspapers' focus on highly salient issues.

3.2.2 Regime Ideology

Just as some studies use the partisanship of the judges' appointers to measure the judges' partisanship, research also uses the appointers' ideology to proxy the judges. In fact, the state-of-the-art measure for the ideological preferences of US appellate judges (and, for that matter, US trial judges), developed by Giles, Hettinger, and Peppers (2001), exploits an important institutional feature of the appointment process ('senatorial courtesy'), which may constrain the president from nominating a candidate to the lower federal courts who mirrors his ideology. Under courtesy norms, when a senator is of the same party as the president and the vacancy is from the senator's state, the senator can exert considerable influence on the selection of judges. To attend to this norm, Giles, Hettinger, and Peppers (2001) assign the federal judge the ideology of the 'nominating' senator when courtesy is in effect; otherwise the judge receives the score of the nominating president. (To measure the senators' and presidents' ideology, Giles, Hettinger, and Peppers use Lewis et al.'s (2022) NOMINATE scores, which are based on analysis of legislative roll call votes.)

This same approach, adapted to local norms, including norms regarding roll call votes,[10] could be applied beyond the United States to study appointers and regimes; that is because variants on the NOMINATE scaling method, and now the Martin–Quinn dynamic item response model (discussed momentarily) has been used to estimate the ideal points of members of the European Parliament (Hix, Noury, and Roland 2006; Lindstädt, Slapin, and Vander Wielen 2011; Lo 2018) and of legislators in the Czech Republic (Hájek 2020), Britain (Kellermann 2012), Switzerland (Bütikofer and Hug 2010), France (Rosenthal and Voeten 2004), and Germany (Bräuninger, Müller, and Stecker 2016), among others.

4 Endogenous Measures of Ideology: Ideal Point Estimates

Virtually all contemporary endogenous measures of ideology fall into the category of 'ideal point estimates'. Using the judges' votes (or other choices), the goal is to estimate the judges' most preferred position on a dimension(s) of interest. Mostly the authors posit an underlying left (liberal)–right (conservative) continuum and attempt to locate each judge's idea point along that line.

Although contemporary estimation of judicial ideal points can be traced to two authors of this chapter, Martin and Quinn (2002), and was initially applied to US justices, the project has gone global (Voeten 2008; Sánchez, Magaloni, and Magar 2011; Malecki 2012; Hanretty 2013; Dalla Pellegrina, Escresa, and Garoupa 2014; Nery Ferreira and Mueller 2014; Alarie, Green, and Iacobucci 2015; Iaryczower and Katz 2016; Dalla Pellegrina et al. 2017; Gonzalez Bertomeu, Dalla Pellegrina, and Garoupa 2017; Hartmann and Hudson 2017; Yildirim, Kutlar, and Gulener 2017; Frankenreiter 2018; Weinshall, Sommer, and Ritov 2018; Desrieux and Espinosa 2019). To provide a few examples:

Brazilian Supreme Court: Desposato, Ingram, and Lannes (2015) use the Martin–Quinn model to measure the judges' ideologies. The study shows that an increase in the court's policy-making authority created a political cleavage on the court.

Catalan Constitutional Court: Dalla Pellegrina, Garoupa, and Gili (2020) estimate the judges' ideal of points along two dimensions: conservative–progressive and Spanish–Catalan sovereignty. The former affects decisions with significant policy content; the latter affects outcomes regardless of content.

Estonian Supreme Court: After estimating the justices' ideal points, Hanretty (2015) concludes that the recovered dimension does not reflect ideology but rather 'disagreement about the proper scope of constitutional redress'.

Norwegian Supreme Court: Based on their ideal point estimates, Skiple, Littleré Bentsen, and Hanretty (2020) demonstrate that the judges are not divided along left–right lines but instead 'disagree about the appropriate degree of deference' to give to the government.

Turkish Constitutional Court: Applying the Martin–Quinn model, Varol, Dalla Pellegrina, and Garoupa (2017) unearth a conservative ideological shift following a restructuring of the Court.

European Court of Human Rights: Voeten (2007) estimated the ideal points of judges from 1960 to 2006. The results show that activism versus restraint is 'the main dimension of contestation among judges.'

That scholars all over the world are attempting to estimate ideal points in one way or another speaks to the importance of the enterprise. Ideal points have become nearly indispensable for assessing the implications of many accounts of judicial behaviour, characterizing courts (or at least their median judge), studying individual and institutional change over time, and analysing the relations between courts and other relevant actors, among many other pressing projects.

In this section, we briefly explain ideal points and the spatial model that underlies them. Next we turn from the spatial model to the measurement models used to estimate ideal points. We conclude with a discussion of the limitations and challenges of these models—and potential workarounds.

4.1 Ideal Points and Spatial Models of Voting

Ever since Pritchett's groundbreaking work on the 'Roosevelt Court' (the US Supreme Court of the 1930s and 1940s), scholars and other commentators have arrayed judges serving on a collegial court along an ideological continuum. Figure 1 below provides an example of the 2021–2022 US Supreme Court.

