

# Electoral Pressures and the Legal System: Friends or Foes?

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## 1 Introduction: Politics, Elections, and the Efficiency of Government Action

Decisions made within the legal system are typically viewed as being impartially decided, informed only by the testimony and evidence presented, and legal precedent. For this reason, many scholars treat legal decisions as exogenous events, i.e., that they are independent of pre-existing conditions (see, for example, Baicker and Gordon 2006). However, political scientists and legal analysts have long understood that in many cases factors outside what is presented in the courtroom affect the outcomes of legal cases.<sup>2</sup> The race, gender, and political affiliation of individuals involved in the legal process have all been found to play a role in determining legal outcomes.<sup>3</sup>

For example, at the federal level the ideology of justices (typically inferred from the political party of the person who appointed the justice) has been found to be important in both opinion structure and outcome in administrative law cases (Cross and Tiller 1998). In addition, Republican appointees have been found to rule against the Environmental Protection agency in environmental law cases more often than Democratic appointees (Smith and Tiller 2002). Schanzenbach (2005: 59-60) aptly categorizes the research on the effect of judicial characteristics when he states that "...the literature has consistently

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<sup>2</sup> In their paper on the effect of state school finance reforms on total local resources, Baicker and Gordon (2006) somewhat disturbingly note that constitutional language regarding the state's education system has little predictive power in determining the outcome of state school finance cases.

<sup>3</sup> For a nice overview of the literature on the impact of the characteristics of judges on outcomes, see Schanzenbach (2005).

established that when judges have discretion, they indulge personal policy preferences....”<sup>4</sup>

Politics plays a role in influencing legal outcomes at other points in the legal process as well. District attorneys (DAs) are elected officials with considerable influence over case outcomes. Not only do DAs decide when there exists enough evidence to charge a defendant, they also decide the level of resources to devote to prosecuting the case. The legal system gives considerable leeway to district attorney’s to exercise personal judgment, from the decision to prosecute to the decision to offer a plea bargain. Simon (1991) details how pressure from district attorneys increases the man-hours devoted to finding a suspect in high-profile homicide cases. Despite the clear pressure that elections place on DAs, little empirical work has been done on this issue, with the exception of Dyke (forthcoming), who finds the probability that a defendant will be prosecuted increases in an election year. His work suggests that DAs are more likely to prosecute cases in election years that they otherwise might dismiss in non-election years.

Elections are commonly viewed as the primary means through which voters can hold public officials accountable for their actions. According to authors such as Donald Wittman (and others from the ‘Chicago School’) elections are effective in this role (Wittman 1995). When elections are contestable, and competition within the political process is strong, this school holds that elections promote outcomes that are efficient and consistent with voter preferences. In contrast, authors from the ‘Virginia School’ tradition hold a much more critical view, in which voter ignorance, interest groups, and barriers to entry result in democratic failures—inefficient outcomes that may not mirror voter preferences. However, even in the limited cases where electoral outcomes are driven by

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<sup>4</sup> Other important research in this vein is Tabarrok and Helland (1999), Helland and Tabarrok (2002) and Hanssen (2000).

voter preferences, there remains the question of whether these majority preferences are truly accurate or rational in the first place (Caplan 2007).

Empirical research has consistently shown that the incentives of elected officials are distorted around election time. Garrett and Sobel (2003), for example, find that presidential decisions regarding disaster declarations to release FEMA funding to states are influenced by whether the president is currently seeking reelection. Additionally, Kubik and Moran (2003) find a gubernatorial election cycle in state executions in which states are significantly more likely to conduct executions in gubernatorial election years. These are just two examples in which the empirical literature has found distorted incentives around the time of elections in areas of government policy that would, at first glance, seemingly be the least susceptible to these influences. In this chapter we explore whether elections in the legal system tend to be efficiency enhancing or instead result in democratic failures that compromise the quality of the legal system. In particular, we explore how electoral pressures faced by judges and district attorneys impact legal outcomes in the United States.

