The Political Ideologies of Law Clerks

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In order to study the political ideologies of judicial law clerks in the United States, we construct a novel dataset that combines information on the identity of clerks with a measure of political ideology based on political donations. We then use this data to empirically investigate several important questions about the ideologies of clerks. First, we examine whether clerks tend to share the liberal ideology of other lawyers or the more conservative ideology associated with federal judges and find that clerks tend to be disproportionately liberal. Second, we investigate how the ideologies of clerks compares to the ideologies of lawyers and find that liberal lawyers are more likely to have clerked than conservatives. Third, we assess whether the ideologies of clerks differs based on the level of clerkship and find that the liberal skew becomes less pronounced as the prestige of the clerkship increases. Fourth, we analyze the relationship between ideology and the hiring of clerks and find that the ideology of judges is strongly correlated with the ideology of their clerks. (*JEL*: M51)

1. Introduction

Law clerks occupy a central position in both academic and popular accounts of the American judicial process. Large literatures in law and

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political science document the role that clerks play in everything from the management of disputes in district courts to the drafting of opinions at the U.S. Supreme Court (Rehnquist, 1957; Newland, 1961; Baier, 1973; Mahoney, 1988; Chen, 1994; Ditslear and Baum, 2001; Peppers, 2006; Avery et al., 2007; Peppers et al., 2008). More popular writing about the judiciary emphasizes the importance of clerks as well, including a number of "tell-all" books written by former clerks (Lazarus, 2005; Peppers and Ward, 2013; Cushman and Peppers, 2015).

Despite the fascination with law clerks, a lack of data has impeded efforts to study the group empirically, leaving many of the most basic facts about them largely unknown. Because the ideologies of legal actors is known to influence the decisions they make (e.g., Sunstein et al., 2006; Miles and Sunstein, 2007; Chilton and Posner, 2015), the political ideologies of clerks is of particular interest. For example, how do clerks' political views compare to other lawyers? Do judges hire clerks with ideological leanings that are similar to their own? Given the potential influence of clerks on case outcomes and the doctrines set out in judicial opinions (Chen, 1994; Peppers, 2006; Ward and Weiden, 2006; Peppers and Zorn, 2008; Kromphardt, 2015), these questions are not just theoretical.

In this article we study the political ideologies of judicial law clerks. We do so by constructing a novel dataset of clerk ideology that links the most comprehensive population-level data available on political ideology with the most extensive datasets on the identity of U.S. federal law clerks. Our data on political ideology exploit political donations disclosed to the Federal Elections Commission between 1979 and 2014, known as the Database on Ideology, Money in Politics, and Elections (DIME) (Bonica, 2013). Using this information, Bonica (2014) places roughly 15 million individuals on an ideological spectrum based on who the individuals donated to and how much money they contributed. Our data on the identity of U.S. federal law clerks come from two sources. First, we use data collected by Katz and Stafford (2010) on the identity of roughly 18,000 individuals that served as either U.S. district or circuit court clerks between 1995 and 2004. Second, we use data from the Supreme Court Information Office to identify the roughly 1,850 individuals who clerked on the U.S. Supreme Court between 1960 and 2015. Our final matched sample comprises information on the identity and ideology of 8,331 individuals that completed federal district, circuit, or Supreme Court clerkships.

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We use these data to study four important but previously unaddressed questions about the ideologies of clerks. First, we explore the overall distribution of clerks' ideologies and find that—although substantial variation in clerk ideology exists by clerk subpopulations—clerks generally skew to the left of the ideological spectrum. Second, we investigate how the ideologies of clerks compares with that of other lawyers and find that, even among graduates of top fourteen law schools, liberals are more likely to clerk than conservatives. Third, we examine how the ideologies of clerks changes based on the type of clerkship and find that clerks on lower courts are more liberal than clerks on higher courts. Fourth, we analyze how the ideologies of clerks corresponds to the ideology of the judges they serve and find that clerk ideology is strongly correlated with the ideology of their hiring judges. Perhaps most interestingly, although clerks for Republican appointed judges tend to be more conservative than the clerks for Democratic appointed judges, we find that even many in the former group are nonetheless left of center. Taken together, our findings shed some of the first light on the political ideologies of judicial law clerks, and they lay the groundwork for future inquiries surrounding this important group.

This article proceeds as follows. In Part 2, we briefly explain the role of clerks in the U.S. legal system. In Part 3 we describe the sources of our data, discuss the process in which we linked our measure of political ideology to the identities of clerks, and explore differences between clerks who make political donations and clerks who do not make political donations. In Part 4 we present information on the ideological distribution of clerks. In Part 5 we compare the ideologies of clerks to lawyers overall, and in Part 6 we compare clerk ideology at different levels of courts. In Part 7, we explore the relationship between the ideologies of clerks and the judges who hire them. In Part 8, we briefly discuss the limitations of our results and directions for future research.

2. The Role of Law Clerks

Given the well-documented role that law clerks play in the American legal system, we provide only a brief sketch of their responsibilities and the small but growing empirical literature on them. Clerks are typically hired by individual judges to help that judge fulfill his

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or her duties. A clerk may help the judge by drafting memos on upcoming cases, assisting with preparations for trial or oral arguments, and writing the first draft of orders and final decisions (Newland, 1961; Baier, 1973; Peppers, 2006). The actual amount of responsibility given to clerks varies—some judges assign their clerks with little more than copy editing, whereas others delegate substantial responsibility for the writing of opinions (Gulati and Posner, 2015).

Federal clerkships are prestigious, but usually temporary, positions. Federal judges usually hire lawyers to clerk for them in the first few years after they have completed law school, meaning that most clerks are in their mid-20s. Typically, judges hire clerks to work for one year, but some judges hire clerks to work for two years or longer. The number of clerks that judges are allowed to hire varies based on the court and the workload of the judge. For example, at the Supreme Court, the Chief Justice can hire up to five clerks per term, Associate Justices can hire up to four clerks per term, and retired Justices can hire up to one clerk per term (Peppers, 2012).

To date, scholarship on law clerks has mostly been qualitative, documenting the clerkship hiring process and the manner in which clerks are relied upon by judges. However, a small but growing empirical literature has analyzed various aspects of the hiring and influence of clerks, such as by surveying clerks and judges (Avery et al., 2001, 2007; Peppers et al., 2008) and by studying networks and peer effects among clerks (Katz and Stafford, 2010). More recently, Rozema and Peng (2015) estimate a structural model of the Supreme Court clerk hiring process, drawing on federal appellate clerk data.

In addition to these empirical projects, a few papers have constructed measures of the ideologies of Supreme Court clerks. Most notably, in a series of papers Corey Ditslear and Lawrence Baum study the relationship between the ideologies of Supreme Court Justices and the ideologies of their clerks (Ditslear and Baum, 2001; Baum and Ditslear, 2010; Baum, 2014). Instead of measuring clerk ideology based on the clerks' political donations (as we do here), these authors proxy the clerk's ideology with a measure of the ideology of the circuit judge for whom the clerk previously worked.[1] Similarly, Kromphardt (2015) uses the ideology of the

1. In turn, the ideology of the circuit judge is based on the appointing president and Almanac descriptions.

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judge for whom Supreme Court clerks previously worked as a proxy for their ideology. Using an alternative approach, Peppers and Zorn (2008) measure the ideologies of Supreme Court clerks by surveying past clerks about their political preferences.