Figure 1
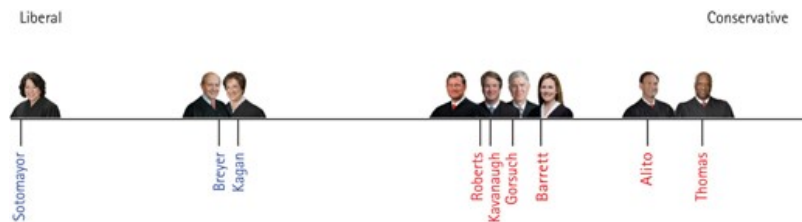
US Supreme Court Justices, ordered from left to right based on their Martin–Quinn ideal point estimates, 2021–2022 term.

The horizontal line represents a policy space ordered from left (most 'liberal') to right ('most conservative'). (Here, the line depicts all cases decided by the Court but it could be particular issue area, such as civil rights or criminal procedure.) The vertical lines are the justices' 'most preferred positions', which, in this depiction, is an estimate of each justice's ideal point. If each justice had his or her druthers, the Court's decisions would end up precisely on this point.

All of us have seen these types of figures; they are commonplace worldwide. But underlying them is a general framework: a spatial model of voting. The model that motivates the Martin–Quinn approach to ideal point estimation assumes that judges have a choice between two alternatives (e.g. affirm or reverse the lower court, vote with the majority or not), and that these alternatives have policy consequences that can be represented by points in an issue space. Judges evaluate these policy consequences with utility functions that are single peaked around some ideal policy point specific to each judge. A (trivial) consequence of the model is that a judge is most likely to vote for the alternative closest to her in the policy space.

4.2 From Spatial Models to Measurement Models

To move from spatial models to measurement, most contemporary approaches draw on item response theory (IRT) models. The basic goal is to show a relationship between an attribute, as measured by some instrument, and a response. In educational testing, the trait may be intelligence or ability as measured by answers to questions on a standardized exam. In judging, the trait may be ideology, as measured by votes in cases, to join, say, the majority or not. It is worth emphasizing that IRT models are agnostic about the latent dimension—that is, they won't tell us whether an uncovered pattern is ideology or not. That call is up to the researcher to make. (Ho and Quinn (2010) provide a non-technical introduction to these models.)

The central building block in models of judicial ideal points is that the probability of Judge j voting for the alternative coded 1 (say, voting with the majority in non-unanimous decisions) in case k is given by:

$$\Phi(\alpha_k + \beta_k\theta_j)$$

where $\Phi(\cdot)$ is the standard normal cumulative distribution function, α_k and β_k are deterministic functions of the policy locations of the two alternatives, and θ_j is the ideological location of Judge j's most preferred policy (her ideal point). Because of the dichotomous nature of each judge's decision, the probability that Judge j votes for the alternative coded 0 in case k (say, not in the majority) is given by:

$$1 - \Phi(\alpha_k + \beta_k\theta_j).$$

(The mathematics here follow directly from the spatial model of voting and are just a representation of the fact that, under the theoretical model, Judge j will vote for the option generating the policy consequences she most prefers.)

α_k, β_k, and θ_j are parameters to be estimated. Under a majority/dissent coding scheme, α_k captures the propensity to vote with the majority on case k after accounting for β_k and θ_j. β_k (the discrimination

parameter) tells us the extent to which the voting pattern in a given case k is consistent with the dominant pattern unearthed by the model; the higher the (absolute) value of β_k, the better the representation of case k.[11] In Figure 1 a 6−3 decision in which the three more liberal justices dissented would be consistent with the model, but a 6−3 decision, with Sotomayor, Kavanaugh, and Thomas dissenting would not be consistent.

For our purposes, the parameter θ_j is of great interest. It represents the judge's location (most preferred position) on the latent dimension for the period under analysis. Looking at Figure 1 it seems clear that the dimension is a left−right ideological dimension—if only because the θ_j values are consistent with informed commentary on the justices' behaviour.

Figure 1 shows ideal points for the 2021−2022 term of the Court, but they come from a dynamic IRT model, the Martin−Quinn analysis, which allows the estimates to vary by term (or any other time period) and are quite common in studies of judicial behaviour (e.g. Voeten 2008; Alarie, Green, and Iacobucci 2015; Windett, Harden, and Hall 2015; Varol, Dalla Pellegrina, and Garoupa 2017). To generate the dynamic estimates, Martin and Quinn include a Bayesian prior—though many other approaches are possible, including analyses that assume the judges' preferences are stable over the course of their careers (like NOMINATE scores developed for legislators) (e.g. Alarie and Green 2009; Hanretty 2012, 2013; Nery Ferreira and Mueller 2014; Dalla Pellegrina et al. 2017) or that develop estimates separately for each time period of interest (Dalla Pellegrina, Escresa, and Garoupa 2014).

