Introduction

So What Does *Law Have to Do with It?*

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DURING THE RENAISSANCE, the ermine became a symbol of purity that English royalty and later English judges adopted by adorning their robes with ermine fur. American judges forwent the fur but retained the symbol, for reasons that were nicely articulated by the Tennessee Supreme Court, writing in 1872:

> The idea that the judicial office is supposed to be invested with ermine, though fabulous and mythical, is yet most eloquent in significance. We are told that the little creature is so acutely sensitive as to its own cleanliness that it becomes paralyzed and powerless at the slightest touch of defilement upon its snow-white fur. A like sensibility should belong to him who comes to exercise the august functions of a judge . . . . But when once this great office becomes corrupted, when its judgment comes to reflect the passions or interests of the magistrate rather than the mandates of the law, the courts have ceased to be the conservators of the commonweal and the law itself is debauched into a prostrate and nerveless mockery. (Harrison v. Wisdom, 54 Tenn. [7 Heisk.] 99 [1872]).

In short, the ermine embodies the norm of impartial justice and the premise that judges are to bracket out extraneous influences on their decision-making and base their decisions upon applicable facts and law. If the story began and ended there, the answer to the question posed by the title of this volume, "What's law got to do with it?" would have to be: "Everything."

In the aftermath of the legal realism movement, a cadre of political scientists, inspired by principles of behavioral psychology, developed what they

dubbed the "attitudinal model" of judicial decision-making. Proponents pitted their attitudinal model against what they characterized as the "legal model," in studies of voting behavior on the Supreme Court (Segal and Spaeth 1993). They found that while judges say that they are following the law, in reality, their decisions are influenced more by their attitudes or ideological predilections. From this perspective, the myth of the ermine is just that, and despite its celebrated purity, the ermine is ultimately just another weasel. If so, what law has to do with it is essentially nothing.

For many years, the legal profession raised its ermines while the political science community nurtured its weasels, with only passing recognition that each was thinking of the same animal in fundamentally different ways. On those infrequent occasions in which one group acknowledged the other, it was typically in derisive or dismissive terms, for the limited purpose of observing that the other had misclassified its mammal in ways too obvious to take seriously. To the extent that there was a debate over the influences on judicial decision-making, it was a dichotomous one: judges were ermines, or they were weasels.

With the diversification of the menagerie in the 1990s, however, the ermine-weasel debate would take a turn for the complicated. Some political scientists challenged the premise of the attitudinal model that judges simply voted their policy preferences; rather, they posited, judges want to see their preferences implemented. For that to happen, the acquiescence, if not the support of other institutional actors—such as Congress or the president—can be essential. Judges therefore think strategically, the theory went, and adjust their decision-making to mollify or circumvent those who could thwart implementation of the judges' long-term policy objectives (Epstein and Knight 1998). Proponents of this "strategic choice" model thus postulate that judges are neither high-minded ermines nor weasels driven to satiate their ideological appetites, but clever, foxlike creatures, whose impulse to act upon their attitudes is tempered by savvy for the politically possible.

Still another cohort of political scientists, influenced by the thinking of social psychology, has questioned the premise underlying attitudinal and strategic choice models, that judges are driven by a single-minded desire to implement their vision of good public policy. Rather, they have argued, judges are social animals who desire respect and acceptance within their various communities to no less an extent than anyone else (Baum 2007). Thus, the argument goes, judicial decision-making is affected by the audiences that judges seek to impress, convince, or placate. The relevant audiences can be varied, and may include fel-

low judges, the bar, the media, the electorate, and others. Insofar as judges are an eager-to-please lot fixated upon ingratiating themselves to their audiences, the judicial mind-set would seem to be more closely akin to a puppy-dog than an ermine, fox, or weasel.

Then there are the economists. While economic analysis begot rational choice theories of legislative decision-making, which in turn spawned the strategic choice model discussed above, the relationship between strategic choice and traditional economic analysis of law is attenuated. The economic model rejects the suggestion that judicial decision-making can be explained by a desire to make good policy or make others happy. Rather, it presupposes a self-interested judge, who seeks to maximize the same things that all self-interested souls seek to maximize: income, power, prestige, leisure, and so on (Posner 1993). Fixed salaries and ethics rules constrain the influence of income on judicial decision-making, but judges may still structure their decision-making to maximize other interests, such as their prospects for appointment to higher judicial office (and the added power and prestige it entails) (Morriss, Heise, and Sisk 2005). In contrast to the ermine, weasel, fox, or puppy, the economic model's judge—who is driven by self-interested desires, is indifferent to the approbation of others, and has goals no loftier than indulging her own creature comforts—seems decidedly feline in orientation.