Our article builds on this literature in several ways. First, our measure of ideology—based on an individual's actual political donations—is likely to suffer from less measurement error than measures of ideology derived from the ideology of a prior employer (which themselves may be measured with error). Second, because our measure is derived from clerks actual political donations, it may provide a more accurate picture of their ideologies than answers the clerks choose to provide when surveyed about their ideologies in relation to their clerkship. Finally, unlike past research in this area, our approach allows us to investigate the ideologies of the vast majority of clerks who clerk on courts other than the Supreme Court.

3. Data

Our analysis relies on a novel dataset we created that contains information on the political ideologies of U.S. federal law clerks. In this section, we first describe our data on political ideology and on the identity of federal law clerks. We then explain the process we used to link these sources of data. Finally, we explore potential differences between clerks who make political donations and clerks who do not.

3.1. Ideology Data

Our data on ideology come from the Database on Ideology, Money, and Elections (DIME) (Bonica, 2014), which contains information from the universe of political donations disclosed by the Federal Election Commission and state agencies. These data include donations made in local, state, and federal elections from 1979 to 2014 for individuals, political action committees, and corporations, and include approximately 100 million donations and related information.[2]

2. More information can be found at http://data.stanford.edu/dime.

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We rely on DIME for its reporting of ideological scores known as Campaign Finance scores (CFscores), which are calculated from individual donations using a scaling methodology described in Bonica (2014). The approach derives ideological scores from political donations by assuming that individual donors tend to donate to candidates with whom they are in ideological agreement.[3] For example, we infer that an individual who donates to mostly center-left candidates will herself have a center-left political ideology. The resulting CFscores situate individuals on a unidimensional ideological scale, from extremely liberal to extremely conservative. The scale is normalized such that it has a mean of zero and a standard deviation of one with respect to the population of U.S. donors. For example, Barack Obama and Hillary Clinton, on the ideological left side of the spectrum, have CFscores of −1.65 and −1.16, respectively; Joseph Lieberman and Chris Christie, ideologically more moderate, have CFscores of −0.54 and 0.46, respectively; and Scott Walker and Ron Paul, on the ideological right, have CFscores of 1.28 and 1.57, respectively.

CFscores have been extensively validated in prior work. As discussed by Bonica (2014), the scores yield measures comparable to widely used ideological scores for political actors. For example, CFscores have been shown to outperform other ideological scalings for lower-court federal judges (Bonica and Sen, 2016). As applied to judicial law clerks, an important advantage of the CFscore is that other measures of ideology are generally unavailable, with the (rare) exception of those clerks who go on to hold political office themselves.

An important concern with the CFscore methodology is that some donors may donate strategically for reasons other than an affinity for the recipient's ideological beliefs, such as a corporation that donates to rival candidates during a single election (Bonica, 2014; Bonica et al., 2015; Bonica and Woodruff, 2015). In the context of the legal profession, one could imagine that some lawyers strategically donate—for example, to those judges before whom they expect to argue cases. However, as discussed in Bonica and Sen (2015), for individuals who are both recipients of donations and donors themselves, the CFscores derived from donations made are strongly

3. See Stephanopoulos (2015) at 1747–79 for a discussion of the support for this assumption.

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correlated with the CFscores derived from donations received. This correlation would emerge if donations were primarily motivated by ideological affinity between the donor and recipient; it would be unexpected if donations were simply the result of strategic behavior by donors. Moreover, it is unlikely that many clerks make strategic donations to obtain their clerkship—most clerks are recent law school graduates and the majority of the donations used to derive their CFscores occur well after their clerkship concludes.[4]

A limitation with the use of CFscores is that they are only available for individuals who have made a political donation. Individuals who donate may differ in potentially unobservable ways from those who do not. Although we will return to this issue below, we note that concerns about selection into the donor population may be less severe in the context of the present study than in other applications. This is because although only about 5% of the U.S. population make a donation during our sample period, over 40% of lawyers do so (Bonica et al., 2015). As we discuss below, the donation rates among the clerks in our sample are in line with the rates for lawyers overall.

Despite this limitation, CFscores offer many advantages—particularly in terms of their coverage—and have therefore been quickly adopted by political scientists and legal scholars. The applications using CFscores have included mapping the ideologies of practicing lawyers (Bonica et al., 2015), state supreme court judges (Bonica and Woodruff, 2015), and judges at different levels of the judicial hierarchy (Bonica and Sen, 2016), among other important political and legal groups. In addition to mapping the ideologies of various populations, CFscores have also been used to test the impact of ideology on a variety of political and legal outcomes. For instance, Chilton and Posner (2015)

4. Of course, a potential concern is that a clerk's ideology may change between the time of the clerkship and the time that subsequent donations are made. In practice, Bonica (2014) observes little yearly variation when looking at the estimated ideology of political actors (members of Congress), a finding in line with broader literature within political science suggesting fairly stable partisan affiliations over people's lifespans (e.g., Green et al., 2004). However, the same may not be true for federal judges, for whom a lifetime appointment onto a federal court appears to be a significant life-altering event. Thus, some ideological drift has been observed for federal judges, including for Supreme Court Justices (Epstein et al., 2007).

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used CFscores to test whether the ideologies of law professors predicts the conclusions they reached in their scholarship, Bonica and Sen (2015) used CFscores to test the influence of ideology on the likelihood that an individual will be appointed to the federal judiciary, and Bonica et al. (2015) used CFscores to test the influence of ideology on appointments to the federal bureaucracy. In addition to these empirical studies, a line of legal scholarship on election laws has increasingly relied on and cited CFscores (e.g., Haan, 2015; Stephanopoulos, 2015; Wood and Spencer, 2015; Pildes, 2014; Bonica and Shen, 2014). The reason election law scholars have begun to incorporate CFscores into their research is that, by placing all donors and political candidates on an ideological spectrum, they make it possible to study polarization within the larger U.S. population.

3.2. Clerkship Data

Our data on the identity of U.S. federal law clerks comes from two sources. The first source is a dataset constructed by Katz and Stafford (2010) that provides information on clerks who worked for federal circuit and district court judges between 1995 and 2004. The clerkship data contain the clerk's name, law school, and the federal judge for whom the clerk worked. The data contain 5,057 circuit court clerks and 12,580 district court clerks.

We evaluated the completeness of the Katz and Stafford (2010) clerkship data in two ways. First, we investigated whether there was systemic failure to locate judges by comparing the number of judges in the data with the number of judges officially appointed in each year. Officially, there were between 154 and 163 appointed circuit court judges (nonvacant seats) and between 603 and 664 appointed district court judges for all years in the sample (1995–2004) (United States Courts, 2005; Gryski et al., 2013). The clerkship data contains between 149 and 160 circuit court judges each year, with the exception of 2001 (139 circuit judges), and between 570 and 657 district court judges each year. Given that the clerkship data only includes active judges who also hire law clerks, these facts offer some evidence that Katz and Stafford located the large majority of federal judges who hired clerks.

Second, we investigated whether the clerkship data was likely to identify clerks conditional on locating a judge within a year. We compared the mean

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number of clerks located for each judge-year to the number of clerks we might expect judges to hire each year. Under current Judicial Conference policy, full-time federal judges may hire up to five staff members, which include law clerks and judicial assistants such as a secretary and court reporter. If a circuit judge handles less than a full case load, the number of judicial staff members declines proportionally with the reduction in case load (e.g., a judge with a half case load gets two clerks). The yearly mean number of clerks per circuit court judge in the sample is consistently around three. A back of the envelope calculation suggests anywhere from 462 (154 circuit court judges per year times 3 clerks per judge) to 652 (163 circuit court judges per year times 4 clerks per judge) circuit court clerks per year, which is consistent with the clerkship data. The yearly mean number of district court clerks per judge in the data is consistently around two. Before 2008, it was common for district—but not circuit—court judges to employee "career clerks" (Milenkovski, 2008), which are not in the data and explains why the number of district court clerks is around two. Overall, it appears that Katz and Stafford captured the large majority of federal court clerkships.

