Judicial Independence as an Organizing Principle

Charles Gardner Geyh

Indiana University Maurer School of Law, Bloomington, Indiana 47405;
email: cgeyh@indiana.edu

Annu. Rev. Law Soc. Sci. 2014. 10:185–200

First published online as a Review in Advance on August 29, 2014

The *Annual Review of Law and Social Science* is online at lawsocsci.annualreviews.org

This article's doi:
10.1146/annurev-lawsocsci-110413-030849

Keywords

judiciary, judges, courts, judicial accountability, judicial politics

Abstract

The term judicial independence has a range of meanings and applications. It is variously employed in normative and descriptive ways; in absolute and relative terms; as a theoretical construct and a practical safeguard; in regard to judges individually and collectively; as an end in itself and a means to other ends; as a matter of hard law and soft norm; and in relation to the political branches of government, the media, the electorate, litigants, interest groups, and judges themselves. This article creates a structure within which to situate the judicial independence literature, to the end of positioning judicial independence as a useful, if polymorphous, organizing principle that delineates a foundational component of the judicial role.

INTRODUCTION

Judicial independence is a sprawling topic. For some scholars, that is its problem: It is an amoeba, a formless thing that changes shape to serve its needs, and sustains itself by engulfing and absorbing related and arguably more useful creatures it encounters. The term judicial independence is variously employed in normative and descriptive ways; in absolute and relative terms; as a theoretical construct and a practical safeguard; in regard to judges individually and collectively; as an end in itself and a means to other ends; as a matter of hard law and soft norm; and in relation to the political branches of government, the media, the electorate, litigants, interest groups, and judges themselves.

One peril of using a term to mean so many things is that it can wind up meaning nothing at all. Kornhauser (2002, p. 45) argues that "confusion over the definition of judicial independence cannot be eliminated" because different theories of adjudication inevitably produce different constructs of judicial independence between and within academic disciplines. He thus concludes that "the concept of judicial independence is not useful" and that we should focus instead on the aspects of judicial performance that particular theories of adjudication promote—such as litigant and adjudicator "anonymity," which seeks to ensure that case outcomes do not depend on the identity of the parties or judge (p. 51).

This assumes, however, that the utility of judicial independence turns on distilling it down to a unitary concept that can be consistently applied across contexts. If instead one begins from the premise that judicial independence is not monolithic but has a range of meanings and applications that together delineate a foundational component of the judicial role, then it is possible to recast judicial independence as a useful, if polymorphous, organizing principle.

My goal here is to elaborate on judicial independence as an organizing principle by creating a structure within which to situate the judicial independence literature.[1] In short, I hope to give the amoeba a backbone. In so doing, I focus on judicial independence in the United States, where scholars have developed conceptual frameworks more fully. I cite some transnational work here and argue that more is called for, but I regard that literature as distinct and ripe for a separate review. The judicial independence skeleton I assemble in the pages that follow is sufficiently elaborate to warrant an anatomical drawing (see **Figure 1**).

JUDICIAL INDEPENDENCE: UNQUALIFIED AND QUALIFIED

Judicial Independence Unqualified

Dictionaries define independence as "freedom from outside control or support" (Merriam-Webster 2014). Literally, then, the term lends itself to unqualified construction. There are two contexts in which judicial independence is commonly employed in absolute terms, without regard to countervailing constraints on its operation: when it is being used as a slogan and when it is reduced to a straw man, for the purpose of being disparaged. When judicial independence is used as a slogan, the point is to tout its virtues in succinct, unsophisticated ways. In the late 1990s, the American Judicature Society disseminated buttons proclaiming "I support judicial independence." Along similar lines, in 1996, Chief Justice Rehnquist (1996, p. 274) declared that "an independent judiciary with the final authority to interpret a written constitution is one of the crown jewels of our system of government." Other judges have stumped for judicial independence in comparably glowing, simplistic, and unqualified ways (see, for example Breyer 2007, p. 907; O'Connor 2006,

[1] Both Russell (2001) and Burbank (1999) have previously attempted to describe the structure of judicial independence.

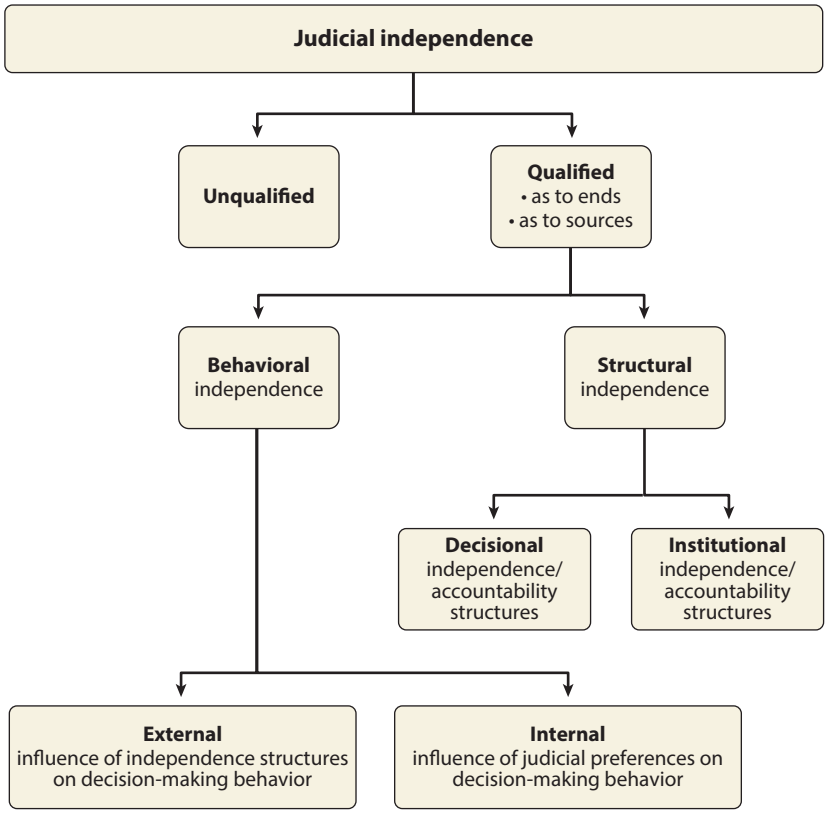

Figure 1

Diagram of judicial independence as an organizing principle.

p. 2; see also Rehnquist 2004, p. 579). In an age when news is routinely compressed to sound bites, resorting to bumper sticker sloganeering is easy to understand. It is interesting to note, however, that organizations devoted to promoting judicial independence have discovered that the term judicial independence plays poorly with the public (because independence is equated with unaccountability) and have recommended that like-minded organizations speak in terms of fair or impartial courts instead (see, for example, Off. Democr. Gov. 2002).