If analyzed superficially, this proliferation of models would simply seem to have enlarged the "either-or" debate over influences on judicial decision-making from two animals to five or six.[1] A closer look, however, reveals a gradual and perhaps fundamental shift in the way serious scholars think about judges and judicial decision-making. At the turn of the new millennium, political scientists and law professors began unprecedented collaborations on a range of empirical research projects. The net effect has been for each to take the others' work much more seriously than in the past, and to acknowledge with increasing frequency that the influences on judicial decision-making are complex and multivariate. As a consequence, few well-informed scholars would still argue that judges are exclusively foxes, or ermines, or weasels, or puppies, or cats; rather, there is an emerging consensus that judges are, well, foxermeaseluppycats.

For decades, law professors and political scientists were unwittingly engaged in a three blind men and the elephant remake, in which they, oblivious to each other, classified the same animal in different ways, with exclusive reference to the part they were holding. To complete the metaphor, the latest round of in-

terdisciplinary research has been eye-opening. One objective of this volume is to chronicle the recently emerging, if limited, common-sense consensus among law professors, political scientists, and judges that the influences on judicial decision-making are varied, and that law has neither everything nor nothing to do with how judges decide cases—rather, it has *something* to do with it.

To herald this as a moment of interdisciplinary consensus is both notable and overstated. It is notable, in that it marks a turning point in the study of courts: we have, in effect, begun to carve a Rosetta stone enabling the two disciplines with the most to say about what judges do, to communicate in a language that each understands. So equipped, it is possible for the first time to appreciate the extent to which law professors, political scientists, and judges share the common view that law and politics each play a role in the decisions judges make.

Characterizing this as a "consensus" overstates the accord and conceals the profound disagreements that remain. Most, if not all, may agree that law has something to do with what judges do, but is that "something" meaningful enough to matter? The legal establishment has long thought so. It conceptualizes judges as significantly different from public officials in the so-called political branches of government, by virtue of the judge's duty to bracket out extraneous influences and apply the law. Judges have thus been afforded a measure of independence from external controls denied other public officials that affects how judges are selected, regulated, and removed. For judges and many law professors, then, judicial independence facilitates rather than denigrates the rule of law—but that assumes the primacy of law in relation to other influences on judicial decision-making. If "law" is toward the bottom of the list, as many political scientists maintain, judicial independence liberates judges to implement their other priorities, by acting on their ideological preferences; indulging in strategic gamesmanship; pandering to their favored audiences; or satiating their self-interest. From this perspective, judicial independence undermines, rather than facilitates, the rule of law.

In short, the discovery of the foxermeaseluppycat is no small matter, but it is a polymorphous creature that defies classification. Scholars acknowledge its existence and yet disagree as to what it looks like and whether it is better caged or allowed to roam free. The chapters of this volume chronicle both the struggle toward interdisciplinary consensus on what judges do, and the profound disagreements that remain.

In his stage-setting essay in Chapter 1, Professor Jeffrey Segal outlines the

three dominant models of judicial decision-making—legal, attitudinal, and strategic choice—and highlights ongoing debates over their relative merits. This approach should be familiar to political scientists who study the courts, for it describes the field in terms of the differences separating the various schools of thought as they have emerged over the past generation.

Succeeding chapters orient themselves differently, by de-emphasizing what separates competing approaches and focusing instead on ways to reconcile or bridge the law-politics divide, embedded in the legal, attitudinal, and strategic choice models. In Chapter 2, Professor Stephen Burbank introduces complications, further explored by others in this volume, that offer insights into the difficulty of isolating the impact of law on judging. He emphasizes that the relationship between law and politics is not monolithic, but context-dependant, and may vary from court to court, issue to issue, and even case to case. He further argues that the relationship between law and politics is not dichotomous, because the law is necessarily written in terms sufficiently broad to accommodate discretion and consequently ideological (and other) influences. Here, Professor Segal takes issue, because in his view, defining law so flexibly enables it to explain everything, and so nothing—in other words, it is stated in terms so broad that its impact cannot meaningfully be verified or falsified. Burbank rejoins that while so capacious an understanding of law may complicate, if not undermine, the task of creating falsifiable hypotheses to test the respective influences of law and politics on judicial decision-making, he is unfazed, concluding, "I prefer the messiness of lived experience to the tidiness of unrealistically parsimonious models."