We supplement the Katz and Stafford (2010) data with data on Supreme Court clerks from the Supreme Court Information Office. These data contain the universe of clerks who worked at the Supreme Court between 1960 to 2015—a total of 1,854 Supreme Court clerks.

3.3. Linking the Clerkship and Ideology Data

We linked the data on political ideology and the identity of clerks using a two-step matching process. First, because the identifying information reported in the clerkship data was limited to name, law school attended, and year of graduation, we start by matching the clerkship data to the Martindale-Hubbell directory. We do this because the Martindale-Hubbell directory is among the most comprehensive databases of attorneys in the United States today and has the significant benefit of including additional information not contained in the clerkship data, including a unique identifier, current employer, geographic location, and, in some cases, area of practice (Whisner, 2014). Fortunately, given the much smaller population of lawyers as compared to donors, a small amount of information (name, law school, and

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year of degree) was sufficient to uniquely match most clerks against records in the Martindale-Hubbell directory. Matching to Martindale-Hubbell also provides us with additional information on the clerks (e.g., gender).

Second, we use the additional information from Martindale-Hubbell to match to donation records in DIME using an automated algorithm. The algorithm operates by scanning (1) first, last, and middle name,[5] (2) suffix, (3) title, (4) address, (5) firm or employer, and (6) geographic proximity.

Using this two-step process, we match 43% of the clerks in our sample to DIME—an amount in line with the donation rates of lawyers overall. In particular, we observe CFscores for 38% of district court clerks, 47% of circuit court clerks, and 66% of Supreme Court clerks.

3.4. Selection into the Sample

Before describing the sample of judicial clerks whose donations we observe, it is worth noting that clerks who made donations may not represent a random sample of all clerks. In particular, if a clerk's ideology is associated with his or her propensity to donate, the ideologies of the clerks we observe will not be representative of the entire clerk population. For example, if liberal clerks were more likely to donate than conservative clerks, the distribution of ideologies we observe will be biased leftwards relative to the true clerk population. We investigate this selection concern in two ways.[6]

First, we explore whether the donation rates of clerks vary by the ideologies of the judges for whom they clerked. More specifically, we investigate whether the clerks employed by liberal judges (who are likely to trend liberal) donate at a different rate than the clerks employed by conservative judges (who are likely to trend conservative). Along these lines, Figure 1

5. To adjust for variations across records, we used the Jaro-Winkler algorithm, which measures the distance between two strings (in this case, names); the higher the distance, the more alike two strings are.

6. For additional analysis on this question, see Bonica and Sen (2015), which conducts a Heckman selection model looking at donating lawyers versus nonlawyers. They find no differences in their substantive conclusions regardless of whether the analysis is corrected for selection bias. Our focus here is on law clerks, but their evidence is nonetheless suggestive.

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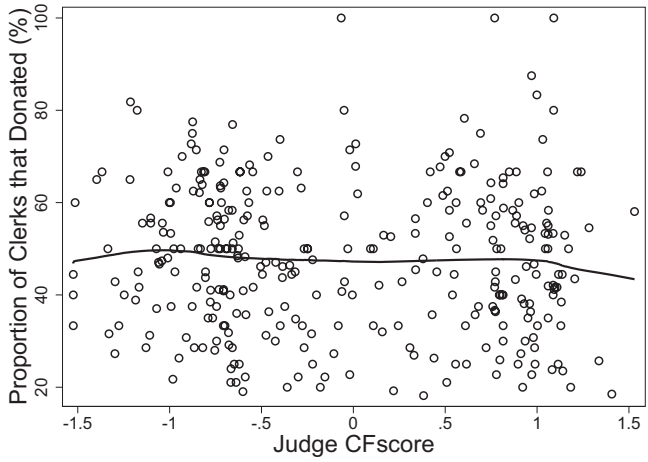


Figure 1. Proportion of Clerks that Donated by Judge Ideology.

provides a scatterplot of the proportion of clerks who donated by judge against the judge's ideology (measured by the judge's CFscore), as well as a lowess curve of the same relationship. The figure suggests that clerks' propensity to donate is not meaningfully associated with their judge's ideology, which we confirm with a simple regression.[7] Similarly, the donation rates are almost identical among clerks that worked for a judge appointed by a Democratic president (42.2%) and clerks that worked for a judge appointed by a Republican president (43.2%). In sum, this analysis suggests that ideologically based selection is perhaps not a significant concern, at least under the assumption that clerks tend to be hired by ideologically like-minded judges.

Second, we compare clerk ideology as measured by CFscores with other measures of clerk ideology. Specifically, Peppers and Zorn (2008) measured the ideologies of law clerks by mailing a survey to 1,000 previous Supreme Court clerks (who clerked between 1940 and 2004). The survey asked the former clerks whether the Republican or Democratic Party more closely mirrored their political ideology at the time of their clerkship. Of the 532 former clerks that answered the question, 25% reported having identified

7. The estimated coefficient is −0.669 and the *P*-value is 0.546 (95% confidence interval is −2.847 and 1.510).

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with the Republican Party and 75% reported having identified with the Democratic Party. As a comparison, of the Supreme Court clerks in our sample, 30% have a conservative CFscore and 70% have a liberal CFscore. In our overall sample of clerks, which includes lower court clerks as well, the results are almost identical to Peppers and Zorn (2008): 25.2% of clerks have a conservative CFscore and 74.8% of clerks have a liberal CFscore. Both methods thus produce very similar results.

Taken together, the evidence suggests the that donation rates of clerks do not vary by judge ideology and that our approach for measuring clerk ideology produces results that are similar to prior efforts to measure clerk ideology using surveys. Although we cannot entirely rule out selection concerns, we believe that our approach to measuring the ideologies of clerks is the most credible approach with current data. Moreover, our investigation of selection into the sample did not reveal any major reasons for concern.

4. The Ideologies of Clerks

The institutional setting of law clerks gives rise to ambiguous predictions about clerks' ideological views. On the one hand, given that there are more liberal lawyers than conservative lawyers in America (Bonica et al., 2015), one might expect clerks to skew to the left. On the other hand, given that there are more conservative judges (as a proportion of all judges) than there are conservative lawyers (as a proportion of all lawyers) (Bonica and Sen, 2015), if judges hire clerks who are in ideological alignment with them one might expect clerks to be more conservative than the overall population of lawyers. In this section, we offer empirical evidence on the political ideologies of clerks.

First, we begin by examining the distribution of the CFscores of all of the clerks in our sample. Figure 2 presents these results. The x-axis is the CFscore, which runs from extremely liberal on the far left to extremely conservative on the far right. The y-axis represents the proportion of clerks that have a particular ideology. The line in Figure 2 is a density curve that shows the proportion of clerks that have a particularly ideology score within equally sized bins of 0.2.

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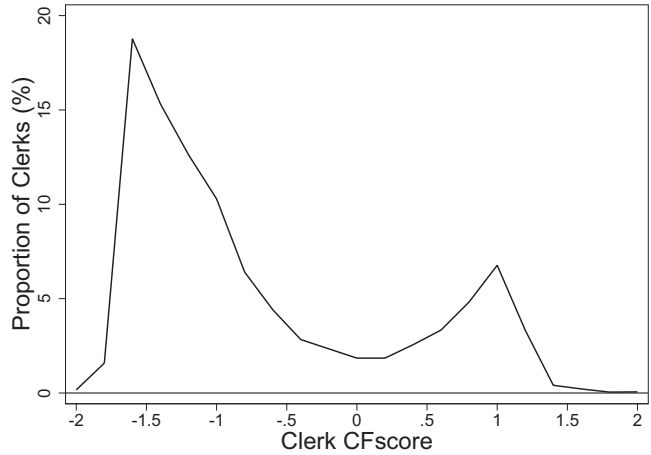


Figure 2. Distribution of Clerk CFscores.