The underlying problem with the term judicial independence, when used in unqualified ways, is that it is descriptively inaccurate and normatively indefensible, making it an easy target for disparagement—a veritable straw man. It is inaccurate because judges are not literally independent. Peretti (2002, p. 109), for example, asserts that judicial independence is a "myth" because if judges truly were independent, they would be "free of political pressure" and would not need to "worry about how others will react to their decisions, because no reprisals can be administered." Moreover, unqualified independence is indefensible because the excesses of wholly independent judges—however outrageous—would be beyond all power to prevent or punish. Hence, as early as the 1830s, judicial independence skeptics argued, "The boast of an independent judiciary is always made to deceive you. We want no part of a government independent of the people" (Volcansek & Lafon 1987, p. 90).

Judicial Independence Qualified

An obvious alternative to thinking about judicial independence in absolute or unqualified ways is to recast it in qualified terms by tempering independence with reference to the ends that independence serves and the sources of authority from which independence is derived. Qualifying independence in these ways better describes judicial independence in operation and renders judicial independence more defensible by marginalizing absolutist arguments that pay insufficient heed to countervailing concerns (Burbank 1999, p. 317; Geyh 2006a, pp. 915–16).

Qualifying judicial independence with reference to its ends. One way to counter the perils of judicial independence in its absolute form is to qualify it with a measure of accountability (Carrington & Cramton 2009, Levinson 2006). Seidman (1988), however, argues that ambivalence over judicial independence (which he equates with unaccountability) is nonetheless inevitable: We like independent judges because judges insulated from majoritarian politics can protect the rights of individuals from fleeting majorities run amok, but we don't like independent judges because judges insulated from majoritarian politics can be indifferent to the interests of the people they serve. Seidman thus concludes that judicial independence—even in qualified form—is simultaneously good and evil, for which reason "virtually all defenses of judicial independence end in contradiction" (p. 1571).

Seidman rightly notes the tension inherent in judicial independence qualified by accountability, but the claim that independence and accountability are contradictory is overstated. Burbank (1999, p. 339) better describes independence and accountability as "two different sides of the same coin" (see also Burbank 1996, pp. 117–18). There is nothing contradictory about wanting judges who are independent enough for judicial independence to serve its purposes, but not so independent as to thwart those same purposes. By qualifying judicial independence with accountability, judicial independence morphs from an unqualified good, or end in itself, to an instrumental value that serves other ends. Identifying the ends that independence promotes elucidates the nature and extent of independence needed to achieve those ends, thereby helping to delineate where independence should end and accountability begin.

For the bench and bar, the most commonly stated objective of judicial independence is to promote the rule of law (see, for example, Madiera et al. 1997, p. 11; 2003, pp. 7–8). Judges, it is argued, must be insulated from external pressures that could interfere with their capacity to uphold the law impartially. Many political scientists, however, have reached the opposite conclusion: Independence undermines the rule of law by enabling judges to disregard the law and implement their personal policy preferences (see below for a discussion of behavioral independence).

Scholars have sought to diminish, if not reconcile, this cross-disciplinary disagreement in three ways. First, law—traditionally understood—has made a comeback in recent empirical scholarship, which has shown that law constrains judicial decision making in a variety of contexts, particularly in courts below the US Supreme Court (Cross 2007, pp. 39–69; Ruger et al. 2004, pp. 1154–55; Sisk & Heise 2012, pp. 210–12; Staudt 2004, p. 683). To that extent, independent judges do follow the law. Second, some have argued that independence promotes the rule of law in a postpositivist, less formalistic sense by enabling judges to follow their best understanding of what the law is, even if such an understanding is subject to ideological influence when the law is indeterminate (Geyh 2012a, pp. 208–9; Segal 2011, p. 19). Accountability-promoting mechanisms, such as ethics rules that subject judges to discipline for deliberate disregard of the law, can then help to constrain independence by differentiating between innocent and intentional misconstructions (Model Code of Judicial Conduct, R. 1.1). Third, still others have argued that judicial independence serves ends in addition to (or in lieu of) the rule of law. At least three such ends have been identified:

1. Due process: Buffering judges from political pressure to decide particular cases in specified ways better enables judges to employ a fair judicial process that enhances the judiciary's legitimacy in the eyes of litigants, regardless of whether the conclusions of law that judges reach are influenced by policy preferences (Redish 1995, p. 708; Rubin 2002, pp. 70–71; Tyler 1984, p. 70).
2. Justice: Independence promotes a pragmatic conception of justice by limiting external interference with a judge's capacity to make fact-sensitive decisions she regards as best in the cases before her, regardless of whether ideology may affect the judge's assessment of what best means (Geyh 2012a, pp. 242–43).
3. Separation of powers: Judicial independence can promote the institutional integrity of the judicial branch by foreclosing undesirable political branch encroachments on the judiciary's autonomy, irrespective of whether judicial decisions are subject to extralegal influences (Madiera et al. 1997, p. 43). Whereas conceptions of independence described to this point have focused on the independence of individual judges vis-à-vis those who could influence their decision making, separation of powers promotes the independence of the judiciary as an institution vis-à-vis the other branches of government. The distinction between decisional and institutional independence is elaborated upon below.

How much independence is optimal will necessarily depend on the objective independence is thought to serve. Some independence may be necessary to promote the rule of law (traditionally or flexibly understood), due process, justice, and the separation of powers, for the reasons just explained. Unqualified independence, however, can undermine those same objectives by liberating judges to disregard the law, abuse due process, flout justice, and render the judicial branch not just separate, but imperial. Independence is subject to a host of possible constraints elaborated upon in this article. Whether a given constraint threatens judicial independence in a bad way or promotes judicial accountability in a good way turns on whether the independence–accountability balance that the constraint strikes furthers or compromises the particular objective that qualified independence serves.

Qualifying judicial independence with reference to its sources. Judicial independence is qualified not only by accountability and the ends that judicial independence and accountability serve but also by the sources from which the judiciary's independence is derived. The judiciary's independence is provided for in a host of ways: by the manner in which its judges are selected, removed, compensated, and regulated. These varied means of protecting the judiciary's independence are not equally robust. Rather, their relative strength is qualified by how they are safeguarded (or not).