4.3 Advantages … and Challenges

This is but a very brief introduction to IRT models designed to estimate judicial ideal points, with emphasis on dynamic Martin−Quinn scores. For readers interested in learning more (including applications), we recommend the original Martin and Quinn article (2002), as well as Martin, Quinn, and Epstein (2005); Alarie and Green (2009); Ho and Quinn (2010); Bailey, Howard, and Randazzo (2017); Gergen et al. (2020). We also note the availability of software packages that simplify the task of analysing item-response models. Martin, Quinn, and Park's (2011) MCMCpack is especially popular. It contains functions to use Bayesian tools to fit many statistical models including an array of measurement models (e.g. a one-dimensional IRT model, a k-dimensional IRT model).

We hope these sources are helpful but for now it is worth stressing that IRT models designed to estimate judicial ideal points are ubiquitous because they have many nice features. Certainly one is that they do not require researchers to determine whether a case or vote is 'liberal' or 'conservative'—almost always a task fraught with difficulty and controversy. More objective binaries are fine (such as, in our example, voted 'with the majority' or 'not with the majority'). Moreover, any dichotomy works as long as the votes are coded consistently within a particular case. In other words, it is perfectly acceptable to code votes in some cases as 'with the majority' or 'not with the majority' and votes in another subset of cases as 'with the chief judge' or 'not with the chief judge', and so on. All such coding will produce *identical* ideal point estimates.

A second excellent property of judicial ideal point estimates is that they allow for comparisons with other actors—including legislators and judges. The exact procedure depends on the comparability of the various estimates. For example, the Judicial Common Space places US justices, lower court judges, presidents, and legislators in the same policy space (Epstein et al. 2007a). Because all but the justices' scores follow from NOMINATE scores, the placements require only a transformation of the justices' (Martin−Quinn) scores to make them comparable. Other strategies are also possible (see e.g. Brouard and Hönnige 2017).

Yet another upside is that dynamic ideal point estimates permit judges to 'evolve'. Although preference change in the form of ideological drift may not be all that interesting for judges serving relatively short, non-renewable terms, it is a phenomenon of note for life-tenured judges (Epstein et al. 2007b; Alarie and

Green 2009). Approaches that can generate year-by-year (or actually any other period of interest) allow for assessment of drift over time.

Still, ideal point estimates are not without their share of concerns—though we prefer to think of them as challenges that can be met. The first, and perhaps most obvious, is the circularity issue, because researchers derive their estimates from votes, deploying, say, the Martin–Quinn scores to study the effect of ideology on votes would amount to using votes to predict votes. One response is that researchers should use them for only certain kinds of projects—typically projects that already assume ideology has an effect on voting. Endogenous scores, for example, have been used in research on ideological drift, which asks whether the judges' ideology changes with time.

Another response to the endogeneity problem is to remove the cases of interest from the data and then estimate the Martin–Quinn (or any other) scores on the remaining cases. Suppose we wanted to study the effect of ideology on votes in religion cases. By purging the religion cases from the data and recalculating the scores, we would avoid the trap of using votes to predict votes.

At one level, this technically resolves the circularity problem, though this problem can be overstated. As Martin and Quinn (2005) write:

> [A]s a practical matter using the full data Martin–Quinn scores when modeling votes in a single issue is perfectly appropriate. While circularity is a technical concern, the resultant measures from purging issues will change very little, and so it is not worth the effort to do so. When modeling votes in a single issue area, circularity is not a practical concern.[12]

A second concern with ideal point estimates is that they (in line with the spatial model) assume that judges vote sincerely for their most preferred outcome. That is, the estimates do not take account of the possibility that judges might vote strategically—for example, by considering the preferences and likely actions of their colleagues or elected actors. Some scholars have attempted to devise workarounds, with Fischman's (2011) effort especially notable. He develops a consensus model that includes the cost of dissent in the judicial utility function (reflecting the 'norm of consensus' on US appellate courts) and shows that it generates more accurate predictions than standard ideal point models. Considering the high rate of consensus on many courts worldwide, Fischman's strategy seems especially promising for the comparative analysis of judicial behaviour. (For another approach to estimating preferences on courts without much or any dissent, see Malecki (2012)).

A third concern centres on dimensionality. Our discussion has highlighted ideal points in a one-dimensional (left–right) space for good reason: The vast majority of studies (and not just US studies) uncover a single dimension usually identified as an ideological or policy pattern, suggesting the plausibility of unidimensionality as a general rule. But exceptions exist, and the same models used to identify ideological voting have been applied to indicators of other dimensions of interest. Such was Dalla Pellegrina et al.'s (2020) study of the Catalan Constitutional Court. The authors used IRT models to estimate the judges' ideal points along two dimensions: conservative–progressive and Spanish–Catalan sovereignty (see also Hartmann and Hudson 2017).