There are several things worth noting about Figure 2. First, the majority of clerks in our sample are to the left of the ideological spectrum of U.S. donors. In fact, 74.8% of clerks have a CFscore that is less than zero. Second, the mean CFscore for the clerks in our sample is −0.61, and the median CFscore is −0.97. To put this in perspective, the mean is roughly comparable to the CFscore of Bill Clinton (−0.68). Additionally, although Figure 2 shows a much higher density of liberal clerks than conservative clerks, the distribution of clerk CFscores is bimodal. For example, not only do 25.2% of clerks have a conservative CFscore, there are also a large number of clerks with a CFscore of roughly 1.0, which is comparable to the CFscore of Mitt Romney (0.88). Taken together, Figure 2 suggests that although clerks are largely liberal, they are still somewhat representative of the two party divide in American politics.

Second, we examine the distribution of clerk ideology by gender. To do so, we divide the sample of clerks by gender using information from the Martidale-Hubbell directory. In the sample, 63% of the clerks are male, 35% are female, and 2% are unidentified. Figure 3 presents the distribution of clerk ideology broken out for the male and female clerks in the sample. As the figure shows, male clerks are more conservative on average than are female clerks. Male clerks have a mean CFscore of −0.47 and a

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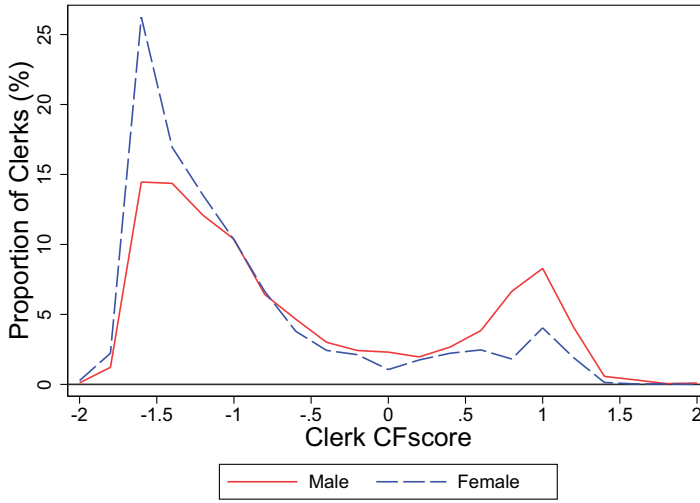


Figure 3. Distribution of Clerk CFscores by Gender.

median CFscore of −0.86. Female clerks have a mean CFscore of −0.85 and a median CFscore of −1.14. The distribution of male clerk ideology exhibits a more apparent bimodal distribution than the overall sample. In other words, our data suggest that a relatively large fraction of male clerks are conservative, but only a small fraction of female clerks are conservative.[8]

Third, we examine the distribution of clerk ideology stratified by law school. Figure 4 presents the ideologies of clerks that attended the top fourteen ranked law schools based on the 2015 U.S. News & World Report rankings. Clerks from law schools outside the listed fourteen institutions are grouped in the residual "All Other" category.[9] Overall, clerk ideology appears to be somewhat correlated within law schools, providing evidence that clerks either sort into law schools based on political views or that law schools shape the political views of their students, or some combination

8. This is consistent with the fact that, in the overall population of lawyers, women are more liberal than men (Bonica et al., 2015).

9. We focus on the top fourteen law schools because federal clerks largely come from these law schools and because these schools have been consistently recognized as the top tier by U.S. News & World Report rankings. These schools have also been the focus of prior research on ideology in the legal academy (Bonica et al., 2015; Chilton and Posner, 2015).

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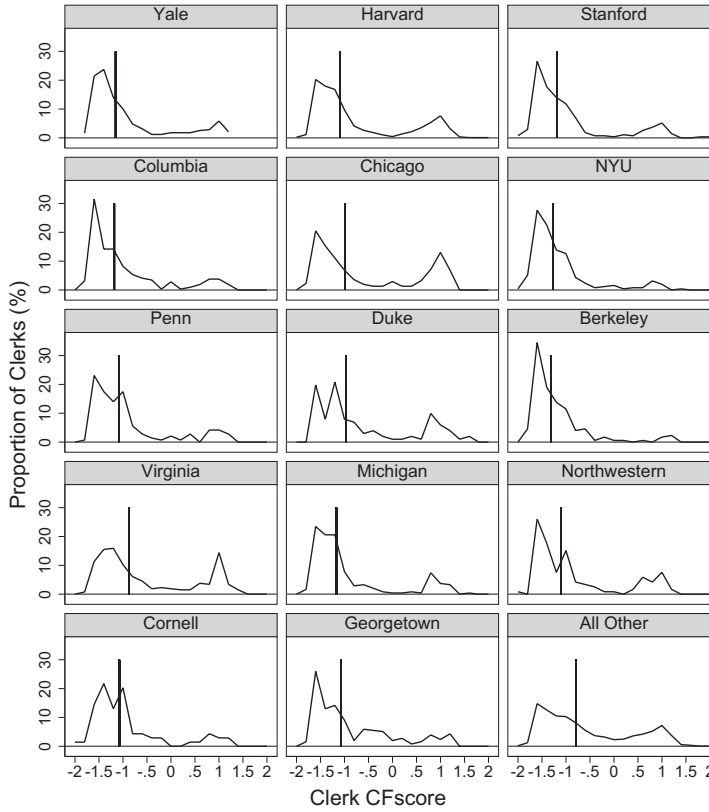


Figure 4. Distribution of Clerk CFscore by Law School.
Notes: Vertical line indicates the median clerk CFscore for the given subsample.

of both. Clerks from law schools that (arguably) have a liberal reputation (e.g., Berkeley, Stanford, NYU) are typically more liberal than clerks from law schools that (arguably) have a conservative reputation (e.g., Virginia, Duke). Finally, one law school—the University of Chicago—has a noticeably bimodal distribution despite being in a liberal area.

5. The Ideologies of Clerks Compared to Other Lawyers

The previous section suggests that liberal clerks considerably outnumber conservative clerks. The fact that about three out of every four clerks are

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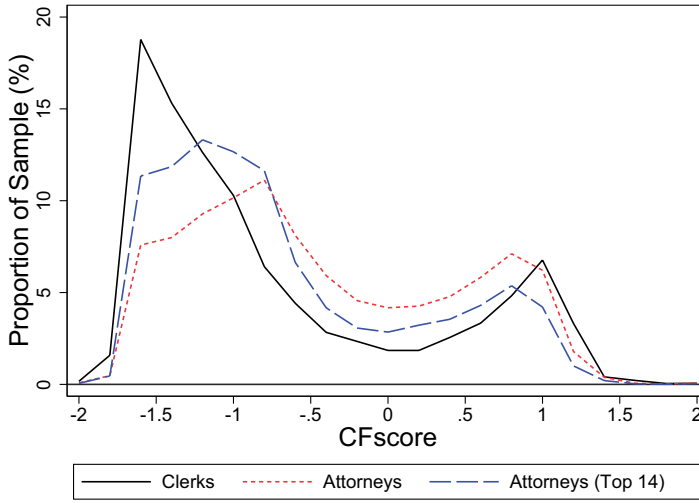


Figure 5. Distribution of CFscores for Clerks and Lawyers.

liberal may simply reflect the fact that the overall population of lawyers is also liberal. On the other hand, it could suggest that liberal lawyers are more likely to serve as clerks than are conservative lawyers. It is thus an open question how the ideologies of clerks compares to the ideologies of other lawyers. In this section, we shed some initial light on this question by comparing the CFscores of the clerks with the CFscores of all lawyers in the Martindale-Hubbell directory.