## 2 Judicial Selection: The Effect of Selection Procedure on Outcomes<sup>5</sup>

The question of how judges should be selected has been an important one throughout the history of the United States. During the 1787 Constitutional Convention in Philadelphia there was ardent debate over who would select members of the judiciary (Farber and Sherry 1990). More recently, the last several decades have seen many states change their method of selecting judges, primarily moving away from electing their justices to some form of appointment system. From 1940 to 1990, for example, fifteen states switched to a

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<sup>5</sup> This section draws on Sobel and Hall (2006).

merit form of judicial selection (Hanssen 2004) in their highest appellate courts. Today, the governor or legislature appoints state Supreme Court justices in 29 states and popular elections are used in the remaining 21 states. In states that elect their Supreme Court justices, eight use partisan elections in which candidates run on political platforms as Democrats or Republicans, and 13 use non-partisan elections in which candidates run on their name and reputation alone (American Judicature Society 2007).<sup>6</sup>

An enduring question in legal scholarship is the importance of judicial selection method to judicial outcomes, with the primary focus being on the difference between appointing and electing judges. Among the many arguments put forth by those in favor of appointing judges instead of electing them is the hypothesis that judicial elections undermine public confidence in the judiciary and thus are incompatible with a strong and independent judiciary.<sup>7</sup> While numerous studies have found significant differences in legal outcomes between appointed and elected judiciary systems, the differential between partisan and non-partisan elections is generally ignored in the empirical literature.<sup>8</sup>

Partisan elections, in particular, have a reputation for producing ideologically biased judges. West Virginia's 2004 Supreme Court election – the most expensive judicial election in the nation that year – is but one recent example. The incumbent and the challenger combined spent nearly \$1 million and independent political action organizations spent around \$3.5 million in total. Interest groups lined up on opposite sides of the judicial race, with organized labor supporting the Democratic incumbent and business associations supporting the Republican challenger. Both the incumbent and the challenger explicitly ran

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<sup>6</sup> Partisan election states are Alabama, Illinois, Louisiana, Michigan, Pennsylvania, Ohio, Texas, and West Virginia. While party affiliations do not appear on the ballot in Ohio, candidates do receive party nominations to be placed on the ballot.

<sup>7</sup> An example of this would be Link (2004).

<sup>8</sup> One notable exception is Helland and Tabarrok (2002) who point out that judges elected in partisan elections have an incentive to redistribute wealth from out-of-state defendants (who cannot vote against them) to in-state plaintiffs (who can). An in-depth discussion of their research on the courts, together with some legal reform suggestions, can be found in Helland and Tabarrok (2006).

on political platforms reflecting their party's ideology, with the incumbent stressing his reputation for being a friend of labor and the challenger touting his business-friendly judicial philosophy.

Partisan elections where candidates receive public support from organized interest groups and run on political party platforms thus appear to run contrary to the notion of an unbiased and fair judiciary. Is it the case that states with partisan elections have lower judicial quality than states using non-partisan elections? If so, are the previously found differentials between states using judicial appointment and elections really due only to the poor legal systems in the handful of states with partisan elections?

To examine this question we employ a new survey-based ranking of state legal liability systems conducted by the U.S. Chamber of Commerce. This index scores state judicial quality on a scale of zero to 100 based on a nation-wide survey of lawyers.<sup>9</sup> Table 1 provides the average state ranking and the average score by state for the year 2004, stratified by method of judicial selection.

[Table 1 about here]

The data thus seem to confirm the commonly-held belief that appointing justices leads to superior outcomes compared to judicial election. Appointive states have an average ranking of 21.1 out of the 50 states measured with an average score of 61.0 out of 100. States electing their judges have much lower scores, with an average state ranking of 31.5 and overall judicial quality score of 53.5. Looking at the breakdown between partisan and non-partisan elective states, however, clarifies that the really significant decline in legal quality is for states that select judges using partisan elections. Partisan election states have an average ranking that would place them 40<sup>th</sup> out of the 50 states, with an average

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<sup>9</sup> *State Liability Systems Ranking Study* (2004), U.S. Chamber of Commerce, Washington, D.C. The ranking uses a random survey of approximately 1000 lawyers throughout the United States. The lawyers were asked the states they were familiar with and then asked to evaluate those state's legal system on a variety of criteria pertaining to the overall quality of a state's legal system.

legal quality score nearly 15 points below the average appointive states. While non-partisan election states are still below appointive states, the difference is small compared to the decline in legal quality observed for partisan elective states. Consistent with the previous literature, elections lower judicial quality compared to appointment and partisan elections considerably lower judicial quality compared to appointive systems. What is clear is that the majority of the differential between appointed and elected systems is due to the significantly worse legal quality in those states with partisan elections.

[Table 2 about here]

To ensure other factors that differ across states are not driving the results in Table 1, we now turn to regression methodology. The dependent variable is the state's liability system ranking. As control variables we use the number of lawyers per capita, percent voting Democratic in the 2000 presidential election, the percentage of state residents over 25 with a college degree, and judicial salary level.<sup>10</sup> We begin by first simply including a dummy variable for whether the state employs elections (of either type) to select judges. The results of this basic regression analysis are presented in Column 1 of Table 2. The sign on ELECTIVE is negative and statistically significant, with the interpretation of the coefficient being fairly straightforward. A state changing from judicial elections to judicial appointments would be expected to have a 4.5 point increase in legal quality, or about the difference between the 9<sup>th</sup> ranked state and the 26<sup>th</sup> ranked state.