The sources of independence logically subdivide into two categories: de jure and de facto, with the latter including customary and functional variations (Geyh 2006b, pp. 6–11). De jure independence is derived from positive law—including constitutions, statutes, and judicial orders—the contours of which have been explored by judges, policy makers, and legal scholars (Chemerinsky 1999, pp. 306; 2011, p. 34; Kaufman 1980, pp. 692–93; Redish 1995, pp. 707–11). De jure independence is at its strongest when the positive law at issue is stable and safeguards independence in unambiguous terms—for example, the federal judiciary's independence from congressionally imposed salary cuts guaranteed by Article III of the US Constitution is effectively absolute (although pay raises and cost of living adjustments are another matter). De jure independence is correspondingly weaker when the underlying positive law is more mutable—for example, a statute that can

be rescinded by a simple act of Congress;[2] when claims that positive law guarantees independence are debatable—for example, arguments that the Constitution prohibits Congress from retaliating against judges who make unpopular decisions by stripping their courts of all jurisdiction to hear specified classes of cases (Chemerinsky 1999, pp. 177–91); or when the scope of the judiciary's authority to act is limited—for example, when the courts' jurisdiction is so constrained as to afford the courts no meaningful role (Dias & Fix 2012).[3]

The relative strength of de jure independence is attributable to its authority being derived from legal texts, the existence and legitimacy (if not the meaning and immutability) of which are generally taken as a given. De facto independence, as well as its customary and functional variations, is derived not from positive law but from less formal sources. Customary independence is grounded in judicial independence principles that have been internalized as informal norms. Such norms evolve over time and manifest themselves as customs that a political culture respects not as a matter of law but as a matter of principle and tradition. Despite cyclical outrage at judges on account of their decisions, Congress has tolerated judicial review and rarely retaliated against the courts via impeachment, budget manipulation, disestablishment, and full-blown jurisdiction stripping; scholars have attributed this response to entrenched independence norms (Geyh 2006b) and a shared interest in mutual restraint (Stephenson 2003). In a related vein, judicial independence norms have preserved an ethos of independence within the judiciary itself (Johnson 2002), and the bench and bar have preserved their longstanding, symbiotic, sometimes self-interested control over the legal profession through protecting and promoting a judicial independence culture (Halliday & Karpik 1997, pp. 28–30).

Because customary independence is not memorialized in an authoritative text, the contours of independence norms are less certain and subject to erosion, migration, and arguments that disregard them altogether or claim that they do not exist. Thus, for example, in a tract entitled *Impeachment!* that widely circulated on Capitol Hill in the 1990s, Barton (1996) cited early impeachments as precedent for impeaching activist judges and attributed abandonment of the practice in the intervening centuries to neglect, rather than customary independence. In other words, for Barton, judges enjoyed neither de jure independence nor de facto independence in its customary form, but functional independence only. Functional independence is independence by default—independence that fills the vacuum created by the absence of regulation and therefore is the weakest form of independence. Before states established judicial conduct commissions and intermediate appellate courts, for example, judges in those jurisdictions were functionally independent from discipline and intermediate appellate review.

Qualified Independence: Structural and Behavioral Forms

Judicial independence in its absolute form generates slogans and straw men but engenders little interest among serious scholars. The preponderance of judicial independence scholarship is devoted to qualified independence, which subdivides naturally into structural (or relational) and behavioral forms (Russell 2001, pp. 6–7; see also Karlan 2007).

Structural independence is concerned with structures that promote the independence or accountability of judges and the judiciary in relation to others. The "others" in question include

[2] The Judicial Conduct and Disability Act, for example, insulates judges from discipline for matters related to the merits of their decisions, whereas the Model Code of Judicial Conduct, adopted in many state systems, does not.

[3] Dias & Fix (2012, p. 21) note that "a definition focusing on authority views independence as the ability *to* act upon something, or the ability of courts and judges to decide a broad range of politically significant issues" (emphasis in original).

public officials in the political branches of government, the electorate, interest groups, litigants, the media, and fellow judges. The focus of structural independence scholarship is on the mechanisms in place (or not) to insulate judges or the judiciary from influence by other individuals or entities. Thus, for example, the good behavior clause in Article III, Section 1, of the Constitution confers a measure of structural independence on federal judges in relation to Congress and the president. Conversely, other structures—such as the impeachment clauses—cabin independence and promote accountability by subjecting judges to removal for treason, bribery and other high crimes, or misdemeanors.

Behavioral independence, by contrast, is concerned with whether judges or the judiciary behave independently, irrespective of the relationships that create structural independence. For example, here, the question would be whether the good behavior clause (a source of structural independence) actually leads judges to make decisions with behavioral independence, which is to say uninfluenced by political branch preferences. One would assume that ordinarily, structural dependence begets behavioral dependence, and vice versa—the unremarkable hypothesis being that a judge is more likely to grant the wishes of someone who has a gun to the judge's head than someone who does not. In that regard, it bears mention that the gun is not always a metaphor: Judges have been assassinated for their decisions by disgruntled litigants and ideological zealots. Viable threats represent an extreme form of structural or relational dependence (structural insofar as security structures are inadequate to buffer judges from such threats) that can engender behavioral dependence absent adequate provision for judges' safety.

The correlation between structural and behavioral independence, though logical, is imperfect. Courageous judges who are structurally dependent on the chief executive may make behaviorally independent decisions at odds with the executive's preferences. Conversely, judges with de jure structural independence may—because of a tradition of deference to the chief executive—make behaviorally dependent decisions that conform to the executive's preferences.

Structural Independence: Decisional and Institutional Variations

The structures that buffer judges and the judiciary from external sources of influence can be subdivided into those that protect judges individually in their decision-making capacity and those that protect judges collectively, as a separate and independent branch of government. The former is commonly referred to as decisional or individual independence; the latter, institutional or branch independence (Bermant & Wheeler 1995, p. 838; Geyh & Van Tassel 1998, pp. 31–32; Madeira et al. 1997, pp. 11–14).

Examples of decisional independence include constitutional tenure and salary protections that insulate judges from political branch threats to their livelihood for making unpopular decisions. Examples of institutional independence include constitutional guarantees of an independent judiciary (in many state systems) that deny the legislature power to encroach on the judiciary's authority to regulate its own practice, procedure, and administration. Ferejohn & Kramer (2002) have described how the federal courts of the United States enjoy considerable decisional independence and little institutional independence: Life tenure and salary protections for individual judges are offset by almost plenary congressional authority over the structure, budget, and oversight of the lower federal courts. That leads the authors to characterize the system as one of "independent judges" and a "dependent judiciary" (Ferejohn & Kramer 2002, pp. 976–77). The converse is true in many state systems, where decisional independence is diminished by hinging judges' continued tenure in office on reelection. Institutional independence is correspondingly strengthened by constitutional guarantees of an independent or unified judicial branch that are absent from the Constitution (Geyh 2002).

