

Ch 6: The Federal Courts

Day 2

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Course: American National Government (GOVT 2305)

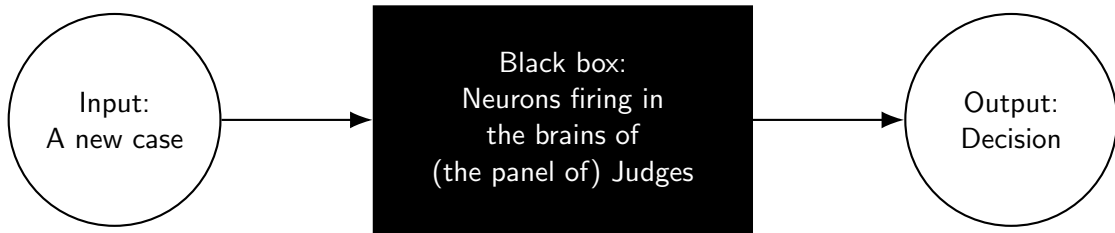
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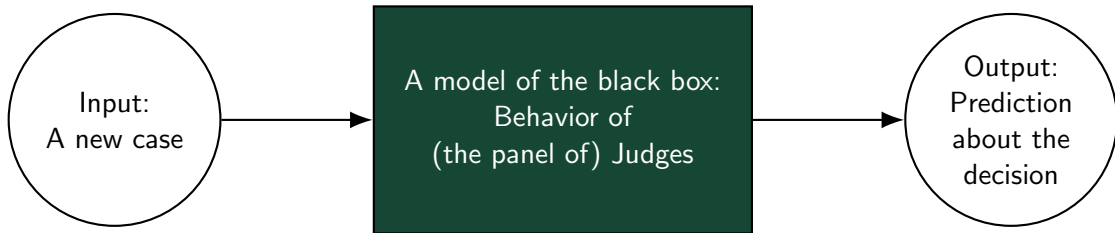
Today's class

- We will begin with a meta note on how Models compare to Reality
- We will discuss 3 models of judicial behavior.
 - The Policy Preferences Model
 - The Strategic Model
 - The Legal Model

Reality



Model



Examples of a model of judge behavior

- Judge flips a coin!
- Judge rolls a dice!

Models are not a complete description of reality

▸ Maps as models

Models are not a complete description of reality

▸ Maps as models

- Reality is many models at the same time!
- But some models are more useful to predict reality than others.
- The only way out: Make models but be explicit about their assumptions
 - This is a large part of what any science does.

The model

- Judges have an intrinsic ideological leaning and follow it.
 - See typology in the book.

Reasons that validate the model

- There are good reasons to believe this fits the supreme court.
- Justices can freely select the circuit court decisions that contradict their ideological leaning and overturn them.

Reasons that invalidate the model

- There are not enough reasons to believe this fits the lower courts
- Circuit court has no discretion over case selection.
- In many of the cases, there is an unambiguous winner per mere interpretation of the law.

Assumption

- Intrinsic characteristics of the judges matter
- Bonica and Sen (2021) take this assumption a step further... [▶ Bonica and Sen](#)

Isn't this model circular?

- They provide conservative/liberal judgements because they are conservative/liberal.
- They are conservative/liberal because they give judgements that are typically conservative/liberal.

The Model

Judges hold two things in their mind and decide a case in the balance of both:

- 1) An intrinsic ideological leaning (just like the Policy Preferences Model)
- 2) Anticipations about what other judges would do

There exist reasons to believe this fits the supreme court

- Judges have an ideology but they also know the ideologies of the 8 others on the bench

There are not enough reasons to believe this fits the lower courts

- In the circuit court, there are 2 other judges in the panel, and reputational cost of the supreme court overturning a decision. This supports some strategizing.
- But circuit court has to hear every appeal most of which are straightforward cases.
- In the district court, a single judge, and the fact that almost every case is straightforward makes this model far less appealing.

The Model

Judges read the law and follow it to a tee to decide on any case

How a law can decide a case

- *Precedent*: (Almost all of the) US follows civil law.
- *Plain meaning*
- *Lawmaker's intent*: Who wrote it down and what were they thinking when they did it?

Not enough reasons to believe this works in the supreme court

- Judges select cases where the law is not clear!

Good reasons to believe this works in the lower courts

- Almost everything is straightforward, and there is no freedom for the courts to pick and choose what they hear
- Getting overturned by a higher court because the law was not followed is not good for reputation

Assumption

- The law can provide clear answers.
- But can it? Ambiguities in the law, and interpretations of it can impact reading of the law affecting its answers

Clark (2019): An overarching view of models of judicial behavior

Table 1.1. *Examples of factors influencing constitutional law.*

Nature		
	Structural	Contingent
Locus	<i>Judicial Institutions</i> Internal Collegial courts with majority rule	<i>Judicial Behavior</i> Individual preferences
	<i>Social Structure</i> External Separation of powers	<i>Social Conditions</i> Electoral politics