5. Conclusion

We began by noting the ubiquity and substantive importance of the *concept* of political preferences in accounts of judging; and much of the chapter took pains to distinguish the underlying latent *concept* from particular *measures* of that concept. This distinction between a latent concept and the tangible, but imperfect, measures of that concept is vitally important to the social scientific enterprise. Although we are confident that the political preferences of judges will remain important for accounts of judging well into the future, we encourage readers to keep an open mind as to the best ways to measure political preferences in their own applications. We hope that this chapter has clarified the considerations key to that inquiry.

Acknowledgements

References

Ainsley, Caitlin, Clifford J. Carrubba, Brian F. Crisp, Betul Demirkaya, Matthew J. Gabel, and Dino Hadzic. 2020. 'Roll-Call Vote Selection: Implications for the Study of Legislative Politics'. *American Political Science Review* 114: 691–706.
Google Scholar   WorldCat

Alarie, Benjamin, and Andrew Green. 2009. 'Policy Preference Change and Appointments to the Supreme Court of Canada'. *Osgoode Hall Law Journal* 47: 1–46.
Google Scholar   WorldCat

Alarie, Benjamin, Andrew Green, and Edward M. Iacobucci. 2015. 'Panel Selection on High Courts'. *University of Toronto Law Journal* 65, no. 4: 335–81.
Google Scholar   WorldCat

Alarie, Benjamin, and Andrew J. Green. 2017. *Commitment and Cooperation on High Courts*. Oxford: Oxford University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Bailey, Michael, Robert M. Howard, and Kirk A. Randazzo. 2017. 'Measuring Ideology on the Courts'. In *Routledge Handbook of Judicial Behavior*, edited by Kirk A. Randazzo. Routledge.
Google Scholar   Google Preview   WorldCat   COPAC

Baker, Andy, and Kenneth F. Green. 2011. 'The Latin American Left's Mandate: Free Market Policies and Issue Voting in New Democracies'. *World Politics* 61: 43–77.
Google Scholar   WorldCat

Bakker, Ryan, Erica Edwards, Seth Jolly, Jonathan Polk, Jan Rovny, and Marco Steenbergen. 2014. 'Anchoring the Experts: Using Vignettes to Compare Party Ideology Across Countries'. *Research & Politics* 1.

Benoit, Kenneth, and Michael Laver. 2006. *Party Policy in Modern Democracies*. London: Routledge.
Google Scholar   Google Preview   WorldCat   COPAC

Blaustein, Albert P., and Roy M. Mersky. 1972. 'Rating Supreme Court Justices'. *American Bar Association Journal* 58: 1183–89.
Google Scholar   WorldCat

Bonica, Adam, and Maya Sen. 2017. 'A Common-Space Scaling of the American Judiciary and Legal Profession'. *Political Analysis* 21: 114–21.
Google Scholar   WorldCat

Brauninger, Thomas, Jochen Müller, and Christian Stecker. 2016. 'Modeling Preferences Using Roll Call Votes in Parliamentary Systems'. *Political Analysis* 24: 189–210.
Google Scholar   WorldCat

Brouard, Sylvain, and Christoph Hönnige. 2017. 'Constitutional Courts as Veto Players: Lessons from the United States, France and Germany'. *European Journal of Political Research* 56, no. 3: 529–52.
Google Scholar   WorldCat

Bütikofer, Sarah, and Simon Hug. 2010. 'The Swiss Upper House: "Chambre de Réflexion" or Conservative Renegades?' *Journal of Legislative Studies* 16: 176–94.
Google Scholar   WorldCat

Campbell, Angus, Philip E. Converse, Warren E. Miller, and Donald E. Stokes. 1960. *The American Voter*. New York: Wiley.
Google Scholar   Google Preview   WorldCat   COPAC

Castles, Frank, and Peter Mair. 1984. 'Left-Right Political Scales: Some Expert Judgements'. *European Journal of Political Research*

12: 73–88.
Google Scholar   WorldCat

Ceron, Andrea, and Marco Mainenti. 2015. 'Toga Party: The Political Basis of Judicial Investigations against MPs in Italy (1983–2013) '. *South European Society and Politics* 20: 223–42.
Google Scholar   WorldCat

Clinton, Joshua D., and David E. Lewis. 2008. 'Expert Opinion, Agency Characteristics, and Agency Preferences'. *Political Analysis* 16: 3–20.
Google Scholar   WorldCat

Cohen, Geoffrey L. 2003. 'Party Over Policy: The Dominating Impact of Group Influence on Political Beliefs'. *Journal of Personality and Social Psychology* 85, no. 5: 808–22.
Google Scholar   WorldCat

Curini, Luigi. 2010. 'Experts' Political Preferences and Their Impact on Ideological Bias: An Unfolding Analysis based on a Benoit-Laver Expert Survey'. *Party Politics* 16: 299–321.
Google Scholar   WorldCat

Dalla Pellegrina, Lucia, and Nuno Garoupa. 2013. 'Choosing Between the Government and the Regions: An Empirical Analysis of the Italian Constitutional Court Decisions'. *European Journal of Political Research* 52: 558–80.
Google Scholar   WorldCat