Columns 2 and 3 include two additional explanatory variables to the basic model. In Column 2, we add a measure of racial diversity commonly employed in the developmental economics literature. A number of studies have found that ethnic, linguistic,

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<sup>10</sup> The sources of our data are as follows: the number of lawyers per capita comes from *The Lawyer Statistical Report* (2004); the percent voting Democratic and the percentage of residents over the age of 25 with a college degree were obtained from *The Statistical Abstract of the United States 2004-05* (2004); and the judicial salary level on the court of last resort in a state was obtained from *The Book of the States* (2004).

and racial diversity can lead to poor economic, legal, and social institutions (see Alesina et al. (2003) for an excellent overview of this research). According to this literature, different ethnic, linguistic, or racial backgrounds in a society can generate disagreement over the provision of publicly-provided goods such as courts and schools.

The racial diversity variable is calculated using population by race from the Census Bureau and constructed according to the following formula:

$$\text{Racial Diversity} = 10,000 - \sum_i (\text{Race}_i)^2$$

where  $\text{Race}_i$  is the percentage of a state's population that is of a particular race. A racially homogenous state would receive a score of zero and as racial diversity increased so would its score. Thus the expected relationship between the measure of racial diversity and legal system quality is expected to be negative, which is what we find in the regression reported in Column 2 of Table 2. More racially diverse states are associated with lower legal quality, other things being equal. More importantly, inclusion of racial diversity in the empirical model does not weaken the finding of a negative relationship between judicial elections and the quality of a state's legal system.

Finally, in Column 3 we include a how 'extreme' the income distribution is within a state. Measured as the natural log of the product of the percent of families earning less than \$25,000 and the percent of families earning above \$100,000, this variable measures how large the upper and lower tails of the income distribution are within a state. States where the tails of the income distribution are larger might have lower judicial quality if income polarization leads to subversion of the judicial system. For example, the poor could subvert the legal system by using the courts to engage in redistribution.<sup>11</sup> Or alternatively, the rich can use their wealth to influence the courts, leading to corruption instead of justice.

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<sup>11</sup> See Tabarrok and Helland (2003) provide some insight into the role that poverty plays in tort awards.

Glaeser, Scheinkman, and Shleifer (2003) present cross-country evidence consistent with inequality leading to poor legal institutions. As can be seen in Column 3, the inclusion of income inequality in the regression does not change the finding that elections lower the quality of a state's legal system. The inclusion of income inequality does make the measure of racial diversity statistically insignificant, suggesting that the statistically significant finding in Column 2 was the result of omitted variable bias and that it is income inequality that exerts a negative influence on judicial quality and not racial diversity.

[Table 3 about here]

In Table 3 we estimate all three specifications from Table 2, this time breaking up ELECTIVE into PARTISAN and NONPARTISAN to see if the difference in judicial quality is the result of the difference between elective and appointive states or between partisan and nonpartisan. The results presented in Table 3 suggest that the partisan nature of judicial elections is what matters for legal quality. While a negative and significant difference exists between partisan elections and judicial quality, the relationship between nonpartisan elections and judicial quality is not significant. The difference between elective and appointive states appears to be driven by the subset of states using partisan elections, with their being little difference between appointive and non-partisan states. The findings of all other explanatory variables are consistent with the findings in Table 2.

The larger question addressed in this chapter is whether electoral pressures are efficiency enhancing or reducing within the legal system. The results from our analysis above suggest that elections indeed do impact legal outcomes, but that not all electoral systems are the same. The underlying nature of the elections (here partisan vs. nonpartisan) appears to also have an impact on whether electoral pressures matter. Partisan elections appear to lower judicial quality far more than nonpartisan elections.

The debate over the appropriate method of judicial selection has been contentious. On the one side are individuals arguing in favor of appointive systems of selecting judges. On the other side are individuals who argue that judges should be held accountable to the public for their judicial decisions, especially in an era where considerable policy change occurs through the court system instead of through the legislature. Both of these viewpoints have their merits. Our findings suggest that a compromise position would be to use nonpartisan elections as they lead to outcomes similar to appointive systems while still retaining electoral checks on the judiciary.<sup>12</sup> However, judicial elections marred by party politics are clearly detrimental to a state's legal system quality.

