

# Independence or accountability? How judges are appointed

Reading questions: week 5

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2024-10-10

To prepare for class, please familiarize with the assigned readings. The reading questions are intended to help you in your preparations. If you want to prepare in groups, you may reach out to the students you do your presentation with. The supplementary readings are useful to situate the readings in the broader debate and/or provide alternative texts that cover the same ideas.

*How do we ensure the independence of our judges? And to what extent are they accountable?* If judges make policies, we should ask what moves them. On the one hand, we've seen that judges' preferences may spill into their decisions. If so, we may ask how we can ensure representation on the Court. On the other hand, judges may also act strategically, adapting their decisions to different career incentives. How do we ensure their independence? Given

the power judges yield, how much – and what type of – accountability are we willing to impose? Lastly, to hold anyone accountable, we need information. What type of information do we have – and what type of information should we have – about judges’ behavior?

This session focuses on how judicial selection to international courts impacts judges’ independence and accountability.

## Readings

- Dunoff and Pollack (2017) introduce the judicial trilemma: the trade-offs between independence, accountability and transparency that all court designers have to make. The result is a more or less independent or accountable judiciary. The authors consider this trilemma under the angle of judicial (re)appointments; the common tool in representative democracies to select representatives and hold them accountable.
- Hermansen and Naurin (2024) (Hermansen and Naurin, 2019) study reappointments to the CJEU and argue that judges are appointed for their influence on Court policies: their ideology and ability to obtain influence. While they argue that judges are held accountable for their performance, they also claim that the effect of ideology hails from judicial selection, not accountability.
- Cheruvu (2024) probes the question of political accountability and provides an empirical investigation into whether CJEU judges adapt the content of their decisions to career incentives.

- Pérez (2015) discusses the EU-level reform that targets the screening of judges.
- [Should judges be elected or appointed?](#) *Not another politics podcast*. The episode presents the discussion of judicial selection from an American perspective, but touches on many of the tradeoffs we make when deciding who will serve as judges.

**Reading questions:**

- Pérez (2015) argues that there are pros and cons for why governments should be involved in the selection of judges at the international level. What are they?
- She distinguishes between full-representation and select-representation courts. How does this impact the politics of judicial selection to international courts?
- Pérez (2015) points out four institutional structures that might restrict government influence in the appointment of judges. What are they? To what extent do you think these four mechanisms ensure judges' independence and competence?
- How does Pérez (2015) see the link between judges' political orientation, their independence and their competence?
- How do Dunoff and Pollack (2017) define judicial independence, accountability and transparency, respectively? What is the role of transparency in the accountability chain?

- How do Dunoff and Pollack (2017) classify the ECJ according to the criteria of the trilemma?
- Considering the argument forwarded by Hermansen and Naurin (2024), how would you classify the ECJ following Dunoff and Pollack (2017) scheme?
- How do Hermansen and Naurin (2024) see the relationship between competence/quality and preferences? How does this relate to Lax (2011)'s argument and Pérez (2015)?
- What is the role of government ideology in Hermansen and Naurin (2024)? How does it relate to the ECJ's representativity/political congruence?
- Consider the role of government ideology in Hermansen and Naurin (2024). How does this relate to the research design employed by Zhang, Liu, and Garoupa (2018), Cheruvu (2024) and Hermansen and Voeten (2024) (also alluded to in Posner (2010))?
- Consider the role of government ideology in Hermansen and Naurin (2024). What does this say about the statement sometimes made that the ECJ is a "runaway agent" and a driver of neoliberal policies Höpner and Schäfer (2012)?
- What is the main argument forwarded by Cheruvu (2024)? What are the two explanations for judges' motivations he considers? What is his research design? What is his answer?

- Consider the *Not another politics* episode: What are the notions/concepts we have discussed in class that they touch upon? Can you make a list?
- How do the discussants value political congruence between judges and voter (i.e. representation)?

## Bibliography

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