Dalla Pellegrina, Lucia, Laarni Escresa, and Nuno Garoupa. 2014. 'Measuring Judicial Ideal Points in New Democracies: The Case of the Philippines'. *Asian Journal of Law and Society* 1, no. 1: 125–64.
Google Scholar   WorldCat

Dalla Pellegrina, Lucia, Nuno Garoupa, and Marian Gili. 2020. 'Estimating Judicial Ideal Points in Bi-Dimensional Courts: Evidence from Catalonia'. *Journal of Empirical Legal Studies* 17, no. 2: 383–415.
Google Scholar   WorldCat

Dalla Pellegrina, Lucia, Jef De Mot, Michael Faure, and Nuno Garoupa. 2017. 'Litigating Federalism: An Empirical Analysis of Decisions of the Belgian Constitutional Court'. *European Constitutional Law Review* 13: 305–46.
Google Scholar   WorldCat

Desposato, Scott W., Matthew C. Ingram, and Osmar P. Lannes, Jr. 2015. 'Power, Composition, and Decision Making: The Behavioral Consequences of Institutional Reform on Brazil's Supremo Tribunal Federal'. *Journal of Law Economics & Organization* 31, no. 3: 534–67.
Google Scholar   WorldCat

Desrieux, Claudine, and Romain Espinosa. 2019. 'Case Selection and Judicial Decision-Making: Evidence from French Labor Courts'. *European Journal of Law and Economics* 47, no. 1: 57–88.
Google Scholar   WorldCat

Epstein, Lee, and Carol Mershon. 1996. 'Measuring Political Preferences'. *American Journal of Political Science* 40: 261–94.
Google Scholar   WorldCat

Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The Behavior of Federal Judges*. Cambridge: Harvard University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007a. 'The Judicial Common Space'. *Journal of Law Economics & Organization* 23, no. 2: 303–25.
Google Scholar   WorldCat

Epstein, Lee, Andrew D. Martin, Kevin M. Quinn, and Jeffrey A. Segal. 2007b. 'Ideological Drift Among Supreme Court Justices'. *Northwestern University Law Review* 101: 1483–542.
Google Scholar   WorldCat

Epstein, Lee, Andrew D. Martin, Kevin M. Quinn, and Jeffrey A. Segal. 2012. 'Ideology and the Study of Judicial Behavior'. In *Ideology, Psychology, and Law*, edited by Jon Hanson, 705–28. Oxford: Oxford University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Fischman, Joshua B. 2011. 'Estimating Preferences of Circuit Judges: A Model of Consensus Voting'. *Journal of Law & Economics* 54, no. 4: 781–809.
Google Scholar   WorldCat

Frankenreiter, Jens. 2018. 'Are Advocates General Political? An Empirical Analysis of the Voting Behavior of the Advocates General at the European Court of Justice'. *Review of Law & Economics* 14: 20160037.
Google Scholar   WorldCat

Gergen, Mark P., David A. Carrillo, Benjamin Minhao Chen, and Kevin M. Quinn. 2020. 'Partisan Voting on the California Supreme Court'. *Southern California Law Review* 93: 101–83.
Google Scholar   WorldCat

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, no. 3: 623–41.
Google Scholar   WorldCat

Goldman, Sheldon. 1997. *Picking Federal Judges*. New Haven: Yale University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Gonzalez Bertomeu, Juan, Lucia Dalla Pellegrina, and Nuno Garoupa. 2017. 'Estimating Judicial Ideal Points in Latin America: The Case of Argentina'. *Review of Law & Economics* 13: 20150040.
Google Scholar   WorldCat

Grendstad, Gunnar, William R. Shaffer, and Eric N. Waltenburg. 2011a. 'Ideologi og Grunnholdninger hos Dommerne'. *Lov og Rett* 50, no. 4: 240–53.
Google Scholar   WorldCat

Grendstad, Gunnar, William R. Shaffer, and Eric N. Waltenburg. 2011b. 'When Justices Disagree. The Influences of Ideology and Geography on Economic Voting on the Norwegian Supreme Court'. *Retfaerd* 34: 3–22.
Google Scholar   WorldCat

Grendstad, Gunnar, William R. Shaffer, and Eric N. Waltenburg. 2015. *Policy Making in an Independent Judiciary. The Norwegian Supreme Court*. Colchester: ECPSR Press.
Google Scholar   Google Preview   WorldCat   COPAC

Hájek, Lukáš. 2020. 'Dynamic Roll Call Analysis of Parties' Ideological Positions in the Czech Republic'. *Journal of Legislative Studies* 26: 133–57.
Google Scholar   WorldCat

Hanretty, Chris. 2012. 'Dissent in Iberia: The Ideal Points of Justices on the Spanish and Portuguese Constitutional Tribunals'. *European Journal of Political Research* 51: 671–92.
Google Scholar   WorldCat

Hanretty, Chris. 2013. 'The Decisions and Ideal Points of British Law Lords'. *British Journal of Political Science* 43, no. 3: 703–16.
Google Scholar   WorldCat