### 3 Wrongful Convictions and the Election of District Attorneys

While the previous section showed the effect of elections on state judicial quality, this section looks to analyze another aspect of the judiciary—how DAs are influenced by the prospect of an upcoming election.

As members of the judicial branch of government, DAs determine which cases they deem meritorious of prosecution. They also choose how to proceed in prosecuting any particular case. DAs, therefore, have the opportunity to manipulate their granted power of case choice and prosecutorial discretion for personal gain. District attorneys could have a number of individual goals in mind, be it an improved public image, experience-gaining for a better private sector position or, as we posit in this section, an increased likelihood of re-election.

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<sup>12</sup> An additional point to note in favor of non-partisan elections is that there does not appear to be any organized lobby in favor of non-partisan elections, unlike appointive systems. Hanssen (2002) finds evidence that the self-interest of lawyers explains state bar association support for appointive 'merit' plans since appointive systems introduces additional uncertainty that increases billable hours for lawyers.

The incidence of wrongful convictions, while impossible quantify with certainty, is likely at a nontrivial level. Over forty years ago, Radin (1964) cited a highly respected (but unnamed) judge who estimated that wrongful convictions occur at a rate of 14,000 per year. Attributing even a small portion of these wrongful convictions to election pressures yields hundreds of innocent citizens convicted for the personal political gain of the local district attorney.

The concept of public servants such as DAs using their influence for personal gain is not foreign, as many popular examples exist of district attorneys manipulating the judicial process for personal gain. Mike Nifong, the DA presiding over the infamous Duke lacrosse scandal, did so in the midst of a heated re-election campaign.<sup>13</sup> Ultimately disbarred for his actions, Nifong was found by the North Carolina bar to have engaged in considerable misconduct including withholding exculpatory DNA evidence (Neff and Blythe 2007).<sup>14</sup> In an apology made the day after the Attorney General of North Carolina dropped the case, Nifong admitted that there was no credible evidence with which to prosecute the accused students (West 2007). District attorneys citing their conviction records as basis for re-election are nearly as common as the elections themselves (see, for example, Murray 2007 and Lapinski 2001), and even cases of district attorneys aggressively prosecuting their political opponents exist (see Glaberson 2005).

We focus our empirical analysis of the electoral pressure on district attorneys on a measurable facet of judicial system error: wrongful convictions. In being able to set the judicial agenda, as well as playing a large role in many facets of the trial itself, district attorneys have many opportunities to adversely affect the process of legal justice. It is our

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<sup>13</sup> See Grose (2007) for an excellent discussion of the role of racial politics in the helping get Nifong re-elected.

<sup>14</sup> The Chairman of the State Bar Disciplinary Hearing Commission specifically pointed to election pressures as a reason for Nifong's actions (Neff and Blythe 2007).

conjecture that election pressures encourage greater prosecutorial misconduct that leads to more wrongful convictions.

In this study, we utilize a sample of cases found in *Innocent: Inside Wrongful Conviction Cases*, a collection of 109 wrongful convictions from the state of New York (Christianson 2004). The cases span most of the 20<sup>th</sup> century and the vast majority of the cases concern a charge of murder. The sample of wrongful convictions spans sixteen counties. In New York, DAs are elected at the county level by the general public, and sixty-three district attorneys currently hold office. Though concerning a fundamentally different function of government—a different branch, in fact—DA elections are quite similar to elections for both the executive and legislative branches. Local media cover the candidates extensively, and the ready use of political rhetoric in public comments highlights role of the district attorney as politician, particularly when elections approach. Finally, as in all elections, district attorney races can vary from effectively unopposed (Kings County, 2005) to tightly contested (Westchester County, 2005).

Table 4 presents a preliminary look at the role of DA elections on the wrongful convictions. DA elections occur every four years in New York, so the incidence of wrongful convictions in election years is easy to identify. Thirty-nine of our 109 wrongful convictions occurred during an election year, or about 36 percent.<sup>15</sup> As a null hypothesis we might expect the cases to be uniformly and randomly distributed throughout the years. Testing against this null hypothesis of 25 percent (since one-quarter of wrongful convictions should occur every fourth year), we find, with statistical significance, that wrongful convictions occur more often during election years.<sup>16</sup>

[Table 4 about here.]

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<sup>15</sup>Note that the dates assigned for each wrongful conviction correspond to the original date of wrongful conviction, not the date of eventual exoneration.

<sup>16</sup> The test statistic is 2.5992, showing a 95 percent level of significance.