The line that separates decisional and institutional independence is conceptually distinct but often blurs in application. Compromising, or threatening to compromise, the institutional independence of judges collectively as an institution can manipulate the decisional independence of individual judges. Thus, for example, Congress might impinge on the decisional independence of an isolated judge who rendered an unpopular decision, with threats to cut the judiciary's budget or disestablish a particular court.

Institutional independence research. Institutional independence literature has explored the independence of the judiciary as an institution in relation to the executive and legislative branches of government. Several scholars have documented the tentative beginnings of the federal judiciary's institutional independence during the colonial period and the new republic, at a time when the conception of a judicial branch separate and independent from the crown was a novelty, and popular infatuation with legislative power created considerable uncertainty over the future of the judiciary's autonomy (see, for example, Gerber 2011, pp. 1606–787; Geyh & Van Tassel 1998, pp. 35–40; Marcus & Van Tassel 1988, pp. 35–36; Wood 1969, pp. 160–61). Further work has chronicled the emergence of a more fully independent judicial branch beginning in the late nineteenth century, in which administrative control of the judiciary was transferred from the executive to the judicial branch and the viability of retaliatory legislative branch encroachments on court structure diminished (see, for example, Geyh 2006b, pp. 51–113; see generally Crowe 2012, Fish 1973, Ross 1994). Others, however, have continued to emphasize the institutional judiciary's continued de jure dependence on Congress (Ferejohn & Kramer 2002, p. 977). At the state level, surveys across judicial systems have shown pervasive state and local manipulation of court budgets (Douglas & Hartley 2003, p. 446–50). Some judiciaries have fought back by laying claim to inherent authority to insist on adequate sources of funding (Glaser 1994, p. 12).

Decisional independence research. There is a sizable literature exploring the relationships between judges and external sources of influence on their decision making. Scholars have shown that the so-called counter-majoritarian difficulty (a term Alexander Bickel coined to describe the tension created by independent judges flouting majoritarian preferences by exercising judicial review) is exaggerated, given Congressional and other external influences on judicial decision making that have constrained decisional independence over time (Friedman 2009, Harvey & Friedman 2006). I have made the complementary point that the entrenchment of independence norms explains why, in that same period, Congress has not imposed its will on judges and their decisional independence more than it has (Geyh 2006b). A rich body of comparative work has measured the relative independence of judicial systems with reference to the structures in place that insulate judicial decision making from external interference (see, for example, Feldman 2011, Jillani 2011, Ramseyer & Rasmusen 2003, Schor 2009, Shetreet 2001, Storme 2011). Meanwhile, the American Bar Association has issued multiple reports decrying perceived threats to decisional independence posed by legislators, executive branch officials, interest groups, and the electorate (see, for example, Madeira et al. 1997, pp. 46–64; 2000, p. x; 2003, p. 1; Oldham et al. 2002, pp. 20–27).

With respect to legislative incursions on decisional independence, authors have explored the extent to which impeachment (Newman 1997, pp. 158–59), appropriations processes (Madeira et al. 2003, pp. 31–33), structural reform (Hellman 1989, pp. 546–47; Hug & Tobias 1999, p. 414), appointments (Jackson 2007), and jurisdictional retrenchments (Richman 1996) target judicial decision making. As to the executive branch, scholars have analyzed the fractious relationship between FDR and the Supreme Court in the context of his so-called Court-packing plan (Ross 1994, pp. 285–311), the Court's limited ability to effect social change through its rulings in the absence of executive branch support (Rosenberg 1991, p. 336), and the extent to which criminal

prosecution by the Department of Justice can be used to force resignations and intimidate federal judges (Van Tassel 1993, pp. 383–85). A more limited body of work has explored the risk of intrajudicial intrusions upon decisional independence, occasioned by disciplinary systems. At the federal level, some have challenged the wisdom and constitutionality of legislation that created a system of judicial self-discipline, which arguably implicates congressional encroachments on the judiciary's institutional independence, as well as judicial encroachments on fellow judges (Kaufman 1980, pp. 697–700; Redish 1999, p. 677). Others have dismissed such arguments as exaggerated (Shane 1993, p. 212). At the state level, disciplining judges for violating ethics rules requiring them to uphold and apply the law has fueled arguments that the decisional independence of the targeted judges is under attack (Lubet 1999, pp. 65–67).

Finally, there is a rapidly growing body of scholarship on judicial elections (Streb 2007). Some scholars critique contested elections as inimical to decisional independence and democratic theory (Geyh 2003, p. 51), others defend elections as a salutary form of democratic accountability that enhances the judiciary's institutional legitimacy (Bonneau & Hall 2009, p. 128; see generally Gibson 2012), and still others appear ambivalent (Geyh 2012b; Gilbert 2013; Pozen 2008, pp. 290–91; 2011). In a related vein, Justice Sandra Day O'Connor, the American Bar Association, and others have focused on judicial campaign finance and the extent to which campaign support from interest groups buys or appears to buy influence among judges who win election, to the detriment of their decisional independence (e.g., Chertoff 2010, pp. 51–52; O'Connor & McGregor 2012, p. 1743; Oldham 2002, p. 1). Others, in turn, have argued that such concerns are overblown (see generally Bonneau & Hall 2009).

Behavioral Independence: External and Internal Variations

Behavioral independence occupies the intersection of judicial independence and judicial impartiality (Geyh 2013). Behavioral independence, as a subset of qualified independence, concerns the extent to which judges who have (or do not have) structural independence from others actually behave independently and further the instrumental values independent judges are supposed to further, by upholding the rule of law, respecting due process, and pursuing justice. The judge whose decision-making behavior manifests dependence on others exhibits a form of bias or favoritism that can fairly be characterized as partiality. Similarly, the judge whose decision-making behavior manifests independence from others but exhibits internal biases that lead her to disregard the law, due process, or the pursuit of justice exhibits another form of partiality.

The distinction between structural and behavioral independence is fuzzy at the margins. Scholars who write about the structural independence of judges and courts from the political branches of government, interest groups, or the electorate frequently assume that structural dependence begets behavioral dependence and that judges who are subject to the influence or control of others will make decisions that acquiesce to the preferences of those to whose influence or control the judges are subject. This is an unsafe assumption. Whether structural dependence translates into behavioral dependence can turn on a host of variables: How severe are the potential consequences of judicial disobedience? How likely is retaliation to occur, given the institutional culture, the effort that must be expended to retaliate, the relative importance of the issue to the prospective retaliator, and the risk of backlash? How significant are the costs of capitulation to the judge, evaluated in terms of their impact either on her personal commitment to the rule of law, due process, justice, her oath of office, and preferred policy outcomes or on the judge's perceived legitimacy in the minds of audiences (such as the bench, bar, media, or public) whose respect she wishes to preserve?