Hanretty, Chris. 2015. 'Judicial Disagreement Need Not Be Political: Dissent on the Estonian Supreme Court'. *Europe-Asia Studies*

67, no. 6: 970–88.
Google Scholar   WorldCat

Hartmann, Ivar Alberto, and Alexander Hudson. 2017. 'Can You Bury Ideology? An Empirical Analysis of the Ideal Points of the Ministers of Brazil's Supremo Tribunal Federal'. *A&C-Revista De Direito Administrativo & Constitucional* 17, no. 68: 43–59.
Google Scholar   WorldCat

Hawkins, Carlee Beth, and Brian A. Nosek. 2012. 'Motivated Independence? Implicit Party Identity Predicts Political Judgments Among Self-Proclaimed Independents'. *Personality and Social Psychology Bulletin* 38, no. 11: 1437–52.
Google Scholar   WorldCat

Hix, Simon, Abdul Noury, and Gérard Roland. 2006. 'Dimensions of Politics in the European Parliament'. *American Journal of Political Science* 50: 494–511.
Google Scholar   WorldCat

Ho, Daniel E., and Kevin M. Quinn. 2010. '813 How Not to Lie with Judicial Votes: Misconceptions, Measurement, and Models'. *California Law Review* 98: 813–76.
Google Scholar   WorldCat

Hönnige, Christoph. 2009. 'The Electoral Connection: How the Pivotal Judge Affects Oppositional Success at European Constitutional Courts'. *West European Politics* 32, no. 5: 963–84.
Google Scholar   WorldCat

Iaryczower, Matias, and Gabriel Katz. 2016. 'More than Politics: Ability and Ideology in the British Appellate Committee'. *Journal of Law Economics & Organization* 32, no. 1: 61–93.
Google Scholar   WorldCat

Iyengar, Shanto, and Sean J. Westwood. 2015. 'Fear and Loathing across Party Lines: New Evidence on Group Polarization'. *American Journal of Political Science* 59, no. 3: 690–707.
Google Scholar   WorldCat

Kekkonen, Arto and Tuomas Yiä-Anttila. 2021. 'Affective Blocs: Understanding Affective Polarization in Multiparty Systems'. *Electoral Studies* 72: 102367.
Google Scholar   WorldCat

Kellermann, Michael. 2012. 'Estimating Ideal Points in the British House of Commons Using Early Day Motions'. *American Journal of Political Science* 56: 757–71.
Google Scholar   WorldCat

Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet. 2022. 'Voteview: Congressional Roll-Call Votes Database'. https://voteview.com/.
WorldCat

Lindstädt, René, Jonathan. B. Slapin, and Ryan. J. Vander Wielen. 2011. 'Balancing Competing Demands: Position Taking and Election Proximity in the European Parliament'. *Legislative Studies Quarterly* 36: 37–70.
Google Scholar   WorldCat

Lindstädt, René, Sven-Oliver Proksch, and Jonathan B. Slapin. 2020. 'When Experts Disagree: Response Aggregation and its Consequences in Expert Surveys'. *Political Science Research and Methods* 8: 580–88.
Google Scholar   WorldCat

Lloyd, Randall D. 1995. 'Separating Partisanship from Party in Judicial Research: Reapportionment in the U.S. District Courts'. *American Political Science Review* 89, no. 2: 413–20.
Google Scholar   WorldCat

Lo, James. 2018. 'Dynamic Ideal Point Estimation for the European Parliament, 1980–2009'. *Public Choice* 176: 229–46.
Google Scholar   WorldCat

López-Laborda, Julio, Fernando Rodrigo, and Eduardo Sanz-Arcega. 2019. 'Consensus and Dissent in The Resolution of Conflicts of Competence by the Spanish Constitutional Court: The Role of Federalism and Ideology'. *European Journal of Law and Economics* 48: 305–30.
Google Scholar   WorldCat

Malecki, Michael. 2012. 'Do ECJ Judges All Speak with the Same Voice? Evidence of Divergent Preferences from the Judgments of Chambers'. *Journal of European Public Policy* 19, no. 1, SI: 59–75.
Google Scholar   WorldCat

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: 134–53.
Google Scholar   WorldCat

Martin, Andrew D., and Kevin M. Quinn. 2005. 'Can Ideal Points be Used as Explanatory Variables?'
https://mqscores.lsa.umich.edu/media/resnote.pdf.
WorldCat

Martin, Andrew D., Kevin M. Quinn, and Jong Hee Park. 2011. 'MCMCpack: Markov Chain Monte Carlo in *R*'. *Journal of Statistical Software* 42, no. 9: 1–21.