However, this result could come as the result of more cases being tried during election years than otherwise; after all, if more cases are heard and convicted in election years, it would be logical to conclude that we should observe more wrongful convictions.<sup>17</sup> Using data on the number of New York state murder convictions from 1975-2006, we can see if there are electoral conviction cycles.<sup>18</sup> We find that electoral conviction cycles *do* seem to (weakly) exist. While the average number of convictions in a non-election year is 296.3, the figure rises in an election year to 303.5; however, this increase does not constitute a statistically significant difference between election and non-election years. Nonetheless, we can utilize this modest difference to modify our previous hypothesis of wrongful convictions by year being evenly distributed across all years regardless of whether there is an election or not. Instead of assuming a flat 25%, we can scale expected wrongful convictions in election years to the higher rate of convictions in election years. Since 25.5% of convictions occur during election years, we can test the hypothesis that more than 25.5% of wrongful convictions occur during election years. Table 4 shows that the difference in wrongful convictions between election years and non-election years, considering the variation in overall convictions, is significant at the 5 percent level.

While wrongful convictions by year provide evidence of an election-year effect, additional evidence can be found by looking at the time of year that these wrongful convictions take place. Rows 1 and 2 in Table 5 present the month of the wrongful convictions that occurred during an election year, along with the respective percentage that month comprises of the entire election year as a whole. Rows 3 and 4 correspond to the same breakdowns, only for the average figures for non-election years. After including

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<sup>17</sup> Of course, the fact that more cases would be heard during election years could also be political in nature. However, since we are focused on the incentive for *wrongful* conviction, we do not address this issue here.

<sup>18</sup> Data obtained by direct contact from the New York State Division of Criminal Justice Services, March 15, 2007.

historical trends in convictions by month, we test three forms of our hypothesis that electoral pressures lead to excessive wrongful convictions.

[Table 5 about here.]

The first test is that of the null hypothesis—that all wrongful convictions are spread evenly over the twelve months of the year. Row 6 displays these results. A significantly greater number of wrongful convictions occur in the month of May along with a statistically low number of wrongful convictions in the month of April.<sup>19</sup> While interesting in its own regard, our study concerns the incidence of wrongful convictions around election times.<sup>20</sup> Therefore, of more direct importance to our analysis is that a statistically very high number of wrongful convictions occur in the month of October, immediately prior to general elections during the first week of November—and a statistically *low* number of convictions occur during the month of November. The data show district attorneys rushing to bring cases to completion prior to the polls opening in early November, creating both a surge of wrongful convictions in October and a dearth of wrongful convictions in November.

Our second hypothesis tests whether wrongful convictions are spread throughout the year in accordance to monthly trends in caseload. Whereby the first hypothesis implicitly assumed that all months see the same number of convictions (and therefore the null hypothesis that wrongful convictions are evenly spread over the year), this hypothesis adjusts for monthly variation in conviction rates. For example, if the number of people convicted in June is twice that of September, it would be natural to assume that twice the number of wrongful convictions would occur in June as well. To take into account monthly fluctuations in convictions, we calculate the percentage of murder convictions that occur on average by month over the thirty-two years of New York state murder convictions

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<sup>19</sup> Statistically significant with 90 percent confidence.

<sup>20</sup> What may be observed here is an effect of primary elections upon the rates of wrongful convictions.

data. We then use this figure—found in row 5—as the null hypothesis to test whether we are observing an abnormal level of wrongful convictions in certain months. In the first hypothesis, when we assume evenly distributed wrongful convictions, we test the incidence of wrongful convictions in every month against the constant null value of 8.33% (1/12<sup>th</sup>). For this hypothesis, the null values range from a low of 5.2% (August) to a high of 10.3% (June). Row 7 presents the results. Once again, October is shown to exhibit a very high number of wrongful convictions, statistically significant at the 1 percent level. The November-shifting effect is also observed here as it was with our previous test, with a significantly low number of wrongful convictions in November to accompany the higher level in October.

Our third and final test now assumes that non-election years are the norm—that is, the distribution of wrongful convictions in non-election years should be the benchmark by which election year wrongful convictions are judged. This test differs from the previous two in that we are now generating a null value from the characteristics of non-election year wrongful convictions. We utilize this final hypothesis to discern whether wrongful convictions tend to aggregate around certain months both in election *and* non-election years. Row 8 shows the results of this test. October still exhibits a statistically higher level of wrongful convictions along with the November-shifting effect—the same result we have observed in all three tests performed on the monthly data. A December-shifting effect is observed in this final hypothesis test as well.