Behavioral independence has both external and internal dimensions (Russell 2001, pp. 11–12). Turning first to the external, proponents of strategic choice theory hypothesize that behavioral

independence is constrained by the prospect of external influences upon judicial decision making; judges temper their decisions strategically to win the acceptance of audiences that have the power to interfere with implementation of the policy choices judges make (Epstein & Knight 1998, p. xiii). The focus of strategic choice scholarship has been on federal judges in the United States, for whom the most pervasive threat to structural independence may be the risk that the political branches or others might thwart implementation of judges' policy preferences embedded in their rulings. The theory would logically apply with even greater force, however, where structural dependence jeopardizes not just the implementation of judges' ideological preferences, but also their livelihood. In the United States, scholars have begun to investigate the extent to which impending judicial elections affect the decision making of incumbent state judges and the ways in which judicial candidate dependence on campaign support from interest groups affects subsequent decision making when issues of interest to those groups come before the judge (Berdejó & Yuchtman 2013, Huber & Gordon 2004, Palmer 2010). The preponderance of scholarship, however, has been in the transnational arena, where numerous studies have employed a range of indicators to measure the behavioral independence of judges in and across different countries (see, for example, Cent. Appl. Policy Res. & Bertelsmann Stiftung 2008, Iaryczower et al. 2002, Neal & Keith 2007).

There is likewise an internal dimension to behavioral independence. Whether and how a judge's decision-making behavior will be affected by the presence or absence of structural dependencies turn in part on the judge's own internal priorities. The internal influences on judicial decision making implicate a separate and diverse body of scholarship that cuts across law, political science, psychology, and economics, so significant in its own right that it has been the subject of a recent review in this journal (Bybee 2012). Although it is beyond the scope of this article to review that body of work in detail, explaining how that work intersects with behavioral independence furthers the goal of deploying judicial independence as an organizing principle in a study of judges and the judicial role.

1. Law: For centuries, judges have written opinions explaining the choices they make with exclusive reference to rules of law. For most of that time, legal scholars have taken judges at their word, extruding reams of doctrinal scholarship that critiqued judicial opinions on the unstated assumptions that independent judges follow the law and that the rule of law governs how judges decide cases. The legal realist movement of the 1920s challenged this assumption within the legal academy, and although that movement ran its course by the 1930s, it catalyzed a new field of study in political science departments.
2. Political Science: Political scientists, unsurprisingly, have focused on the extent to which politics, rather than law, influences judicial decision making. Clayton & Gillman (1999, pp. 15–20) have divided political science scholars of law and courts into two camps: the attitudinal and the neoinstitutionalist. Attitudinal scholars, beginning with Pritchett (1948), followed by Schubert (1965) and then Segal & Spaeth (1993), have conducted empirical studies of decision making by the US Supreme Court, leading them to conclude that independent judges implement their ideological preferences, or attitudes, rather than the law. Neoinstitutional scholars, by contrast, argue that the attitudinal model is incomplete and that the political institutions of which judges are a part and with which judges interact also influence the decision making of independent judges. Thus, for example, strategic choice scholars, discussed earlier, hypothesize that judges sometimes temper their decisions strategically, to mollify and thereby ward off intrusions from other institutions, such as the legislative or executive branches, that could thwart or nullify the policy choices judges seek to implement (see Berdejó & Yuchtman 2013, Epstein & Knight 1998, Huber & Gordon 2004, Palmer 2010). Another subgroup of neoinstitutionalists, the historical interpretivists,

argue that judges are influenced by the history and institutional culture of the judiciary itself and that the judiciary's institutional culture inculcates preferences—including preferences for the rule of law—that can affect the choices independent judges make (Smith 1988).

If the data show that independent judges are implementing their policy preferences (strategically or not) when they say that they are following the law, does it imply that judges are dissembling? Attitudinal scholars profess agnosticism on the question of whether judges are sincere (albeit sometimes in terms that reflect an inclination toward atheism) (Segal & Spaeth 1993, p. 433), whereas strategic choice scholars necessarily assume that when judges disguise their strategic choices in rule of law rhetoric, they do so consciously (Baum 2011, p. 75). In their groundbreaking study of federal district courts, however, political scientists Rowland & Carp (1996) sought a theory that could reconcile attitudinal influences with judges' professed commitment to the rule of law, which shifts the focus from politics to psychology. Rowland & Carp (1996) argued that, unlike the attitudinal model, which operates on basic assumptions of behavioral psychology (that a case stimulus prompts an ideological response), a cognitive psychology model could better explain judicial motivation.

3. Psychology: Devotees of cognitive psychology have argued that when judges decide close cases, their ideological predilections can influence which of the competing legal arguments they deem more plausible and persuasive (Baum 2010, p. 5; Simon 2004, pp. 541–42; Wrightsman 1999, pp. 13–40). Once judges have reached tentative conclusions in difficult cases, the process of drafting opinions that develop arguments in support of their conclusions reinforces the rightness of their initial views and the wrongness of opposing arguments, which yields opinions that betray no awareness of how difficult the cases originally seemed (Simon 1998). In this way, a judge's reasoning can be subconsciously motivated by her policy preferences (Braman 2009). Motivated reasoning rationalizes the disconnection between what judges say and do when it comes to the influence of political ideology. But scholars of law and psychology have isolated influences on judicial decision making in addition to the political, including heuristics (Guthrie et al. 2001, 2007), race (Quintanilla 2011), gender (Adams 2010), emotion (Maroney 2011), and desire for audience approval (Baum 2006).
4. Economics: Whereas psychologists have explored a multiplicity of motivations underlying judicial decision making, economists fixate on one: economic self-interest. Within the economics camp, scholars have struggled to overcome the "embarrassment" of "explain[ing] judicial behavior in economic terms, when almost the whole thrust of the rules governing compensation and other terms and conditions of judicial employment is to divorce judicial action from incentives that determine human action in an economic model" (Posner 1993, p. 2). That has limited the utility of economics as an explanatory device for judicial behavior.[4] Nevertheless, scholars applying economic principles have argued that judicial decision making can be motivated by the desire to maximize other forms of economic self-interest, including power, prestige, leisure time, and (Posner's choice) voting as a source of judicial utility (Posner 1993, pp. 13–23; see also Cohen 1992, pp. 26–27; Morriss et al. 2005, p. 96; Schauer 2000; pp. 619–36).