First, Figure 4 plots the CFscores of clerks alongside the CFscores of all lawyers and lawyers who received their law degree from a top fourteen law school. Although Figure 5 reveals that all three populations have roughly similar ideological distributions, it also reveals that clerks are more liberal on average than lawyers overall and than graduates from top fourteen law schools. Moreover, it reveals that the distribution of clerks resembles the distribution of graduates from top fourteen law schools more than it resembles the distribution of the overall population of lawyers. For instance, the mean CFscore for clerks, lawyers from top fourteen law schools, and all lawyers are −0.61, −0.55, and −0.32, respectively. This is perhaps unsurprising because lawyers from top fourteen law schools are more liberal than lawyers overall, and judges tend to hire clerks from top schools.

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Table 1. Difference between Clerk Ideology and Lawyer Ideology

	CFscore		
	(1)	(2)	(3)
Indicator for Clerk	−0.296***	−0.155***	−0.043***
	(0.009)	(0.011)	(0.011)
Years as a Lawyer		0.005***	0.006***
		(0.000)	(0.000)
Female		−0.344***	−0.340***
		(0.003)	(0.003)
Law School FE	No	No	Yes
Obs	403,585	403,585	403,585
R-squared	0.002	0.041	0.063
Dep Var Mean	−0.32	−0.32	−0.32

Note: Standard errors in parentheses. $^{*}P < 0.1$, $^{**}P < 0.05$, $^{***}P < 0.01$.

To further investigate how the ideologies of clerks compares to the ideologies of lawyers, Table 1 regresses CFscore on an indicator for whether the individual was a clerk and other covariates. Column (1) confirms the results in Figure 5. Clerks are, on average, more liberal than other lawyers. In particular, having clerked is associated with more than a 1/4 of a standard deviation shift left in ideology. Column (2) adds control variables for years practicing law and gender. With the addition of these controls, the coefficient on the clerk indicator declines in magnitude but is still statistically significant. Column (3) conditions on a vector of law school fixed effects. With these additional controls, the differences between clerk and nonclerk CFscores is smaller but remains statistically significant. Based on the preferred specification in Column (3), we conclude that clerks in our sample are, on average, only slightly more liberal than other lawyers with similar characteristics. This suggests that age cohort, gender, and law school explains most but not all of the ideological differences we observe between clerks and other lawyers.

Although the results in Table 1 suggest that clerks are, on average, more liberal than lawyers overall, it could still be the case that for certain law schools, conservative graduates are more likely to clerk than liberal

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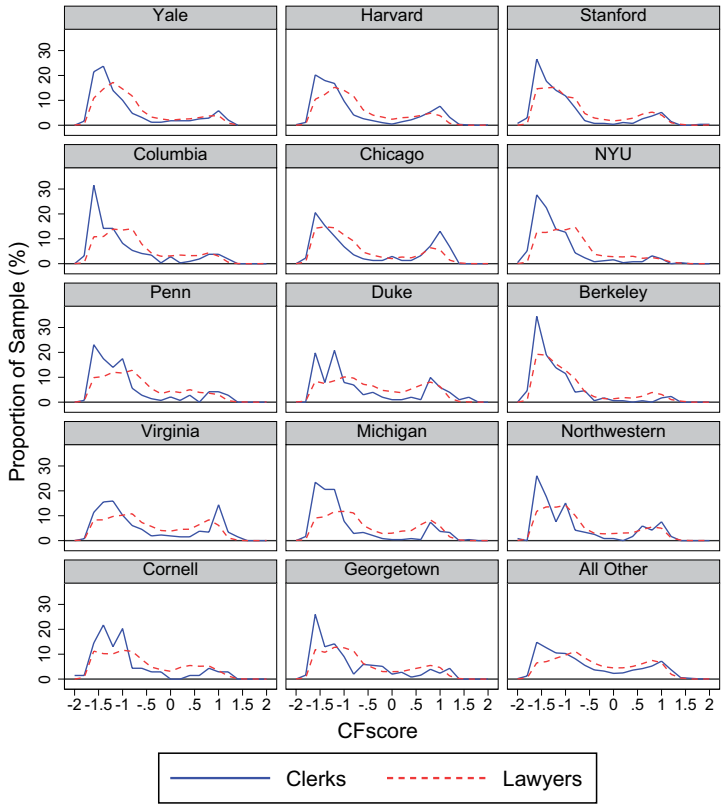


Figure 6. Clerks and Lawyers by Law School.

graduates. To investigate this possibility, Figure 6 plots the clerk distributions against the distribution of all graduates from the top fourteen law schools. The figure suggests that for some law schools there are considerable differences in the distribution of clerks' CFscores compared to the distribution for all graduates. For example, the distribution of CFscores for clerks that graduated from Stanford, Berkeley, and Michigan is further to the left than the respective distributions of the overall alumni. In contrast, for the University of Chicago, the distribution of CFscores for clerks is considerably more bimodal than the distribution of all alumni that graduated from the school.

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Table 2. Proportion of Conservatives and Liberals who Serve as Clerks by Law School

	Proportion that Clerked		
	Liberal	Conservative	Difference
Yale	17.45	17.61	−0.16
Harvard	7.91	8.84	−0.93*
Stanford	11.07	7.34	3.73***
Columbia	5.73	3.88	1.85***
Chicago	8.69	14.91	−6.22***
NYU	4.52	2.38	2.15***
Penn	4.77	2.92	1.84**
Duke	4.48	2.96	1.52**
Berkeley	5.60	1.83	3.77***
Virginia	5.31	4.47	0.83
Michigan	4.69	1.91	2.78***
Northwestern	3.63	2.97	0.66
Cornell	3.38	1.27	2.11***
Georgetown	3.82	2.30	1.52***
All Other	1.45	1.05	0.4***
Total	2.36	1.50	0.86***

Note: $^{*}P < 0.1$, $^{**}P < 0.05$, $^{***}P < 0.01$. Statistical significance is based on a *t*-text of the difference in the proportion of donating alumni who clerk by whether the individual is conservative (CFscore ≥ 0) or liberal (CFscore < 0).

To further explore this issue, for each of the top fourteen law schools we calculate the proportion of liberal and conservative alumni who donated that have clerked. To do so, we define an individual as a liberal if their CFscore is less than 0, and conservative if their CFscore is greater than or equal to 0. Table 2 provides the results. Columns (1) and (2) indicate the proportion of liberal and conservative individuals from each law school who clerked, and Column (3) reports the difference with significance indicators for whether the differences in proportions are statistically significant based on a *t*-test.

The results in Table 2 suggest that there are statistically significant differences ($P < 0.05$) between the proportion of liberal and conservative donating graduates who clerked for 12 of the 14 top law schools. Of those twelve schools, the only law school with a higher proportion of conservatives clerking is the University of Chicago. For Chicago graduates, 8.69% of liberal graduates clerked compared to 14.91% of conservatives. Overall, 2.36% of liberals in our sample clerked, compared with 1.50% of conservatives.