It is now common knowledge that public servants use their positions of power for personal gain—after all, they, like all other actors in the economy, are utility maximizing individuals. All that separates public servants in the judicial branch from those in the other branches are the different scopes of influence that they possess. While favoritism in taxation, expenditure and regulation allow for enhanced re-election prospects for

legislators, district attorneys have no such authority. Instead, district attorneys use their discretion in selecting cases to pursue, and the process of prosecuting them, to increase their personal goals and well-being. We have shown that the incidence of wrongful convictions rises sharply immediately prior to elections. We feel that this empirical reality is strong evidence that district attorneys increase their scope of influence nearer to election times in order to be perceived as a stronger public servant. Unfortunately, this effort towards increasing the perception of their worth to the public comes at the cost of more innocent defendants going to jail.

## **4 Conclusion**

The results presented here confirm previous research showing that judicial quality is lower in states that utilize elections to select their judges. Utilizing a new data set measuring judicial quality across the fifty U.S. states we also find it is the partisan nature of judicial elections that is the primary reason for lower judicial quality in elective states that utilize partisan elections. Our research suggests that efforts to improve legal quality by ‘taking the politics’ out of the judiciary are somewhat misguided because the primary force lowering judicial quality is the partisanship. Moving to nonpartisan elections is likely to achieve much of the desired gains in judicial independence and quality while maintaining voter accountability over justices.

In addition, we show that the influence of elections on the judicial branch of government extends beyond judges to district attorneys. By having the power to determine not only which cases to prosecute but how to prosecute them, DAs can choose a case load that maximizes their personal well-being. As the incidence of wrongful murder convictions rises sharply prior to elections, we suggest that district attorneys take more aggressive

measures to prosecute borderline cases as a means of appearing to be a more worthy public servant. This results in more innocent defendants being found guilty.

Ultimately, these results point more specifically towards the exact impact that elections have on different sections of the judicial system. While the role of elections in influencing the outcomes of the executive and legislative branches of government have been heavily analyzed, the results presented here show that electoral forces also play a significant role on the outcomes of the judicial branch of government. These electoral pressures appear to be detrimental; supporting the theories held by the ‘Virginia School’ regarding the (in)efficiency of elections. It is time to view the judiciary in a similar light as the other branches of government and to consider institutional changes that might mitigate the influence of politics on the legal system.<sup>21</sup>

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<sup>21</sup> A good example of research in this vein is the work of Roger Koppl. In a series of papers Koppl looks at the role of institutional structure on the forensic science and has come up with several suggestions on how to change forensic science as an institution in order to minimize outright fraudulent forensic science (see, for example, Koppl (2005)).

## References

- Alesina, Alberto, Arnaud Devleeschauwer, William Easterly, Sergio Kurlat, and Romain Wacziarg. 2003. "Fractionalization." *Journal of Economic Growth* vol. 8, no 2 (June): 155-194.
- American Bar Foundation. 2004. *The Lawyer Statistical Report: The U.S. Legal Profession in 2000*. Chicago: American Bar Foundation.
- American Judicature Society. 2007. "Initial Selection: Courts of Last Resort." Des Moines: American Judicature Society. Online: [www.ajs.org/js/LastResort.pdf](http://www.ajs.org/js/LastResort.pdf).
- Baicker, Katherine, and Nora Gordon. 2006. "The Effect of State Educational Finance Reform on Total Local Resources." *Journal of Public Economics* vol. 90, nos. 8-9 (September): 1519-1535.
- Besley, Timothy, and Abigail Payne. 2003. "Judicial Accountability and Economic Policy Outcomes: Evidence from Employment Discrimination Charges." Mimeo.
- Caplan, Bryan. 2007. *The Myth of the Rational Voter: Why Democracies Choose Bad Policies*. Princeton: Princeton University Press.
- Christianson, Scott. 2004. *Innocent: Inside Wrongful Conviction Cases*. New York: New York University Press.
- Council of State Governments. 2004. *The Book of the States*. Lexington: Council of State Governments.
- Cross, Frank B., and Emerson H. Tiller. 1998. "Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Court of Appeals." *Yale Law Journal* vol. 107: 2155-2176.
- Dyke, Andrew. 2007. "Electoral Cycles in the Administration of Criminal Justice." *Public Choice*, forthcoming.
- Farber, Daniel A., and Suzanna Sherry. 1990. *A History of the American Constitution*. St. Paul, MN: West.
- Garrett, Thomas A., and Russell S. Sobel. 2003. "The Political Economy of FEMA Disaster Payments." *Economic Inquiry* vol. 41, no. 3 (July): 496-509.
- Glaberson, William. 2005. "Cases Against Rivals Were Justified, Hynes Said." *The New York Times* 6 January.
- Glaeser, Edward. 2006. "Inequality." in *The Oxford Handbook of Political Economy*, Barry Weingast and Donald Wittman (eds). Cambridge: Oxford University Press.
- Glaeser, Edward, Jose Scheinkman, and Andrei Shleifer. 2003. "The Injustice of Inequality." *Journal of Monetary Economics* vol. 50, no. 1 (January): 199-222.