The overriding point, for purposes here, is that judges with a quantum of structural independence, whose decisions are to varying degrees outside the control of others, are liberated to make their own choices—choices that may or may not advance the goals that structural independence

[4]The strategic choice model is derived from a rational choice model of legislative decision making, the latter being a quasi-economic model that posits that legislators make choices rationally calculated to maximize their prospects for reelection. The strategic choice model, however, posits that the choices judges make are aimed at implementing good public policy, which Posner rejects as an economic motivation.

is intended to further. The choices that judges with structural independence actually make, and why, are the stuff of behavioral independence. The multidisciplinary studies summarized here show that the choices judges make are subject to a host of legal and extralegal influences that structural independence implicitly facilitates. And when those choices are deemed to undermine the instrumental values that a qualified form of independence seeks to promote, proposed solutions can include accountability measures that increase structural dependence. Thus, for example, when judges are attacked for making decisions that are perceived as overly influenced by an unpopular political ideology, it can prompt calls to create new structural dependence structures (e.g., a system of contested elections) or bring little-used existing structures (like impeachment) to bear.

LOOKING AHEAD

There is a cyclical quality to attacks upon the judiciary's independence, which lends itself to cycles in judicial independence scholarship as well. Following major transitions of political power in American history, leaders of new regimes have often taken steps to chasten or remove unpopular holdover judges appointed or elected by predecessor regimes, prompting heated public debates over the appropriate independence–accountability balance. The latest cycle began in the aftermath of the Republican Party's victory in the 1994 midterm elections, when congressional conservatives spearheaded a campaign against liberal judicial activism, and lost steam in 2008, after Democrats retook control of Congress and the White House. It generated significant interest, among not only policy makers, judges, lawyers, and the media, but scholars too, who produced a corpus of books, edited volumes, symposia, and articles that have been a focus of this review. With the latest cycle of anticourt sentiment on the wane, judicial independence scholarship may likewise decline.[5] Nevertheless, there are at least three areas of continuing interest and future growth for judicial independence scholarship: interdisciplinary research, comparative work, and study of state systems.

In 2002, Burbank & Friedman (2002) proposed an interdisciplinary agenda for judicial independence scholarship that has yet to be fully realized. Empirical collaborations between law professors and political scientists have yielded valuable insights into the interplay between law and ideology in the context of federal judicial decision making. But in the federal system, where incursions on the judiciary's independence are isolated, systematic evaluation of how constraints on independence affect decision making is difficult. Such an undertaking may be more fruitfully pursued in the continued study of those foreign systems where encroachments on judicial independence are more pervasive and of state systems where contested elections may constrain decisional independence in meaningful ways. Hence, further comparative work between foreign systems, between foreign and US federal systems, between US federal and state systems, and between state systems will be helpful.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

I thank Anita Foss, Brian Lynch, and Katie Thrapp for their research assistance.

[5] By judicial independence per se, I mean to exclude the separate law and courts subfield, which has made important contributions to judicial independence scholarship, but about which I make no claim to being influenced by trends in anticourt sentiment.

LITERATURE CITED

Adams EA. 2010. Race & gender of judges make enormous differences in rulings, studies find. *ABA Journal News*, Feb. 6. **http://www.abajournal.com/news/article/race_gender_of_judges_make_enormous_differences_in_rulings_studies_find_aba**

Barton D. 1996. *Impeachment! Restraining an Overactive Judiciary*. Aledo, TX: Wallbuilders

Baum L. 2006. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton, NJ: Princeton Univ. Press

Baum L. 2010. Motivation and judicial behavior: expanding the scope of inquiry. In *The Psychology of Judicial Decision Making*, ed. D Klein, G Mitchell, pp. 3–25. New York: Oxford Univ. Press

Baum L. 2011. Law and policy: more and less than a dichotomy. See Geyh 2011, pp. 71–91

Berdejó C, Yuchtman N. 2013. Crime, punishment, and politics: an analysis of political cycles in criminal sentencing. *Rev. Econ. Stat.* 95:741–56

Bermant G, Wheeler RR. 1995. Federal judges and the judicial branch: their independence and accountability. *Mercer Law Rev.* 46:835–61

Bonneau CW, Hall MG. 2009. *In Defense of Judicial Elections*. New York: Routledge

Braman E. 2009. *Law, Politics, and Perception: How Policy Preferences Influence Legal Reasoning*. Charlottesville: Univ. Va. Press

Breyer SG. 2007. Judicial independence: remarks by Justice Breyer. *Georgetown Law J.* 95:903–7

Burbank SB. 1996. The past and present of judicial independence. *Judicature* 80:117–22

Burbank SB. 1999. The architecture of judicial independence. *South. Calif. Law Rev.* 72:315–51

Burbank SB, Friedman B. 2002. *Judicial Independence at the Crossroads: An Interdisciplinary Approach*. Thousand Oaks, CA: Sage

Bybee KJ. 2012. Paying attention to what judges say: new directions in the study of judicial decision making. *Annu. Rev. Law Soc. Sci.* 8:69–84

Carrington PD, Cramton RC. 2009. Original sin and judicial independence. *William Mary Law Rev.* 50:1105–52

Cent. Appl. Policy Res., Bertelsmann Stiftung. 2010. *BTI 2010 Manual for Country Assessments*. Gütersloh, Ger.: Bertelsmann Stiftung. **http://www.bti2010.bertelsmann-transformation-index.de/fileadmin/pdf/Anlagen_BTI_2010/BTI_2010_Manual.pdf**

Chemerinsky E. 1999. *Federal Jurisdiction*. New York: Aspen. 3rd ed.

Chemerinsky E. 2011. *Constitutional Law: Principles and Policies*. New York: Aspen. 4th ed.

Chertoff MJ. 2010. Trends in judicial selection in the states. *McGeorge Law Rev.* 42:47–64

Clayton CW, Gillman H, eds. 1999. *Supreme Court Decision-Making: New Institutionalist Approaches*. Chicago: Univ. of Chicago Press

Cohen MA. 1992. The motives of judges: empirical evidence from antitrust sentencing. *Int. Rev. Law Econ.* 12:13–30

Cross FB. 2007. *Decision Making in the U.S. Courts of Appeals*. Stanford, CA: Stanford Univ. Press

Crowe J. 2012. *Building the Judiciary: Law, Courts, and the Politics of Institutional Development*. Princeton, NJ: Princeton Univ. Press

Dias C, Fix M. 2012. Measuring judicial independence. *Law Courts* 22:21–25

Douglas JW, Hartley RE. 2003. The politics of court budgeting in the states: Is judicial independence threatened by the budgetary process? *Public Adm. Rev.* 63:441–54

Epstein L, Knight J. 1998. *The Choices Justices Make*. Thousand Oaks, CA: Congr. Q.