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Taken together, these results suggest that a larger proportion of liberals who donate clerk than conservatives who donate. There are, of course, several possible explanations for this discrepancy: conservative students could be less interested in clerking; conservative students at the top laws schools could have worse credentials than liberal students; conservative students may face biases in the hiring process; or our sample may simply overrepresent liberal clerks. Because we do not observe which individuals apply for which clerkships as well as important determinants of successful clerkship candidates, we cannot make any causal claims about the reasons for this gap, and leave investigations into the mechanisms to future research.

6. The Ideologies of Clerks by Level of Clerkship

We next explore whether there are differences in clerk ideology by level of court. Several potential reasons might lead to diverging patterns of clerk ideology between levels of courts. First, judges higher in the judicial hierarchy may have stronger preferences for clerk ideology given the greater flexibility of judges on such courts to decide cases in ways that are consistent with their policy preferences. That is, district court judges may be constrained by doctrine and past precedent in a way that circuit court judges are not. The same story holds true for circuit court judges compared with Supreme Court Justices. Second, judges across the judicial hierarchy might face different information asymmetries regarding a potential clerk's ideology, e.g., Supreme Court Justices can rely on information from circuit court judges to form better expectations regarding a potential clerk's ideology. Third, judges higher up the judicial hierarchy can be more selective when hiring clerks, and thus may face lower search costs in identifying and hiring qualified candidates that meet their ideological preferences. For these reasons, in this section we disaggregate clerk ideology by levels of courts.

We begin in Figure 7 by plotting the distributions of ideologies for clerks that served on district courts, circuit courts, and the Supreme Court. The mean clerk CFscore for clerks who worked in district courts is -0.62, for clerks who worked in circuit courts is -0.63, and for clerks who worked in the Supreme Court is -0.49. Perhaps the most striking feature of Figure 7 is that higher-level courts employ clerks who are more divided along the

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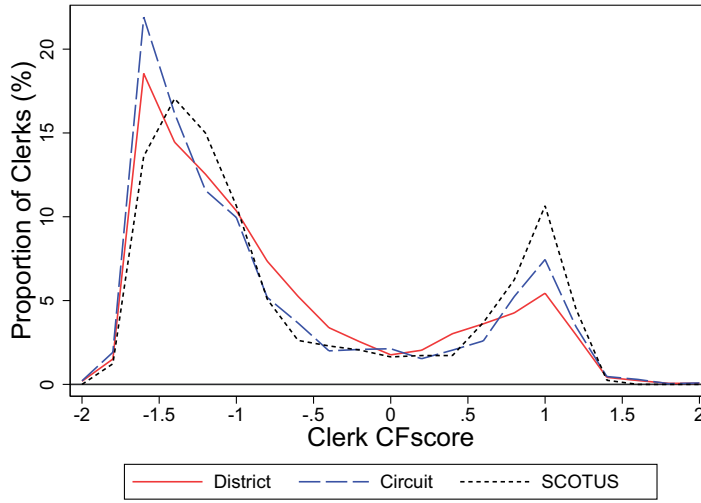


Figure 7. Distribution of Clerk CFscores by Level of Court.

ideological spectrum. That is, there is a more bimodal distribution for Supreme Court clerks than for circuit court clerks and a more bimodal distribution for circuit court clerks than for district court clerks. To be more exact, 30.4% of Supreme Court clerks, 25.3% of circuit court clerks, and 23.9% of district court clerks had a positive (and thus conservative) CFscore.

Second, extending the law school results from Figures 4 and 6, we examine how the clerk ideology varies by levels of court for the top fourteen law schools. Table 3 provides a breakdown of the median clerk CFscore by law school and level of the court. For all but one law school (Cornell), the alumni that worked as district court and circuit court clerks were more liberal than the alumni that worked as Supreme Court clerks.

Third, we explore differences between different types of judges within one level of court: the circuit courts. As a slight digression, we note a feature of circuit judges, which is that of the "feeder judge." Feeder judges are those whose own clerks often later go on to clerk for the Supreme Court. The difference is an important one, because feeder judges are known to have the ability to attract the most sought-after clerks. Comparing clerks of feeder judges to clerks of other circuit court judges is therefore similar in some regards to comparing lower court clerks with Supreme Court clerks.

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Table 3. Clerk CFscore by Law School and Court Type

	Median Clerk CFscore			
Clerk Law School	District	COA	SCOTUS	Overall
Yale	−1.22	−1.17	−1.07	−1.15
Harvard	−1.11	−1.17	−0.93	−1.10
Stanford	−1.30	−1.19	−1.01	−1.19
Columbia	−1.21	−1.32	−1.00	−1.18
Chicago	−1.24	−0.92	−0.91	−0.99
NYU	−1.28	−1.26	−1.25	−1.27
Penn	−1.11	−1.14	−0.93	−1.09
Duke	−1.05	−0.96	−0.68	−0.96
Berkeley	−1.32	−1.34	−1.10	−1.31
Virginia	−0.92	−0.99	−0.20	−0.87
Michigan	−1.17	−1.17	−1.07	−1.17
Northwestern	−1.38	−0.90	−0.54	−1.11
Cornell	−1.11	−0.90	−1.01	−1.08
Georgetown	−1.12	−1.08	−0.94	−1.07
All Other	−0.81	−0.77	−0.43	−0.79

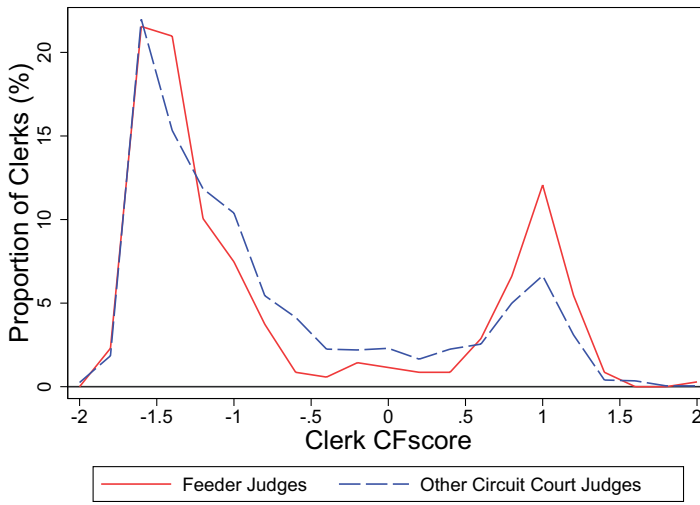


Figure 8. Distribution of Circuit Court Clerk Ideology for Feeder Judges and Other Circuit Court Judges.

To evaluate whether differences in circuit court clerk ideology exists between clerks for feeder judges and other circuit court judges, we use information on the court of appeals judge that each Supreme Court clerk worked for since 1960, and define a feeder judge as one who has had at

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least two clerks go on to clerk on the Supreme Court. This results in a sample of 22 feeder judges and 227 other circuit court judges. Using this data, Figure 8 plots the distribution of ideology for clerks that worked for feeder judges and other circuit court judges. The distribution of ideology for clerks of feeder judges indeed appears more bimodal than other circuit court judges and quite similar to the distribution of Supreme Court clerks seen in Figure 7. To be specific, 31.0% of clerks for feeder judges have a CFscore greater than or equal to 0, while only 24.3% of clerks for other circuit court judges have a CFscore greater than or equal to 0. In comparison, 30.4% of Supreme Court clerks have a CFscore greater than or equal to 0. Taken together, these results suggest that the distribution of clerk ideology becomes more bimodal with the increasing prestige of the clerkship.

7. The Ideologies of Clerks and the Hiring Process

The final question we consider is whether judges hire clerks who are ideological allies or whether they hire clerks broadly from across the ideological spectrum. This is an important question because clerks play an important role within judicial chambers, and as a result, ideological sorting of clerks to judges might exacerbate already existing levels of polarization (Liptak, 2010).