Martin, Andrew D., Kevin M. Quinn, and Lee Epstein. 2005. 'The Median Justice on the U.S. Supreme Court'. *North Carolina Law Review* 83: 1275–322.
Google Scholar   WorldCat

Mason, Lilliana. 2015. '"I Disrespectfully Agree": The Differential Effects of Partisan Sorting on Social and Issue Polarization'. *American Journal of Political Science* 59, no. 1: 128–45.
Google Scholar   WorldCat

Munro, Geoffrey D., Julia Zirpoli, Adam Schuman, and Jeff Taulbee. 2013. 'Third-Party Labels Bias Evaluations of Political Platforms and Candidates'. *Basic and Applied Social Psychology* 35, no. 2: 151–63.
Google Scholar   WorldCat

Nagel, Stuart S. 1961. 'Political Party Affiliation and Judges' Decisions'. *American Political Science Review* 55, no. 4: 843–50.
Google Scholar   WorldCat

Nery Ferreira, Pedro Fernando Almeida, and Bernardo Mueller. 2014. 'How Judges Think in the Brazilian Supreme Court: Estimating Ideal Points and Identifying Dimensions'. *Economia* 15, no. 3: 275–93.
Google Scholar   WorldCat

Ostberg, C. L., and Matthew E. Wetstein. 2007. *Attitudinal Decision Making in the Supreme Court of Canada*. Vancouver: UBC Press.
Google Scholar   Google Preview   WorldCat   COPAC

Peretti, Terri. 2020. *Partisan Supremacy*. Lawrence: University Press of Kansas.
Google Scholar   Google Preview   WorldCat   COPAC

Pinello, Daniel R. 1999. 'Linking Party to Judicial Ideology in American Courts: A Meta-analysis'. *Justice System Journal* 20, no. 3: 219–54.
Google Scholar   WorldCat

Pritchett, C. Herman. 1941. 'Divisions of Opinion among Justices of the U.S. Supreme Court, 1939-1941'. *American Political Science Review* 35, no. 5: 890–98.

Google Scholar   WorldCat

Pritchett, C. Herman. 1948. *The Roosevelt Court*. New York: Macmillan.
Google Scholar   Google Preview   WorldCat   COPAC

Rachlinski, Jeffrey J., Sheri Johnson, Andrew J. Wistrich, and Chris Guthrie. 2009. 'Does Unconscious Racial Bias Affect Trial Judges?' *Notre Dame Law Review* 84: 1195–246.
Google Scholar   WorldCat

Ray, Leonard, and Hanne Marthe Narud. 2000. 'Mapping the Norwegian Political Space: Some Findings from an Expert Survey'. *Party Politics* 6: 225–39.
Google Scholar   WorldCat

Reiljan, Andres. 2019. 'Fear and Loathing Across Party Lines (Also) in Europe: Affective Polarisation in European Party Systems'. *European Journal of Political Research* 59: 376–96.
Google Scholar   WorldCat

Rosenthal, Howard, and Eric Voeten. 2004. 'Analyzing Roll Calls with Perfect Spatial Voting: France 1946–1958'. *American Journal of Political Science* 48: 620–32.
Google Scholar   WorldCat

Sánchez, Arianna, Beatriz Magaloni, and Eric Magar. 2011. 'Legalist versus Interpretativist: The Supreme Court and the Democratic Transition in Mexico'. In *Courts in Latin America*, edited by Gretchen Helmke and Julio Rios-Figueroa. 187–218. Cambridge: Cambridge University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Schmidhauser, John R. 1961. 'Judicial Behavior and the Sectional Crisis of 1837–1860'. *Journal of Politics* 23, no. 4: 615–40.
Google Scholar   WorldCat

Schubert, Glendon. 1959. *Quantitative Analysis of Judicial Behavior*. Glencoe: Free Press.
Google Scholar   Google Preview   WorldCat   COPAC

Segal, Jeffrey A., and Albert D. Cover. 1989. 'Ideological Values and the Votes of U.S. Supreme Court Justices'. *American Political Science Review* 83: 557–65.
Google Scholar   WorldCat

Skiple, Jon Kaare, Henrik Littleré Bentsen, and Chris Hanretty. 2020. 'The Government Deference Dimension of Judicial Decision Making: Evidence from the Supreme Court of Norway'. *Scandinavian Political Studies* 43, no. 4: 264–85.
Google Scholar   WorldCat

Solberg, Rorie Spill, and Eric N. Waltenburg. 2023. 'Attitudinal Judging: Partisanship and Ideology'. In *The Oxford Handbook on Comparative Judicial Behaviour*, edited by Lee Epstein, Gunnar Grendstad, Urška Šadl, and Keren Weinshall. Oxford: Oxford University Press.
Google Scholar   Google Preview   WorldCat   COPAC

Sunstein, Cass, David Schkade, Lisa M. Ellman, and Andres Sawicki. 2006. *Are Judges Political?* Washington: Brookings Institution Press.
Google Scholar   Google Preview   WorldCat   COPAC

Szmer, John, Susan W. Johnson, and Tammy A. Sarver. 2007. 'Does the Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada'. *Law & Society Review* 41: 279–304.
Google Scholar   WorldCat

Ulmer, S. Sidney. 1962. 'The Political Party Variable in the Michigan Supreme Court'. *Journal of Public Law* 11, no. 2: 352–62.
Google Scholar   WorldCat