Feldman D. 2011. The independence of international judges in national courts: lessons from Bosnia and Herzegovina. See Shetreet & Forsyth 2011, pp. 215–30

Ferejohn JA, Kramer LD. 2002. Independent judges, dependent judiciary: institutionalizing judicial restraint. *NYU Law Rev.* 77:962–1039

Fish PG. 1973. *The Politics of Federal Judiciary Administration*. Princeton, NJ: Princeton Univ. Press

Friedman B. 2009. *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution*. New York: Farrar, Straus and Giroux

Gerber SD. 2011. *A Distinct Judicial Power: The Origins of an Independent Judiciary*. New York: Oxford Univ. Press

Geyh CG. 2002. The elastic nature of judicial independence. In *The Improvement of the Administration of Justice*, ed. GM Griller, EK Stott, pp. 167–74. Chicago: Am. Bar Assoc.
Geyh CG. 2003. Why judicial elections stink. *Ohio St. Law J.* 64:43–79
Geyh CG. 2006a. Rescuing judicial accountability from the realm of political rhetoric. *Case West. Reserv. Law Rev.* 56:911–35
Geyh CG. 2006b. *When Courts and Congress Collide: The Struggle for Control of America's Judicial System*. Ann Arbor: Univ. Mich. Press
Geyh CG, ed. 2011. *What's Law Got to Do with It? What Judges Do, Why They Do It, and What's at Stake*. Stanford, CA: Stanford Univ. Press
Geyh CG. 2012a. Can the rule of law survive judicial politics? *Cornell Law Rev.* 97:191–253
Geyh CG. 2012b. Judicial selection reconsidered: a plea for radical moderation. *Harvard J. Law Public Policy* 35:623–42
Geyh CG. 2013. The dimensions of judicial impartiality. *Fla. Law Rev.* 65:493–551
Geyh CG, Van Tassel EF. 1998. The independence of the judicial branch in the new republic. *Chicago-Kent Law Rev.* 74:31–89
Gibson JL. 2012. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: Univ. Chicago Press
Gilbert MD. 2013. Judicial independence and social welfare. *Mich. Law Rev.* 112:575–625
Glaser HB. 1994. *Wachtler v. Cuomo*: the limits of inherent powers. *Judicature* 78:12–24
Guthrie C, Rachlinski JJ, Wistrich AJ. 2001. Inside the judicial mind. *Cornell Law Rev.* 86:777–830
Guthrie C, Rachlinski JJ, Wistrich AJ. 2007. Blinking on the bench: how judges decide cases. *Cornell Law Rev.* 93:1–43
Halliday BL, Karpik L. 1997. Politics matter: a comparative theory of lawyers in the making of political liberalism. In *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*, ed. TC Halliday, L Karpik, pp. 15–64. New York: Oxford Univ. Press
Harvey A, Friedman B. 2006. Pulling punches: congressional constraints on the Supreme Court's constitutional rulings, 1987–2000. *Legis. Stud. Q.* 31(4):533–62
Hellman AD. 1989. Jumboism and jurisprudence: the theory and practice of precedent in the large appellate court. *Univ. Chicago Law Rev.* 56:541–601
Huber GA, Gordon SC. 2004. Accountability and coercion: Is justice blind when it runs for office? *Am. J. Polit. Sci.* 48(2):247–63
Hug P Jr, Tobias C. 1999. A split by any other name. *J. Law Polit.* 15:397–414
Iaryczower M, Spiller PT, Mariano T. 2002. Judicial independence in unstable environments, Argentina 1935–1998. *Am. J. Polit. Sci.* 46(4):699–716
Jackson VC. 2007. Packages of judicial independence: the selection and tenure of Article III judges. *Georgetown Law J.* 95:965–1008
Jillani TH. 2011. The challenge of judicial independence and the experience of Pakistan. See Shetreet & Forsyth 2011, pp. 425–42
Johnson VR. 2002. The ethical foundations of American judicial independence. *Fordham Urban Law J.* 29:1007–28
Karlan PS. 2007. Judicial independences. *Georgetown Law J.* 95:1041–59
Kaufman IR. 1980. The essence of judicial independence. *Columbia Law Rev.* 80:671–701
Kornhauser LA. 2002. Is judicial independence a useful concept? See Burbank & Friedman 2002, pp. 45–55
Levinson S. 2006. Identifying "independence." *Boston Univ. Law Rev.* 86:1297–1308
Lubet S. 1999. Judicial discipline and judicial independence. *Law Contemp. Probl.* 61:59–74
Madeira EW Jr, Belton SS, Daniel HT Jr, Driscoll JP Jr, Kastenmeier RW, et al. 1997. *An independent judiciary*. Rep., Comm. Sep. Powers Judic. Independence, Am. Bar Assoc., Washington, DC. **http://www.americanbar.org/content/dam/aba/migrated/2011_build/government_affairs_office/indepenjud.authcheckdam.pdf**
Madeira EW Jr, Brady PG, Longmuir SA, Moyer TJ, Neville CL, et al. 2000. *Standards on state judicial selection*. Rep., Comm. State Judic. Sel. Stand., Am. Bar Assoc. Chicago, IL. **http://www.americanbar.org/content/dam/aba/administrative/judicial_independence/reformat.authcheckdam.pdf**

Madeira EW Jr, Mikva A, Sessions WS, Chambers J, Duques HC, et al. 2003. *Justice in jeopardy.* Rep., Comm. 21st Century Judic., Am. Bar Assoc., Chicago, IL. **http://www.americanbar.org/content/dam/aba/migrated/judind/jeopardy/pdf/report.authcheckdam.pdf**

Marcus M, Van Tassel EF. 1988. Judges and legislators in the new federal system, 1789–1800. In *Judges and Legislators: Toward Institutional Comity*, ed. RA Katzmann, pp. 31–53. Washington, DC: Brookings Inst.

Maroney M. 2011. Emotional regulation and judicial behavior. *Calif. Law Rev.* 99:1485–555

Merriam-Webster. 2014. *Independence*. Merriam-Webster.com, Springfield, MA. **http://www.merriam-webster.com/dictionary/independence**

Morriss AP, Heise M, Sisk GC. 2005. Signaling and precedent in federal district court opinions. *Super. Court Econ. Rev.* 13:63–97

Neal TC, Keith LC. 2007. *Conceptualizing and operationalizing judicial independence globally*. Presented at Annu. Meet. Am. Polit. Sci. Assoc., Aug. 30–Sept. 1, Chicago

Newman JO. 1997. The Judge Baer controversy: correspondence from the White House, Senator Dole, congressman, and judges. *Judicature* 80:156–64

O'Connor SD. 2006. Remarks on judicial independence. *Florida Law Rev.* 58:1–6

O'Connor SD, McGregor RV. 2012. Judicial selection principles: a perspective. *Albany Law Rev.* 75:1741–46

Off. Democr. Gov. 2002. *Guidance for Promoting Judicial Independence and Impartiality.* Washington, DC: US Agency Int. Dev.