In addition, because clerks often take lead roles in the research and drafting of opinions, clerks who share the ideology of their judicial employers (or, alternatively, clerks who represent a diversity of ideological opinions) may in the end affect the behavior of judges. Finally, there may be profound differences in clerk hiring by judges on different levels of courts or among certain kinds of judges (e.g., extremely liberal or extremely conservative judges). Despite the importance of this question, however, to date it has been addressed with only indirect measures of ideology, and not at all outside of the Supreme Court.

In this section, we first examine the consistency in the ideologies of the clerks hired by a judge, and then investigate whether judges tend to hire clerks who are in ideological alignment with their own beliefs. Finally, we study how these effects vary across circuits and levels of courts.

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7.1. Ideological Consistency Among Hired Clerks

Before turning to the question of whether judges hire clerks who share their ideologies, an initial question to ask is whether judges even hire ideologically similar clerks in the first place. That is, if clerk ideology played no role in the process by which clerks were matched to judges, we would not expect the ideology of a clerk hired by a judge to be correlated with the ideology of other clerks hired by the judge in the same year or in other years.

To study the extent to which judges hire clerks with consistent ideologies, we assess the extent to which within-judge standard deviation of clerk ideology appears random.[10] The basic question is what would the within-judge standard deviation of clerk CFscores look like if clerks were randomly assigned to judges.

To investigate this question, we estimate the within judge standard deviation in clerk CFscores via simulations conducted separately by level of court. To conduct our simulation,[11] for the Supreme Court we randomly reallocate the Supreme Court clerks that served in a given year to the Justices. More formally, suppose Justice i hired I clerks in term t. The simulation ensures that each Justice i is randomly assigned I clerks that clerked on the Supreme Court in term t. Once the clerks are randomly reassigned, we calculate the standard deviation of clerk CFscores for each Justice across all years. Each round of the simulation concludes by capturing the average within Justice standard deviation of clerk CFscores.

For the circuit courts, we force reallocation to occur within circuit for a given term. In other words, a clerk in circuit X in term t is only randomly

10. It is also possible that a judge might care about a potential clerk's ideology but that concern does not manifest itself in hiring ideologically similar clerks. As an example, for many years Justice Scalia was rumored to hire one liberal clerk each term in addition to three conservatives. Although we cannot confirm or reject the "one liberal per term" theory without observing the universe of hired clerks (including those that did not donate and thus are not in our sample), we note that we frequently observe one (and no more than one) liberal Scalia clerk per term for years after 1988, and virtually no liberal clerks after 2005.

11. We test this using a simulation based on the within-judge-year standard deviations as opposed to an ANOVA (Analysis of Variance) test because we are interested in assessing the variation across judge-years. In contrast, ANOVA tests, which test whether subgroups have the same mean, tend to make the assumption that the subgroups being examined share the same (population) standard deviation.

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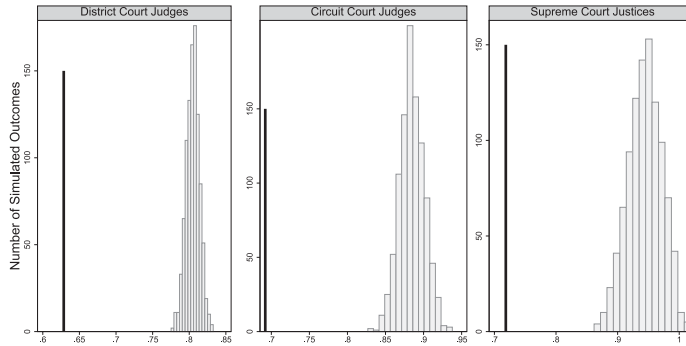


Figure 9. Simulation Results Assessing Whether Judges Hire Clerks with Consistent Ideologies.

reallocated to judges within circuit X in term t. For the district courts, we also reallocate within *circuit* for a given term. That is, for each district court, we first identify which circuit's jurisdiction it is in, and allow for reallocation within that circuit. The reason we designed our simulations to only reallocate within circuit is that it may be the case that judges primarily hire clerks from particular schools or geographic areas. That said, we believe that this is a conservative specification, and our results are robust to specifications in which clerks are not restricted to being reallocated to judges within a given circuit or even with a given year.

We simulate the random reallocation of clerks to judges based on the above specification 1,000 times for each level of court. The simulated average within-judge standard deviation can be then used to make statements about whether one expects the observed within judge standard deviation of clerk CFscores to be generated by a random process. If the observed deviation is less than the randomly generated standard deviations, this provides evidence that judge's clerks resemble the ideologies of the other clerks hired by the same judge.

Figure 9 plots the results from these simulations. The solid black line represents the actual within-judge standard deviation of clerk CFscores and the histogram provides the number of simulated outcomes that were realized. The figure reveals that the actual within-judge standard deviation is dramatically lower than the simulated results for all three levels of courts. In

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other words, the variation in the ideologies of clerks actually hired by judges is much lower than would be expected by random chance. In fact, the actual within-judge standard deviation was lower than every single simulated reallocation. Figure 9 thus provides strong evidence that judges hire clerks with consistent ideologies.

7.2. The Relationship between Judge and Clerk Ideology

Although these simulations demonstrate that judges tend to hire clerks with similar ideologies to their other clerks, it does not necessarily mean that judges hire clerks that share their own ideology. For example, it could be the case that judges consistently hire clerks with similar ideologies—for example, because the judges may repeatedly hire clerks from the same law school—but the clerks may still not align ideologically with the judge. We thus turn to the question of whether clerk ideology relates to the ideology of the hiring judge.

To do so, we first use a common proxy for judicial ideology: the political party of the president who appointed the judge. Figure 10 plots the distribution of clerk ideology by the party of the appointing President.

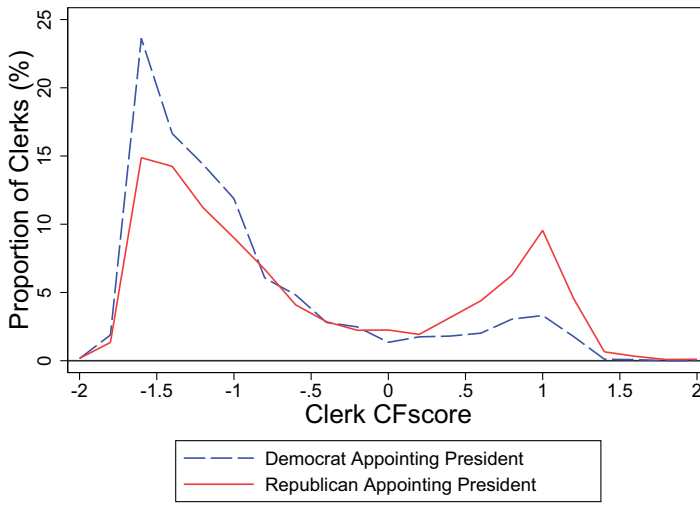


Figure 10. Distribution of Clerk CFscores by the Party of Judge's Appointing President.

