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“All judges are political actors - except when they aren’t”  
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It has been a tough year for judges. In the spring, politicians lashed out against "activist judges" for ruling that Terry Schiavo could be removed from her feeding tube.

Last month nearly 50,000 voters in South Dakota signed petitions for a ballot proposal that would allow litigants to sue any judge they believe has violated their rights.

And across the nation sleepy judicial retention elections have been turned into expensive partisan slugfests, as single-issue interest groups and political parties have subjected judges to the kind of rough-and-tumble treatment traditionally reserved ordinary political candidates.

Why have judges faced mounting pressure? Well, for one reason, it seems that many Americans believe that partisan politics are skewing judicial decision-making.

According to a new poll just released by Syracuse University's Maxwell School, an astounding 85 percent of Americans believe that the partisan background of judges influences court decision-making either some or a lot. An overwhelming majority believes that partisanship does not switch off when judicial robes are put on - and this fact substantially affects public faith in the judicial selection process.

According to the Maxwell Poll, Republicans are almost nine times more likely than Democrats to trust the president and Senate to pick good federal judges.

Where does the public's partisan perception of the courts come from? The poll results point a finger at the media. Nearly 67 percent of those surveyed agree that media coverage of the courts pays more attention to partisan affiliation than to the reasoning that judges use to justify their decisions.

The poll also suggests that judges themselves are to blame. Over 55 percent of Americans believe that even though judges always say that their decisions flow from the law and the Constitution, many judges are in fact basing their decisions on their own personal beliefs. Judges may consistently “talk law,” but a majority of Americans suspect that judges are simply “doing politics.”

If the media and judges share responsibility for the public's partisan perceptions of the courts, it's also the case that few expect politicians to somehow fix the problem. A solid majority do not think that judges should be held more accountable to elected officials. If anything, the public seems to want to put more control of the judiciary back into its own hands. When asked if the number of judges subject to election was too small, too great, or just about right, just under 50 percent of those surveyed responded by calling for more judicial elections.

Reading through these poll results, it is clear that the partisanship that pervades contemporary American politics now infects public views of the judicial process. One might therefore conclude that, if anything, the problem is public discussion of the courts is not political enough.

For example, during his confirmation hearing, John Roberts compared judges to umpires, insisting that their job was simply “to call balls and strikes, not to pitch or bat.”

Perhaps it is time to say that although “judicial umpires” may not pitch or bat, most Americans expect judges to have strong loyalties for one team and to work to make sure that their side wins.
The scandal is not that judging is thoroughly political, but that participants in the judicial process sometimes pretend that it is not. The rule of law is the rule of men, and everybody knows it. Perhaps the growing public pressure on judges simply reflects the widespread belief that law is just politics.

Right? Wrong. And wrong in a big way.

Next to the finding that an overwhelming majority of Americans believe partisanship affects judicial decision-making, the most lopsided majority tapped by the Maxwell Poll came in response to a question about judicial independence.

When asked whether judges should be shielded from outside pressure and allowed to make their decisions on their own independent reading of the law, a remarkable 73 percent of those surveyed agreed. And this majority in favor of judicial independence holds straight across party lines: Three-quarters or more of Democrats and Republicans agree that the courts should be independent.

The result is no different when responses are broken down according to frequency of church attendance. Americans who go to church at least once a week support the ideal of judicial independence in the same large numbers as Americans who attend church rarely or not at all.

So Americans clearly see the influence of partisan politics on the judicial process, but at the same time they also clearly want a judiciary that is insulated from political pressure. The powerful belief in judicial independence reflects a popular aspiration - and it also reflects a broad-based recognition that, whatever else might be said, the courts remain central institutions of dispute resolution.

When asked why so many controversies end up in the courts, only a small percentage of Americans blamed politicians for failing to deal with the controversies in the first place and an even smaller percentage blamed judges for actively reaching out to decide hot-button issues. Instead, a majority of Americans believe that courts are at the center of so many conflicts because the people themselves demand that the judiciary get involved.

Do Americans think that judges are political? They sure seem to. Does this mean that most people see the courts as just another venue for partisan squabbling? Not by a long shot.

As we continue to hear news about the growing political pressure on the courts, we would do well to remember that while the public seems to detect partisanship in the judicial process, Americans by no means see judges as just another brand of politician.

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