For Professor Lawrence Baum, on the other hand, a scholarly obsession with isolating the impact of law as distinct from politics is misdirected. In Chapter 3, Baum notes, consistent with the views of Cross and others, that law and policy are too intertwined to disentangle, and to that extent are less than a dichotomy. At the same time, more than just law and policy can hold sway with judges, whose decisions may also be influenced by the prospect of appointment to higher judicial office, the need for re-election, work-life balance, and the desire to preserve collegial relationships on a given court, among other considerations. To that extent, the universe of influences on judicial decision-making is much more than a dichotomy. Finally, Baum argues that when we do think about the law-policy dichotomy, we should concern ourselves more than most positive empirical scholars have with whether implementing ideological preferences is a judge's conscious motive, or is simply a subconscious effect of

judicial decision-making, because the answer has significant normative implications.

In Chapter 4, Professor Frank Cross further explores the interplay between law and politics by characterizing the former as a subset of the latter. For him, pitting law against politics creates a false dichotomy. By its nature, law leaves room for judicial discretion and the discretion judges exercise is influenced by political ideology, among other factors. Law nonetheless operates as a constraint on judicial discretion, leaving judges to strike a pragmatic balance by making decisions they regard as sound.

If law is politics, however, is the task of isolating the relative influence of law on judicial decision-making hopeless? The legal academy's embrace of eclecticism and complexity in its study of judicial behavior, as evidenced in Professor Cross's chapter, is in tension with the impulse of positive scholars—such as Segal—toward simplicity and reducing the variable influences on judicial behavior to a minimum. As Theodore Ruger observed at a conference where the chapters in this volume were discussed, identifying a variable for "law" generous enough to satisfy legal scholars and yet parsimonious enough to meet the needs of positive empirical scholars, is "the elusive holy grail of interdisciplinary scholarship about judicial behavior."

Professors Eileen Braman and Mitchell Pickerill explore ways to get past these interdisciplinary impasses and reach greater accord on the complexity and nuance of judicial decision-making in Chapter 5. They explain the difficulty law professors and political scientists have had in understanding the relative influence of law on the decisions judges make in terms of "path dependency"—a term that they borrow from the work of scholars who have studied institutions (such as the courts), and turn on the scholars themselves. In effect, each discipline has its own path or way of thinking about the problems it studies, a path that structures its methods of analysis and constrains the extent to which those who walk the path are willing to deviate from it. They identify significant issues of "translation" involving the operationalization of concepts that can influence the perceived usefulness of research across disciplines, and recommend that political scientists and academic lawyers acquire a deeper appreciation for the ways in which scholars in other disciplines conceptualize concepts.

In Chapter 6, Professors Barry Friedman and Andrew Martin offer more specific guidance as to how the influence of law could be more productively studied. They suggest that for the most part the so-called legal model is not re-

ally a model at all. What political scientists have dubbed the legal model often is little more than a list of law-related factors that judges say matter to them when they make decisions. Without specifying under what circumstances or subject to what limitations those factors influence judicial decisions, such factors, by themselves, lack the explanatory or predictive qualities of a model. They note, however, that some limited efforts to model law show promise, and underscore the centrality of nuance to such undertakings. Thus, researchers looking to study the impact of law should think not only of the ways in which law constrains outcomes but also of the ways it channels judicial discretion; they should look beyond the U.S. Supreme Court and spend more time with the lower courts, where the regularity of law is more pervasive; they should look beyond constitutional law and pay greater attention to statutory and common law cases, where the pull of precedent is different and arguably greater; and they should look at more than votes to consider the impact of law on the opinions themselves.

In Chapter 7, Professor Stefanie Lindquist adds another influence on judicial decision-making to the mix: institutional structure. In a massive, groundbreaking study of state supreme courts, Lindquist has begun the process of documenting patterns and trends of decision-making across courts, to the end of exploring what influences the choices judges make. Some preliminary findings, reported here, show that courts are less likely to overturn their own precedent if their judges are appointed, rather than elected; if tenure on the court is longer, rather than shorter; and if the court is smaller rather than larger.