- Grose, Christian R. 2007. "Cues, Endorsements, and Heresthetic in a High-profile Election: Racial Polarization in Durham, North Carolina?" *PS: Political Science and Politics* vol. 40, no. 2 (April): 325-332.
- Hanssen, F. Andrew. 2000. "Independent Courts and Administrative Agencies: An Empirical Analysis of the States," *Journal of Law, Economics, and Organization* vol. 16: (2000): 534-71.
- Hanssen, F. Andrew. 2002. "On the Politics of Judicial Selection: Lawyers and State Campaigns for the Merit Plan," *Public Choice* vol. 110 (January): 79-97.
- Hanssen, F. Andrew. 2004. "Learning about Judicial Independence: Institutional Change in the State Courts." *Journal of Legal Studies* vol. 33 (June): 431-473.
- Helland, Eric, and Alexander Tabarrok. 2002. "The Effect of Electoral Institutions on Tort Awards," *American Law and Economics Review* vol. 4 (Fall): 341-70.
- Helland, Eric, and Alexander Tabarrok. 2006. *Judge and Jury: American Tort Law on Trial*. Oakland, CA: The Independent Institute.
- Koppl, Roger. 2005. "How to Improve Forensic Science." *European Journal of Law and Economics* vol. 20, no. 3 (November): 255-286.
- Kubik, Jeffrey D., and John R. Moran. 2003. "Lethal Elections: Gubernatorial Politics and the Timing of Executions." *Journal of Law & Economics* vol. 46, no. 1 (April): 1-26.
- Lapinski, Alex. 2001. "Incumbent Abraham Is Confident of Re-election as City's District Attorney." *The Daily Pennsylvanian* 6 November.
- Link, Bradley. 2004. "Had Enough in Ohio? Time to Reform Ohio's Judicial Selection Process." *Cleveland State Law Review* vol. 51: 123-152.
- Murray, Jeff. 2007. "DA Hopefuls Make Pitches to Two Clubs." *Elmira Star-Gazette* 22 August.
- Neff, Joseph and Anne Blythe. 2007. "Panel Disbars Duke Lacrosse Prosecutor." *Raleigh News & Observer* 16 June.
- Radin, E. D. 1964. *The Innocents*. New York: William Morrow.
- Schanzenbach, Max. 2005. "Racial and Sex Disparities in Prison Sentences: The Effect of District-Level Judicial." *Journal of Legal Studies* 34, no. 1 (January): 57-92.
- Sobel, Russell S. and Joshua C. Hall. 2007. "The Effect of Judicial Selection Processes on Judicial Quality: The Role of Partisan Politics." *Cato Journal* vol. 27, no. 1 (Winter): 69-82.

- Smith, Joseph, and Emerson Tiller. 2002. "The Strategy of Judging: Evidence from Administrative Law." *Journal of Legal Studies* vol. 31: 61-82.
- Tabarrok, Alexander, and Eric Helland. 1999. "Court Politics: The Political Economy of Tort Awards," *Journal of Law and Economics* vol. 42 (April): 157-188.
- Tabarrok, Alexander, and Eric Helland. 2003. "Race, Poverty, and American Tort Awards: Evidence from Three Data Sets." *Journal of Legal Studies* vol. 32, no. 1 (2003): 27-58.
- U.S. Bureau of the Census. 2004. *Statistical Abstract of the United States 2004-05*. Washington, D.C.: Government Printing Office.
- U.S. Chamber of Commerce. 2004. *State Liability Systems Ranking Study*. Washington: U.S. Chamber of Commerce.
- West, William F. 2007. "Nifong Apologizes to 3 Players; DA Also Takes Issue With Some of AG's Sharp Criticism." *Durham Herald-Sun*. 13 April.
- Wittman, Donald A. 1995. *The Myth of Democratic Failure: Why Political Institutions are Efficient*. Chicago: University of Chicago Press.

**Table 1**

Average Judicial Quality Ranking by Selection Process, 2004

Type of System	Average Ranking	Average Score
Appointed	21.1	61.0
Elected	31.5	53.5
Partisan	39.9	47.9
Nonpartisan	26.4	56.9

Source: U.S. Chamber of Commerce, *State Liability Rankings Study: 2004*.

