

# Politicization and prioritization in the judiciary

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In "The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection," published in the *Journal of Law and Economics*, Adam Bonica and Maya Sen analyze how and why American courts become politicized. The authors present a theory of strategic selection in which politicians appoint judges with specific ideological backgrounds in order to advance political agendas.

Instead of simply determining whether partisanship influences the composition of the courts, the authors aim to understand the ideological demographics of the legal profession—the population from which judges are chosen—and the judiciary. "This is the first study to provide a direct ideological comparison across tiers of the judiciary and between judges and lawyers," say Bonica and Sen, "and also the first to document how—and why—American courts become politicized."

Using a newly collected data set from the Martindale-Hubbell legal directory and the Database on Ideology, Money in Politics, and Elections (DIME) that captures the ideological positioning of nearly half a million judges and lawyers who have made campaign contributions, the authors show that the higher the [court](#), the more conservative and more polarized it becomes, in contrast with the broader population of attorneys, who tend to be liberal. Because higher level courts are more likely to shape national and state policy, politicians who prioritize certain selection methods over others can aim to restructure the judiciary toward their own ideologies.

Bonica and Sen argue that this political motivation leads political actors to favor judicial selection systems relying on gubernatorial or legislative appointments rather than nominations based on merit or nonpartisan elections. Their analysis demonstrates that partisan elections and appointments allow politicians to choose individuals with preferred ideological backgrounds in order to facilitate desired policy shifts. Their findings suggest that political actors take opportunities to use ideology in the selection of judges but that they strategically prioritize higher courts.

"Left to a judicial selection process devoid of ideological considerations," say Bonica and Sen, "America's courts should, after controlling for relevant demographic characteristics, closely resemble the population of attorneys in the jurisdiction from which they are drawn. However, as ideology becomes an increasingly important consideration in judicial selection, the ideological profile of the courts will deviate from that of attorneys and start to look more like that of the relevant political actors."

**More information:** Adam Bonica et al, The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection, *The Journal of Law and Economics* (2018). [DOI: 10.1086/696575](https://doi.org/10.1086/696575)

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