The first seven chapters show that the legal academy and the political science community have come a long way in a relatively short period of time. Gone is the period of isolation in which neither responded to the work of the other in a meaningful way. And going, if not gone, is each discipline's fixation on reducing its understanding of judicial decision-making to a single influence, which has given rise to otherworldly debates over whether judges follow the law or their policy preferences, as if the universe of influences on judicial decision-making is limited to those two choices, and as if those two choices were mutually exclusive. The new generation of interdisciplinary work is leaving dichotomous constructs behind in favor of a more nuanced and sophisticated understanding of what judges do. In short, what we see over the course of the first seven chapters is the gradual emergence of an interdisciplinary consensus acknowledging the convergence of multiple influences on judicial decision-making, including the legal, the political, and others.

This consensus, however, is a decidedly uneasy one, in part because of what it portends for the respective disciplines. Academic lawyers like Burbank and Cross (and neoinstitutional scholars like Baum) may be at peace with complexity and the possibility that the various influences on judicial decision-making cannot be completely reduced, isolated, or quantified, but positive political theorists like Segal find such conclusions unacceptable because they thwart the efforts of researchers to test the relative significance of law and other influences on judicial decision-making. Friedman and Martin, and Braman and Pickerill, in turn, seek ways to bridge the divide between the competing impulses to complicate and simplify, by exploring how empirical research can productively be pursued to the enlightenment of political scientists and law professors alike. And Lindquist's pioneering study of state courts opens the door to the next frontier of courts research, where the dialogue over what judges do and how to study it is sure to intensify.

Even if there is a rough consensus among most scholars that applicable law has something but not everything to do with judicial decision-making, there is no related consensus on where that takes us. For centuries, the legal establishment has defended an "independent judiciary" against proposals to impose greater political controls on judges and the decisions they make, on the grounds that such controls would interfere with the "rule of law," by intimidating judges into making choices that the majority (or whoever is positioned to control the courts) prefers rather than what the law requires. If, however, it is conceded that independent judges do more or less follow the rule of law, does that concession undermine the legal establishment's long-standing justification for judicial independence? The answer depends in part on how much law still has to do with it: if judicial independence comes at the cost of liberating judges to act upon extralegal influences, do those costs exceed the rule of law benefits judicial independence promotes? The answer may likewise depend in part on whether there are *other* justifications for judicial independence that warrant its preservation regardless of its mixed impact on the rule of law—such as the role judicial autonomy plays in promoting a due or fair process for litigants, or enabling sound, pragmatic decision-making.

The debate over whether judges should be appointed or elected is illustrative of how deeply divided the disputants remain despite progress toward consensus on an underlying question that fuels the debate—namely, what does law have to do with the decisions judges make? To the extent that independent judges follow the law, subjecting them to loss of tenure for decisions unpopular

with an electorate unversed in what the law requires arguably replaces the rule of law with the rule of the mob, which augers in favor of selecting judges by appointment rather than election. On the other hand, to the extent that independent judges disregard the law and follow their ideological predilections, elections are a better way to promote accountability (and thereby promote institutional legitimacy) by ensuring that judicial preferences are more closely aligned with the preferences of the public judges serve.

Unsurprisingly, when it comes to judicial selection, the general agreement that judges are subject to an array of influences takes a back seat to disagreement over which influences predominate, with proponents of judicial elections typically highlighting the preeminence of ideology, and proponents of judicial appointment underscoring the primacy of law. At the nub of the judicial selection debate is a disagreement over whether judges are different from other public officials in ways that warrant a fundamentally different system of selection. Professor Matthew Streb's study in Chapter 8 reveals that when it comes to their election campaigns, legislators and judges (at the Supreme Court level, at least) are not that far apart. As he shows, these races have become comparably expensive, and comparably competitive. But such news will be greeted with alarm or huzzahs depending on what law has to do with the job judges perform—and whether one thinks that the kinds of legal decisions judges make are of a sort that the electorate should have an opportunity to influence directly.

In Chapter 9, Professor Melinda Gann Hall notes that the legal community generally regards contested judicial elections as ill suited to select capable, qualified judges, and as a threat to the independence of judges and the rule of law. She argues, with reference to empirical studies, that these concerns are grossly overblown. Rather, she posits that elections are democracy-enhancing, accountability-promoting, and foster rather than denigrate the rule of law by enabling the electorate to constrain judges from disregarding the law and implementing their personal ideological preferences.