Oldham DD, Mikva A, Baker H Jr, Baran JW, Canary C, et al. 2002. *Public financing of judicial campaigns.* Rep., Comm. Public Financ. Judic. Campaigns, Am. Bar Assoc., Chicago, IL. **http://www.americanbar.org/content/dam/aba/migrated/judind/pdf/commissionreport4_03.authcheckdam.pdf**

Palmer VV. 2010. The recusal of American judges in the Post-Caperton era: an empirical assessment of the risk of actual bias in decisions involving campaign contributors. *Glob. Jurist (Frontiers)* 10(3):4

Peretti TJ. 2002. Does judicial independence exist? The lessons of social science research. See Burbank & Friedman 2002, pp. 103–33

Posner RA. 1993. What do judges and justices maximize? (The same thing everybody else does). *Super. Court Econ. Rev.* 3:1–41

Pozen DE. 2008. The irony of judicial elections. *Columbia Law Rev.* 108:265–330

Pozen DE. 2011. Are judicial elections democracy-enhancing? See Geyh 2011, pp. 248–77

Pritchett CH. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values, 1937–1947*. London: Macmillan

Quintanilla VD. 2011. Beyond common sense: a social psychological study of Iqbal's effect on claims of race discrimination. *Mich. J. Race Law* 17:1–61

Ramseyer JM, Rasmusen EB. 2003. *Measuring Judicial Independence: The Political Economy of Judging in Japan*. Chicago: Univ. Chicago Press

Redish MH. 1995. Federal judicial independence: constitutional and political perspectives. *Mercer Law Rev.* 46:697–731

Redish MH. 1999. Judicial discipline, judicial independence, and the constitution: a textual and structural analysis. *South. Calif. Law Rev.* 72:673–706

Rehnquist WH. 1996. Symposium: the future of the federal courts: keynote address. *Am. Univ. Law Rev.* 46:263–325

Rehnquist WH. 2004. Judicial independence. *Univ. Richmond Law Rev.* 38:579–96

Richman WM. 1996. Elitism, expediency, and the new certiorari: requiem for the Learned Hand tradition. *Cornell Law Rev.* 81:273–342

Rosenberg GN. 1991. *The Hollow Hope: Can Courts Bring About Social Change*? Chicago: Univ. Chicago Press. 1st ed.

Ross WG. 1994. *A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts, 1890–1937*. Princeton, NJ: Princeton Univ. Press

Rowland CK, Carp R. 1996. *Politics and Judgment in Federal District Courts*. Lawrence: Univ. Press Kans.

Rubin EL. 2002. Independence as a governance mechanism. See Burbank & Friedman 2002, pp. 56–100

Ruger TW, Kim PT, Martin AD, Quinn KM. 2004. The Supreme Court Forecasting Project: legal and political science approaches to predicting Supreme Court decisionmaking. *Columbia Law Rev.* 104:1150–1209

Russell PH. 2001. Toward a general theory of judicial independence. In *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, ed. PH Russell, DM O'Brien, pp. 1–24. Charlottesville: Univ. Va. Press

Schauer F. 2000. Incentives, reputation, and the inglorious determinants of judicial behavior. *Univ. Cincinnati Law Rev.* 68:615–36

Schor M. 2009. An essay on the emergence of constitutional courts: the cases of Mexico and Colombia. *Indiana J. Glob. Leg. Stud.* 16(1):173–94

Schubert G. 1965. *The Judicial Mind: The Attitudes and Ideologies of Supreme Court Justices, 1946–1963*. Evanston, IL: Northwest. Univ. Press

Segal JA. 2011. What's law got to do with it: thoughts from "the realm of political science." See Geyh 2011, pp. 17–40

Segal JA, Spaeth HJ. 1993. *The Supreme Court and the Attitudinal Model*. Cambridge, UK: Cambridge Univ. Press

Seidman M. 1988. Ambivalence and accountability. *South. Calif. Law Rev.* 61:1571–600

Shane PM. 1993. Who may discipline or remove federal judges? A constitutional analysis. *Univ. Pa. Law Rev.* 142:209–42

Shetreet S. 2001. The critical challenge of judicial independence in Israel. In *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World*, ed. PH Russell, DM O'Brien, pp. 233–50. Charlottesville: Univ. Va. Press

Shetreet S, Forsyth C, eds. 2011. *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges*. Boston: Martinus Nijhoff

Simon D. 1998. A psychological model of judicial decision making. *Rutgers Law J.* 30:1–142

Simon D. 2004. A third view of the black box: cognitive coherence in legal decision making. *Univ. Chicago Law Rev.* 71:511–86

Sisk G, Heise M. 2012. Religion, schools, and judicial decision making: an empirical perspective. *Univ. Chicago Law Rev.* 79:185–212

Smith R. 1988. Political jurisprudence, the "new institutionalism," and the future of public law. *Am. Polit. Sci. Rev.* 82:89–108

Staudt NC. 2004. Modeling standing. *NYU Law Rev.* 79:612–84

Stephenson MC. 2003. "When the devil turns. . .": the political foundations of independent judicial review. *J. Leg. Stud.* 32:59–89

Storme M. 2011. Independence of the judiciary: the European perspective. See Shetreet & Forsyth 2011, pp. 85–96

Streb MJ. 2007. *Running for Judge: The Rising Political, Financial, and Legal Stakes of Judicial Elections*. New York: NYU Press

Tyler TR. 1984. The role of perceived injustice in defendant's evaluation of their courtroom experience. *Law Soc. Rev.* 18:51–74

Van Tassel EF. 1993. Resignations and removals: a history of federal judicial service—and disservice—1789–1992. *Univ. Pa. Law Rev.* 142:333–430

Volcansek ML, Lafon JL. 1987. *Judicial Selection: The Cross-Evolution of French and American Practices*. Westport, CT: Praeger

Wood GS. 1969. *The Creation of the American Republic, 1776–1787*. Chapel Hill: Univ. N.C. Press

Wrightsman LS. 1999. *Judicial Decision Making: Is Psychology Relevant?* Perspect. Law Psychol., Vol. 11. New York: Plenum