

Book Notes: Are Judges Political?: An Empirical
Analysis of the Federal Judiciary, by Cass R.
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Dean Ardron

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BOOK NOTES

ARE JUDGES POLITICAL?: AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY, BY CASS R. SUNSTEIN, DAVID SCHKADE, LISA M. ELLMAN & ANDREAS SAWICKI. WASHINGTON, D.C.: BROOKINGS INSTITUTION PRESS, 2006. Pp. x + 177. Notes, index. USD \$24.95 hardcover.

BY DEAN ARDRON

In a time when U.S. Senate confirmation hearings for judicial appointees have reached a new level of antagonism, the authors of *Are Judges Political?* set out to answer their politically charged question through empirical analysis.

In order to answer their title question, the authors commence an extensive examination of the federal judiciary in politically contested areas such as abortion, affirmative action, campaign finance regulation, and gay rights. Their study reveals the pervasiveness of three patterns of judicial voting: ideological voting, ideological dampening, and ideological amplification.

The first pattern, ideological voting, is seen where Democrat and Republican appointees predictably vote along party lines in a number of “ideologically contested” areas. The second pattern, ideological dampening, is seen when the views of a judge are dampened where that judge is sitting with two judges of the opposite party. Finally, ideological amplification occurs where a judge’s political leanings are amplified when sitting on a panel with two judges of the same party.

While these findings are of substantial importance to scholars who debate the significance of *who* judges are, the authors are quick to acknowledge the limits of their findings. The empirical analysis reveals that the three patterns in judicial voting do not apply in a number of broad areas, including criminal appeals, punitive damages, or standing to sue.

Are Judges Political? offers important new insights into the role that individual judges play in the judicial process. While the authors have limited their study to the U.S. federal judiciary, they have developed a methodology that can be applied to judiciaries across the world. Perhaps the authors’ invitation to do just that will be accepted in

the years to come and further information will become available about the political nature of the judiciary.