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Judicial Activism's Effect on Judicial Elections

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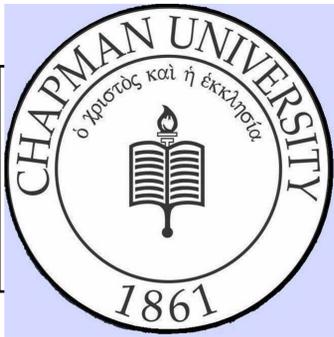
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Judicial Activism's Effect on Judicial Elections

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Introduction to Research

- There is an ongoing debate amongst scholars over whether judges should interpret the Constitution as the Founders would or use the ideals to update law to changing social norms.
- A large portion of scholars argue that a rise in judicial activism has been harmful overall for democracy
 - Robert F. Nagel argued in the National Review that *Brown v. Board of Education* has led to a long decline in citizens' input into democracy and a rise in activist tendencies by judges
 - What happens if judges who are against freedom are appointed?
- Statewide judicial elections are lower profile. However, the increasing rise in campaign contributions also affects these races.
 - Campaign contributions can be used by wealthy donors to swing decisions as in *Caperton v. A.T. Massey Coal Co.*
 - Layne S. Keele argues that judicial retention is another key problem facing judges.

Variables

- Voters characterized as disapproving of judicial activism were characterized by the question "Judges always say their decisions are based on the law and the Constitution, but in many cases, judges are really basing their decisions on their own personal beliefs." This was a statement that voters could rank on a five point scale.
- Voters characterized as approving of judicial activism were defined by the question "Since the constitution must be updated to reflect society's values as they exist today, Supreme Court judges have a great deal of leeway in their decisions, even when they claim to be 'interpreting' the constitution." This was a statement that voters could rank on a five point scale.
 - Approval of judicial elections was characterized through the question "Do you favor or oppose changing the current system of electing judges to an appointed system?"

Hypotheses:

- H 1: Voters who support judicial elections are more likely to disapprove of judicial activism.
- H 2: Voters who oppose campaign contributions are more likely to favor judicial appointments.
- H 3: Voters who view judges as politicians are more likely to favor Constitutionalist judges.

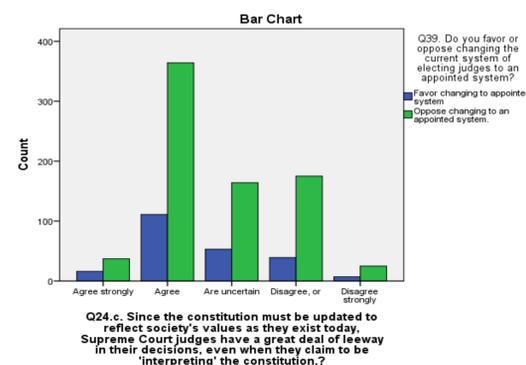
Data

H 1: Judicial Elections

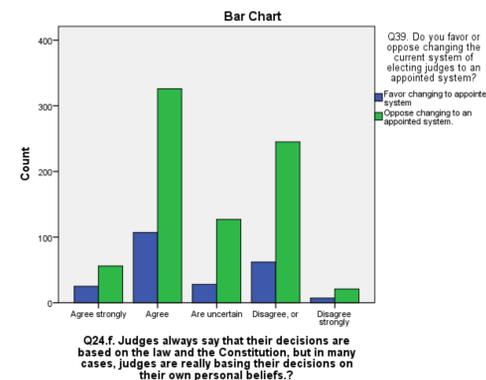
Cross Tabulation Results:

- 23.1% of respondents agreed that judges are basing decisions off of their political beliefs and favored shifting to an appointed system.
- 38% of respondents agreed that judges are basing decisions off of their political beliefs and favored retaining judicial elections.
- 12.8% of respondents said that judges should adapt the Constitution to fit today's standards and favored shifting to an appointed system.
- 40.4% of respondents said that judges should adapt the Constitution to fit today's standards and favored retaining judicial elections.
- (Note: "respondents agreed" is based off the aggregate of "Agree" and "Strongly Agree")

Judicial Activists on State Elections



Constitutionalists on Judicial Elections



H 2: Judicial Appointment

- 7% of respondents favored changing to an appointed system and thought judges could be fair and impartial even while accepting campaign contributions.
- 15.6% of respondents favored changing to an appointed system and thought judges could not be fair and impartial when accepting campaign contributions.
- 52% of respondents opposed changing to an appointed system and thought that judges could not be fair and impartial when accepting campaign contributions.
- 25.3% of respondents opposed changing to an appointed system and thought judges could be fair and impartial when accepting campaign contributions.

H 3: Judicial Politicians

- 16.4% of respondents agreed that Supreme Court judges were essentially politicians and believed that judges are not acting in the best interests of the Constitution.
- 23.4% of respondents agreed that Supreme Court judges were essentially politicians and believed that judges were updating the Constitution to today's standards.

Findings

H 1: Judicial Elections

The results showed that there was no difference between voters who believe in sticking to a strict interpretation of the original constitution and voters who believe in judicial activism. However, there was also not a statistically significant correlation. I could neither accept or reject this hypothesis.

H 2: Opposition to Campaign Contributions

There was no significant correlation between voters who opposed campaign contributions and voters who favored judicial appointments. I could neither accept or reject this hypothesis.

H 3: Judges as Politicians

Significant data was found for the relationship between respondents who opposed judicial activism and their views on judges as politicians. There was also a surprising portion of respondents who disagreed that Supreme Court members were politicians but agreed that they based decisions off of personal beliefs. More research is warranted.

Conclusions

- Voters generally opposed switching to judicial appointments no matter what their views were on the role of judges.
- Similarly, voters' views on campaign contributions didn't affect their opinion on judicial elections although this was not a significant correlation.
- A survey with different questions aimed at these variables might help clarify whether or not there is a relationship
- Respondents' view of judges as politicians were likely to influence their views of judicial activism. However, there was a significant portion who had opposing views. Further research is needed.

References

- Karlan, P. S. (2009). ELECTING JUDGES, JUDGING ELECTIONS, AND THE LESSONS OF CAPERTON. *Harvard Law Review*, 123(8).
- Keele, L. S. (2014). WHY THE JUDICIAL ELECTIONS DEBATE MATTERS LESS THAN YOU THINK: RETENTION AS THE CORNERSTONE OF INDEPENDENCE AND ACCOUNTABILITY. *Aron Law Review*, 4(12), 375-430.
- Stahl, K. A. (2010). THE ARTIFICE OF LOCAL GROWTH POLITICS: AT-LARGE ELECTIONS, BALLOT-BOX ZONING, AND JUDICIAL REVIEW. *Marquette Law Review*, 94(1), 1-74.