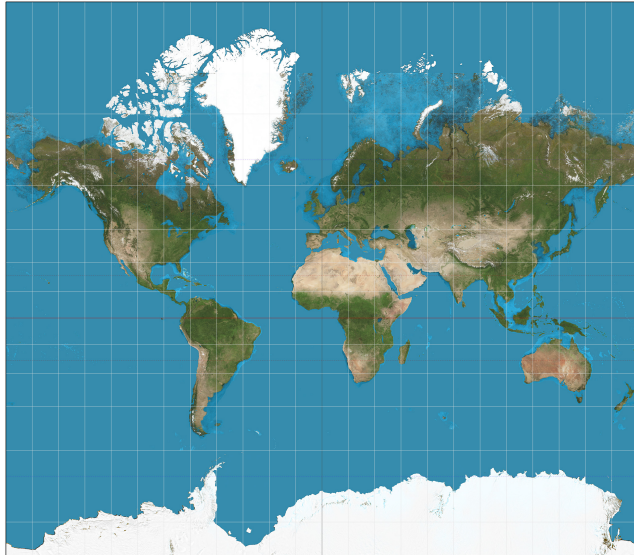
Each cell shows examples of factors influencing constitutional decision making, according to their locus (interval v. external) and nature (structural v. contingent).

Today's class

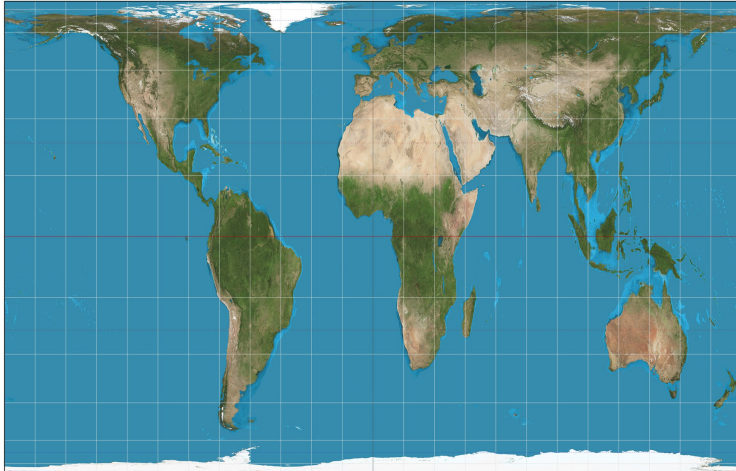
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Appendix slides

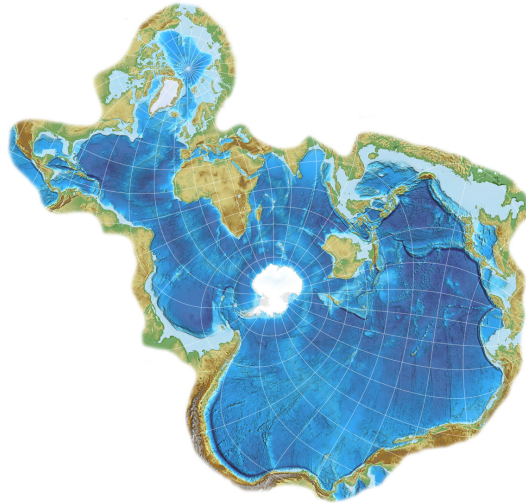
Which model/map is 'real'? (1) [Mercator projection]



Which model/map is 'real'? (2) [Gall-Peters projection]



Which model/map is 'real'? (3) [Spilhaus projection]



Bonica and Sen (2020) - 1

- The intrinsic characteristic of being trained as a lawyer in the US impacts the behavior of the judiciary and its role in American Politics.
- “Why has the American judiciary remained at the center of the political process rather than at the bureaucratic periphery as is typical in other advanced democracies?”

Bonica and Sen (2020) - 2

- Lawyers are the problem
- “To say that the story of American politics has been written, acted, and directed by the legal profession is no exaggeration.”
- “The bar has worked to expand the scope of judicial authority and to position the courts at the heart of the political and regulatory process. Thus, lawyers’ efforts have amplified the political power of American courts relative to other advanced democracies.”
- The book calls this idea Judicial Capture.

Bonica and Sen (2020) - 3

- The legal profession has played an outsized role in American politics.
- 29 of the 56 Declaration signers were lawyers or legally trained.
- 12 of the first 16 U.S. presidents were lawyers.
- Lawyers make up just 0.4% of the voting-age population. Yet, in 2018, nearly 42% of members of Congress came from the legal profession.

Bonica and Sen (2020) - 4

- Judges are almost all lawyers.
- All nine U.S. Supreme Court justices are lawyers.
- Nearly 200 U.S. Courts of Appeals judges and nearly 700 U.S. District Court judges are lawyers.
- All state high-court judges are former lawyers, as are most state trial-court judges. Several states require it.

► [Back to slide](#)

References I



Bonica, Adam, and Maya Sen. 2020. *The Judicial Tug of War: How Lawyers, Politicians, and Ideological Incentives Shape the American Judiciary*. Cambridge University Press, December.
<https://doi.org/https://doi.org/10.1017/9781108894005>.



Clark, Tom S. 2019. *The Supreme Court* [in en]. Cambridge University Press, March.