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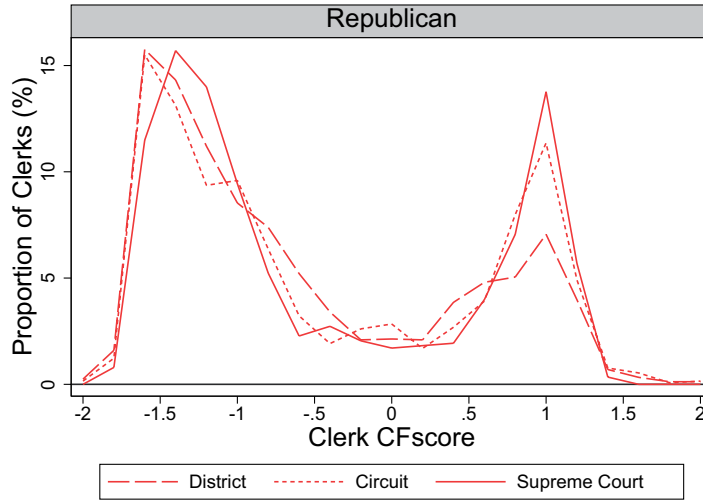


Figure 11. Clerk Ideology for Republican-Appointed Judges by Level of Court.

The figure shows that although Republican appointees hire relatively more conservative clerks than Democratic appointees, in absolute terms the former nonetheless hire more clerks with liberal CFscores than clerks with conservative CFscores. This is a surprising fact and is worth emphasizing: judges appointed by Republicans hire more clerks who come from the left-side of the ideological spectrum. Although future research will be required to determine exactly why this is the case, one possibility is that this might simply be due to the fact that graduates from the top law schools—who largely serve as the potential applicant pool for most clerkships—are overwhelmingly liberal. Thus, conservative judges may not have many options in terms of hiring graduates from top law schools *and* hiring conservatives. Figure 11 presents additional evidence consistent with this theory. The hiring of liberal clerks by Republican appointees is less common for circuit court judges—who can typically select from a broader pool of applicants than district court judges—and even slightly less common for the Supreme Court, where justices have an exceptionally wide pool of qualified applicants from which to select.[12]

12. Of course, it is also possible that this pattern reflects increasing attention to clerk ideology by judges when hiring clerks at higher levels of courts.

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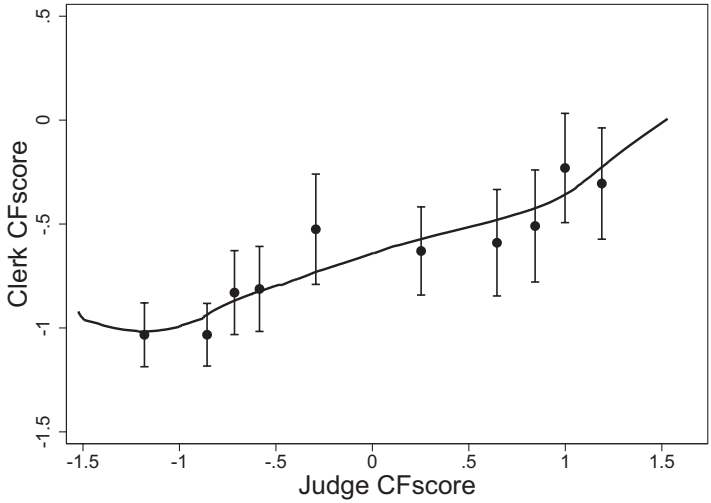


Figure 12. Relationship between Judge and Clerk CFscores.

We next turn to the relationship between clerk ideology and a more direct measure of the ideology of the hiring judge: the judge's own CFscore.[13] Figure 12 presents a lowess curve of clerk CFscore (on the vertical axis) and judge CFscore (on the horizontal axis), as well as a binned scatterplot of the same relationship with standard error bars (± 1 standard error). The plot is simple, but shows a clear relationship: the more conservative a judge, the more conservative his or her clerks tend to be. It is interesting to note that judges with slightly positive CFscores are associated with clerks who have negative CFscores, consistent with our finding that clerks tend to be more liberal (as a group) than the judges for whom they work.

We confirm the statistical significance of this visual evidence by regressing clerk CFscores on judge CFscores. We find that a standard deviation shift in judicial ideology is associated with a 0.30 standard deviation shift in the average ideology of the clerks hired by that judge ($P < 0.01$), which

13. We manually matched data on all federal judges from the Federal Judicial Center to the judges CFscores in the DIME. Since judges are prohibited from making political donations, the judges' CFscores are based on the political donations prior to being confirmed as a federal judge. For more information, see Bonica and Sen (2016, 2015).

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is consistent with the slope of the lowess curve in Figure 12. After controlling for law school fixed effects, the results are largely unchanged, where a standard deviation shift in judicial ideology is associated with a 0.27 standard deviation shift in the average ideology of the clerks hired by that judge ($P < 0.01$).

Before concluding, it bears emphasizing that the results presented here should be interpreted as descriptive; our analysis does not permit conclusions about the causal directions at work. In particular, the correlation between clerk and judge ideology that we observe could result from judges prioritizing the hiring of ideologically aligned clerks, or it could be clerks prioritizing ideologically aligned judges when deciding which clerkships to apply for and which to accept. Alternatively, the matching of ideologically similar clerks and judges could stem from more complicated channels. For example, it could be that judges do not care about clerk ideology but base their hiring decisions on recommendations from lower court judges or law school professors who do.

8. Conclusion

In this article, we have explored the political ideologies of judicial law clerks in U.S. federal courts. In doing so, we provided new evidence on several important questions about clerk ideology. First, we examined whether clerks tend to share the more conservative ideology of judges or the more liberal ideology of lawyers overall, and find that more skew left. Second, we examined how the ideologies of clerks compares to the ideologies of lawyers and found that clerks are more liberal than even the population of graduates from top law schools. Third, we explored whether the ideologies of clerks differs by the level of clerkship and found that the ideologies of clerks became more bimodal as the prestige of the court in which they clerked increases. Fourth, we studied the relationship between the hiring of clerks and ideology and found a strong correlation between the ideology of the hiring judge and the ideology of his or her law clerks. Notably, this last finding suggests that observing the ideologies of the clerks hired by a judge may shed light on the ideology of the hiring judge, a possibility we explore in Bonica et al. (2016).

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It is worth noting a few limitations of our methods and results. First, our results are based on the 43% of federal law clerks who made political donations. As a result, it is possible that a different picture would emerge if we were able to observe the ideological leanings of every clerk in our sample. In particular, our results will be biased if a clerk's ideology is correlated with the probability of donating in ways that are correlated with our variables of interest. For example, if liberal individuals who clerk for conservative judges are less likely to donate—e.g., because they are generally less political—our approach would make clerks appear more conservative than they actually are. Although we find no evidence that our sample is disproportionately skewed toward either liberal or conservative clerks, the possibility of selection means that our results are most directly applicable to the subset of judicial clerks who make donations at some point in their lives.

Another limitation is that our measure of ideology are based on the political donations that an individual makes over the course of a lifetime. For example, a lawyer may have served as a clerk ten years before making the donations that form the basis of the ideology score we employ. A concern with this approach is thus that the ideology of an individual may be different in our data than it was when they clerked. Although this may be the case for some individuals in our sample, we believe that it is unlikely to systematically bias our results because individual ideology has been found to be fairly consistent over time.

With these caveats, our findings shed significant light on the political ideologies of judicial law clerks. This knowledge is important because clerks play an important role in the American judicial process that has only begun to be empirically studied. For instance, given the importance that clerkships can have for future careers, one avenue of future research would be to explore whether the lower rates of clerkships among conservatives are due to bias in the hiring process. Another interesting avenue for future research would be to investigate the influence of clerk ideology on our legal system. Indeed, given the large amount of scholarship documenting the role that clerks have in drafting judicial opinions, it would be interesting if the ideologies of the clerks influence the way cases are decided to a detectable degree. With the more complete picture of the political ideologies of clerks that our research provides, in the future it will be possible to have a better understanding of the role that law clerks play in our judicial system.

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