Varol, Ozan O., Lucia Dalla Pellegrina, and Nuno Garoupa. 2017. 'An Empirical Analysis of Judicial Transformation in Turkey'. *American Journal of Comparative Law* 65, no. 1: 187–216.
Google Scholar   WorldCat

Vines, Kenneth N. 1964. 'Federal District Judges and Race Relations Cases in the South'. *Journal of Politics* 26, no. 2: 337.
Google Scholar   WorldCat

Voeten, Erik. 2007. 'The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights'. *International Organization* 61, no. 4: 669–701.
Google Scholar   WorldCat

Voeten, Erik. 2008. 'The Impartiality of International Judges: Evidence from the European Court of Human Rights'. *American Political Science Review* 102, no. 4: 417–33.
Google Scholar   WorldCat

Weiden, David L. 2011. 'Judicial Politicization, Ideology, and Activism at the High Courts of the United States, Canada, and Australia'. *Political Research Quarterly* 64: 335–47.
Google Scholar   WorldCat

Weinshall, Keren, Udi Sommer, and Ya'acov Ritov. 2018. 'Ideological Influences on Governance and Regulation: The Comparative Case of Supreme Courts'. *Regulation & Governance* 12, no. 3: 334–52.
Google Scholar   WorldCat

Westwood, Sean J., Shanto Iyengar, Stefaan Walgrave, Rafael Leonisio, Luis Miller, and Strijbis Oliver. 2018. 'The Tie that Divides: Cross-National Evidence of the Primacy of Partyism'. *European Journal of Political Research* 57: 333–54.
Google Scholar   WorldCat

Windett, Jason H., Jeffrey J. Harden, and Matthew E. K. Hall. 2015. 'Estimating Dynamic Ideal Points for State Supreme Courts'. *Political Analysis* 23, no. 3: 461–69.
Google Scholar   WorldCat

Yildirim, Engin, Aziz Kutlar, and Serdar Gulener. 2017. 'Estimating Judicial Ideal Points of the Justices of the Turkish Constitutional Court between 1962 and 1982'. *Amme Idaresi Dergisi* 50, no. 4: 1–31.
Google Scholar   WorldCat

Notes

1   See Chapter 10.

2   See Chapter 7.

3   Apparently, Schubert had a different take on state judges. Just six years before publishing *The Judicial Mind*, Schubert (1959) explored the effect of partisan stimuli in the form of workers' compensation claims.

4   Here we focus on conceptual differences between party and ideology. But there are other reasons to question party as a proxy for ideology (Epstein et al. 2012). For example, the approach assumes that the judges (or appointers) of one political party are always and uniformly more conservative than another political party. For example, in the United States, all Republican Presidents (or judges) are conservatives and all Democratic Presidents (or judges) are liberal. But data—at least in the United States—tends to show otherwise: 'Presidents of the same political party vary in their ideological preferences. Eisenhower is not Reagan. Indeed, the empirical record demonstrates that the voting propensities of the appointees of some Democratic and Republican presidents do not differ significantly' (Giles, Hettinger, and Peppers 2001). Another (usually untested assumption) is that appointers are motivated to appoint judges who reflect their ideology. But US studies show that appointers may have other goals. To provide but one example, Ronald Reagan's appointment of

Sandra Day O'Connor was less about advancing ideological goals than about appealing to female voters (see generally Goldman 1997).

5   Researchers have conducted experiments on judges attending judicial conferences, but almost all the experiments focus on sussing out various cognitive biases; judges are apparently reluctant to provide their partisan affiliation much less participate in political experiments (see e.g. Rachlinski et al. 2009).

6   Campaign contributions made to political parties and candidates is another exogenous measure (Bonica and Sen 2017). It hasn't caught on much in the United States, and we wonder how well it would transport to other countries.

7   Varieties of Democracy: https://www.v-dem.net.

8   This article is in Norwegian. See Appendix B in Grendstad, Shaffer, and Waltenburg (2015) for a summary of the measure in English.

9   For some tips on how to develop and analyse expert surveys, see Curini (2010); Lindstädt, Proksch, and Slapin (2020); Bakker et al. (2014).

10   See Ainsley et al. (2020), cataloguing 'voting procedures for 145 legislative chambers and finding that roll calls are typically discretionary'.

11   β_k can have a negative or positive value. When β_k is large and positive, the ideal points of the judges are highly predictive of their votes in case k with the members of the majority having ideal points to the right of the minority judges.

12   But this response, we hasten to note, does not resolve a related problem as to what causes the justices' votes in the first place. Let's say we're interested in the role of ideology in explaining judges' votes in religion cases. If we exclude religion votes in the calculation of the Martin–Quinn scores, we have eliminated the circularity issue. But that approach begs the question as to what caused the non-religion votes. We can claim that it is ideology, but all we really know is that the same factors that influence the judges' votes in non-religious cases influence their votes in religious cases. Perhaps that's good enough for most applications.