David Pozen, on the other hand, is skeptical of such claims. In Chapter 10, he reasons that contested elections—by their nature—encourage judges to conform their interpretations of law to democratic preferences, and so become practitioners of "majoritarian judicial review." The dual effect of majoritarian judicial review, he argues, is to "usurp the achievements of previous generations by channeling interpretations toward contemporary understandings of the provisions they enacted," and to "usurp the achievements of future genera-

tions by foreclosing judicial innovations that might have helped generate, consolidate, and legitimize new understandings of the law." For Pozen, then, this "majoritarian circle" ultimately impoverishes rather than enhances democratic values.

The divide that separates Hall from Pozen is more than substantive—it is methodological as well. Pozen does not mount an empirical challenge to Hall's conclusions, but grounds his argument in political theory. For many within the legal academy, such an approach, which challenges the normative underpinnings of the argument Hall makes, is a familiar and compelling one. Many political scientists, however, may regard it as unhelpful insofar as it does not respond to the social science underlying Hall's claims.

How judges are to be selected and the extent to which they are independent from or accountable to the electorate, the political branches of government, or even themselves is ultimately determined not by academics but by the public and their elected representatives. If one accepts the premise that in a democratic republic, the legitimacy of government depends on the consent of the governed, then public perception matters. As Professor James Gibson explains in Chapter 11, that is particularly true of the judiciary:

> All political institutions need political capital in order to be effective, to get their decisions accepted by others, and be successfully implemented. Since courts are typically thought to be weak institutions—having neither the power of the "purse" (control of the treasury) nor the "sword" (control over agents of state coercion)—their political capital must be found in resources other than finances and force. For courts, their principal political capital is institutional legitimacy.

While the academic community may be close to an accord in its appreciation for the complex slurry of mixed motives underlying judicial decision-making, in the policy-making realm, the debate remains stubbornly binary. Court critics on the right have decried "activist judges" whom they accuse of disregarding the law and substituting their personal preferences, while court critics on the left bemoan "right-wing extremists" whose ideologically driven decisions are outside the political "mainstream." Meanwhile, the legal establishment has defended judges against attack from the left and right, arguing that independent judges are dedicated to upholding the law, and that efforts to intimidate judges and control their decision-making undermine judicial independence and the rule of law.

Despite the best efforts of court critics to undermine the public's faith in its judges, public confidence in courts remains considerably higher than for other political institutions. Gibson notes that ordinarily the legitimacy of political institutions is derived from electoral accountability, which may explain the public's continuing support for selecting judges in contested elections. In the case of unelected judiciaries, however, Gibson argues, legitimacy depends on the judges' perceived expertise and commitment to the rule of law. That may help to explain the legal establishment's long-standing mantra that judges are influenced by facts and law alone.

In Chapter 12, Professor Keith Bybee surveys a wealth of polling data that reveals that the public entertains conflicting views of judges both as impartial arbiters of law and as political actors influenced by their ideologies. In his Kentucky survey, Gibson makes a similar finding: while the vast majority of the public does want judges to follow the law, it also wants judges to protect the powerless against the powerful, and nearly half think that judges should be involved in politics because their role is to represent the political majority.

In sum, the public's view of what judges do (and should do) is eclectic and varied in ways not incompatible with the views expressed by many of the academicians writing in this volume. Court critics and defenders, in contrast, continue to make stark, dichotomous appeals to the public, to promote the image of judges as impartial guardians of the rule of law, or to erode public support for a judiciary they characterize as peopled with unprincipled, ideological zealots. To date, however, court critics have failed to gain traction, and, as Bybee notes, public confidence in an independent judiciary remains relatively stable and strong, despite widespread recognition that independent judges do more and less than simply follow the law.

The views of Indiana Supreme Court Justice Frank Sullivan, Indiana Court of Appeals Judge Nancy Vaidik, and U.S. District Judge Sarah Evans Barker, expressed in Chapter 13, simultaneously corroborate the emerging scholarly consensus that the influences on judicial decision-making are complex and multivariate, and underscore the distance that separates significant segments of political science from the legal establishment. Each judge underscores the centrality of law to the role they play and rejects the notion that attitude or ideology drives the decisions they make. Each, however, elucidates the complexities of their decision-making by describing the influences that affect their choices.