**Table 2**

## Determinants of State Legal Liability Rankings

Variables	OLS Estimates					
	1		2		3	
Constant	43.64	***	42.77	***	145.81	***
	(4.05)		(4.26)		(3.71)	
Elective	-4.52	*	-5.32	**	-4.40	**
	(1.92)		(2.54)		(2.07)	
Education	1.06	***	1.00	***	1.21	***
	(3.65)		(3.29)		(4.05)	
Salary	0.00003		0.00011		0.00013	
	(0.26)		(1.098)		(1.38)	
Democrat	-0.17		-0.16		-0.07	
	(1.05)		(1.11)		(0.49)	
Lawyers	-2.45	*	-2.35		-1.29	
	(1.84)		(1.65)		(0.93)	
Racial Diversity			-0.00204	***	-0.00039	
			(2.83)		(0.42)	
Income Inequality					-22.17	**
					(2.60)	
$R^2$ Adjusted	0.26		0.36		0.40	
Observations	50		50		50	

Note: \* indicates significance at the 10% level, \*\* at the 5% level, and \*\*\* at the 1% level. Absolute value of heteroskedasticity corrected t-statistics in parentheses.

**Table 3**

Comparison of Partisan vs. Nonpartisan Election States

Variables	OLS Estimates					
	1		2		3	
Constant	42.37	***	41.43	***	121.46	***
	(4.12)		(4.38)		(3.38)	
Partisan	-9.36	**	-10.38	***	-8.79	**
	(2.45)		(2.87)		(2.36)	
Nonpartisan	-2.09		-2.80		-2.53	
	(0.82)		(1.19)		(1.06)	
Education	0.93	***	0.87	***	1.05	***
	(3.53)		(3.37)		(3.85)	
Salary	0.00005		0.00014		0.00015	
	(0.57)		(1.45)		(1.62)	
Democrat	-0.15		-0.15		-0.08	
	(1.07)		(1.18)		(0.64)	
Lawyers	-2.07	*	-1.96		-1.20	
	(1.76)		(1.56)		(0.96)	
Racial Diversity			-0.00209	***	-0.00080	
			(2.79)		(1.12)	
Income Inequality					-17.17	**
					(2.19)	
$R^2$ Adjusted	0.30		0.41		0.43	
Observations	50		50		50	

Note: \* indicates significance at the 10% level, \*\* at the 5% level, and \*\*\* at the 1% level. Absolute value of heteroskedasticity corrected t-statistics in parentheses.



**Table 4**

Election Years vs. Non-Election Years

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Total Wrongful Convictions - Election Years	39
Total Wrongful Convictions - All Years	109
Z-statistic value (vs. Null)	2.60 **
Z-statistic value (vs. Historical Murder Conviction Rates)	2.47 **

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Note: \* indicates significance at the 10% level, \*\* at the 5% level, and \*\*\* at the 1% level. The null hypothesis is that wrongful convictions occur in election years and non-election years at the same rate.

**Table 5****The Monthly Timing of Wrongful Convictions**

Row	Description	Months											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
(1)	# of wrongful convictions (election year)	3	3	3	0	5	4	2	3	4	8	1	3
(2)	% of wrongful convictions (election year)	7.7%	7.7%	7.7%	0.0%	12.8%	10.3%	5.1%	7.7%	10.3%	20.5%	2.6%	7.7%
(3)	# of wrongful convictions (avg. all other)	2	2	2.67	2	2	2.33	1.33	3.33	2.67	0.67	2.67	3.67
(4)	% of wrongful convictions (avg. all other)	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	0.1	0.0	0.1	0.1
(5)	% of murder convictions by month	7.8%	7.8%	10.1%	9.8%	10.1%	10.3%	7.8%	5.2%	6.6%	7.8%	8.7%	8.0%
(6)	Z-statistic (vs. Null)	-0.24	-0.24	-0.24	<b>-3.15</b>	<b>1.70</b>	0.73	-1.21	-0.24	0.73	<b>4.60</b>	<b>-2.18</b>	-0.24
(7)	Z-statistic (vs. Hist. Murder Convictions)	-0.05	-0.03	-0.85	<b>-3.44</b>	0.94	-0.03	-1.05	1.19	1.55	<b>4.99</b>	<b>-2.27</b>	-0.12
(8)	Z-statistic (vs. all other non-election years)	0.15	0.15	-0.73	<b>-2.93</b>	<b>2.21</b>	0.64	0.12	-1.44	0.18	<b>12.23</b>	<b>-2.53</b>	<b>-1.75</b>

Note: Bold type equals statistically significant beyond the 10 percent level.