Justice Sullivan's answer to the question "What's law got to do with it?" is "Everything," but he nuances that conclusion with the observation that "poli-

tics and law are not mutually exclusive but rather inextricably bound," because "the very statutes and constitutional provisions that judges must interpret are products of politics and so cannot be interpreted without taking politics into account." Judge Vaidik sought to explain why scholars were so focused on extralegal explanations for judicial decision-making despite their relative insignificance in the minds of judges. She likened the "gap," where the law is unclear and appellate court judges exercise discretion subject to extralegal influences, to the gap between the teeth of David Letterman and Lauren Hutton: "It's a small gap, but it happens to be right in the middle of their face." As to how judges decide cases in that gap, Vaidik concluded that the answer is simply too complex to be captured by a unified model.

On this latter point Judge Barker concurred and elaborated. In addition to the "law," Barker pointed to the influences of her locale, the desire to avoid reversal, the dictates of the code of conduct, the need to manage her docket, a range of subconscious factors, and, most important, the facts of the case as relevant to her decision-making process. That leads her to conclude that empiricists must get "really close" to their judicial subjects if they hope to understand and explain the complexity of their decision-making.

To no small extent, this book illustrates how close and yet how far we are to a common understanding of what judges do and what to do about it. For example, Professor Gibson observes that law professors, political scientists, and judges may be "a lot closer than it appears":

> What judges do is to try to make fair decisions within the context of what's legally possible. . . . [We] probably believe that people differ in their perceptions of fairness, and [we] might even accept that those differences are ultimately tied to ideological views that individuals have—not that [ideology is] completely determinative, but, as I said, within the context of what's legally permitted.

On the other hand, Professor Gibson also observes of judges, law professors, and political scientists that "we have a fundamentally different view about what it is judges do." At bottom, Gibson, like many political scientists, is skeptical of arguments that independent judges are meaningfully constrained by law: "How can we even talk about rule of law, when we have 5–4 decisions?" he has asked, adding that when "there is no legally correct answer," how can the Court's decision "be anything but an ideological choice?" From his perspective, political scientists do not oppose the rule of law, but simply "don't believe it exists in the vast majority of cases that are decided at the appellate level."

In conclusion, scholars, judges, policy-makers, and the public have articulated complex and contradictory understandings of what law has to do with what judges do, whether it matters, and what—if anything—to do about it. This volume heralds the advent of an exciting new generation of interdisciplinary thinking about the decisions judges make. Gone are the eras of malign and benign interdisciplinary neglect, and fading fast are unproductive efforts to pit law against politics in a kind of death match for control of the judicial heart and mind, as if coexistence is not an option. As evidenced by the chapters that follow, in its place is a growing appreciation for the complexity of judicial decision-making, which offers a richer and more nuanced understanding of what judges do, but does so at the expense of complicating how we test and verify the intuitions that underlie such an understanding.

The implications of these developments for the participants in this ongoing discussion are provocative. To what extent is law reasonably characterized as a subset of politics? And to that extent, is it time for law professors to rethink legal education and what it means to teach law students to "think like lawyers" (and judges)? Should the legal establishment speak more candidly about the extralegal considerations that influence judicial decision-making—or is such a concession tantamount to admitting that the emperor has no clothes? Conversely, to what extent is politics reasonably characterized as a subset of law—in other words, to what extent can law be understood to subsume ideological, strategic, and other influences? Can political scientists abide this more capacious definition of law that animates the thinking of so many judges and lawyers? Can political scientists and academic lawyers take each other more seriously without ceding relevance to the other that each is loath to relinquish? Ultimately, and most important, what are the implications of these developments for the institutional legitimacy of the courts? The public may be at peace with courts that are subject to legal and extralegal influences, but what are the limits of its tolerance?

In short, the foxermeaseluppycat is a remarkable creature. The implications of its discovery are profound, and its proper care and feeding are critical to the operation of American government. It is hoped that the chapters that follow will benefit two distinct audiences: students and well-educated readers who seek an introduction to the latest learning on judicial politics and the rule of law; and scholars for whom this work presents the current state of the art in a rapidly moving field, and points the way for future research.

Notes

1. To the five models described above, one could add at least one more—the theory of "motivated reasoning." Cognitive psychologists theorize that judges' ideological predilections motivate them to interpret the law consistently with those predilections, which helps to explain why judges may honestly believe that they are simply following the law, even though their votes can often be correlated to their ideological preferences (Braman 2009; Simon 2004). I've omitted a discussion of cognitive psychology from the text, because it was not critical to the point I am making here, and—more important, perhaps—because I could not conjure an appropriate animal mascot.

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