Judicial Norms: A Judge's Perspectives

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In reflecting on "judicial norms," I will comment on three papers: John Ferejohn and Larry Kramer, Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint, Lawrence Friedman, Judging the Judges: Some Remarks on the Way Judges Think and the Way Judges Do; and Kathryn Abrams, Interrogating Interdependence: Judging an Ascriptive Group Identity. I will first amplify my views on the Ferejohn/Kramer paper. In doing so, I will also briefly raise the topic of "collegiality," which I think is an important, often overlooked, factor in judicial independence. I will then comment on the papers presented by Professor Friedman and Professor Abrams, both of which are much shorter but also much more controversial than the Ferejohn/Kramer paper.

The paper authored by (Professor Ferejohn and Professor Kramer is a long and scholarly piece which attempts to rationalize institutional doctrines of judicial restraint employed by the federal courts in the United States. I want to begin by saying that, in my view, Professor Ferejohn and Professor Kramer have got it basically right in their paper. The Constitution makes judges dependent on the political branches in a variety of ways. Individual judges are not terribly vulnerable to control from the political branches, but the judiciary as a whole is somewhat vulnerable. As a result of this arrangement, the judiciary has developed a set of self-imposed institutional doctrines of restraint. By regulating itself, the judiciary protects its ability to have its judgments effectuated. At the same time, judges' ability to make decisions independently is largely preserved.

Professor Ferejohn and Professor Kramer offer a wealth of authority to explain the institutional doctrines of restraint. Their analysis of the case law is comprehensive and thoughtful. At places in their paper, the authors seem to suggest that federal judges sometimes have gone too far in applying doctrines of restraint. I may disagree with them on certain aspects of this argument, but this is a minor issue. Overall, I found their legal analysis to be sterling.

There is one major piece of the thesis in "Independent Judges," however, with which I disagree. The paper identifies three principal types of mechanisms that: the political branches arguably might use to obstruct the courts. One type of obstruction is enforcement-related: the political branches could ignore judges' mandates. A second type of obstruction pertains to judicial administration: our budgets could be cut, and our daily affairs regulated to the point that it would be hard for us to do our jobs. And a third type of obstruction relates to the scope of judicial power: federal judges' jurisdiction could be limited or stripped.

In my view, only one of these threats looms large to judges in a way that actually encourages us to engage in self-restraint, and that is the possibility that our mandates might not be carried out by the executive or legislative branches. This ever-present possibility gives my judicial colleagues and me a compelling reason to restrain ourselves from rendering decisions that deviate from the rule of law or that overreach the boundaries of our authority. In other words, in my view, concern over the enforcement of judicial mandates, more than any other factor, underlies much of the doctrine associated with judicial restraint.

I. Self-Restraint and Judicial Mandates

In the fall of 1997, I traveled to the People's Republic of China as a part of a Ford Foundation program to conduct a series of lectures on the federal courts in the United States. My audiences were composed of judges and legal scholars who were principally situated in or near Beijing and Shanghai. I was...
naturally interested in learning what aspects of our judicial system seemed to them especially striking or unusual. It turned out that, more than anything else, the Chinese judges and legal scholars wanted to understand how judges in the United States were able to make their judicial pronouncements enforceable. Their interest in this issue is unsurprising when you realize that because of the historical politicization of the judiciary, judicial decisions often are not enforced by other governmental authorities in China. Indeed, a number of judges and legal scholars with whom I spoke frankly acknowledged that some important judicial decisions in China are simply mandated, from "behind the scenes," by political officials.

"Judicial independence" was an oxymoron to the Chinese judges. This came as no surprise. A judiciary that cannot expect its judgments to be executed as a matter of course cannot be described as independent. Judges who need to convince or cajole other government actors to do what is expected of them have no choice but to make all of their decisions with an eye on whether those decisions will be enforced.

So what did I tell the Chinese judges who wanted to know the secret of judicial independence in the United States? I told them, in no uncertain terms, that self-restraint has been a crucial key to the success of the judiciary in the United States in establishing the enforceability of its decisions. I described the comparatively weak position of the U.S. judiciary should the executive or legislative branches choose to ignore our judgments. And I explained that our courts have been careful to adhere to the limits placed on their authority by the Constitution and have developed policies of restraint and deference that minimize conflicts with the other branches.

One important feature of this account of judicial independence and self-restraint is that it is dynamic. For enforceability to emerge, judges overtime must collectively develop the habit of self-restraint. And the executive and legislative branches need to develop, over time, the habit of obeying judicial judgments. The other branches will only develop the habit of obedience if they accept the constitutional legitimacy of judicial action. Self-restraint helps build up the courts' constitutional legitimacy over time, along with other elements of judicial decision making, like following the rule of law and adhering to binding precedent. Over time, self-restraint by judges contributes to a practice of enforcing judicial judgments.

The other branches will only develop the habit of obedience if they accept the constitutional legitimacy of judicial action. As this practice becomes entrenched, the judiciary achieves real independence. Once judicial independence comes into being, however, it needs to be guarded and protected. Judicial self-restraint therefore helps both to generate and to preserve judicial independence.

The point I want to emphasize is that the awareness that we can do little to compel enforcement of our judgments is a real, recurring element in judicial thinking. As a result, our decisional independence depends significantly on the habit of enforcement. It is therefore hardly surprising that judges' determination to make sure that their judgments are enforced is the overwhelming concern that drives judicial self-restraint.

II. Administrative Obstruction: Annoyance Without Threat

The second threat to judicial independence that Professor Ferejohn and Professor Kramer identify is administrative obstruction. Make no mistake: administrative obstruction is real and dangerous, for it may substantially impair the ability of the courts to do their job as efficiently and professionally as possible. My almost seven years as Chief Judge of the D.C. Circuit have given me a real taste of administrative obstruction, so I understand its potentially pernicious effects.

Before I offer some examples of what I mean, let me first make it clear that, in my view, administrative obstructions do not impede the decisional independence of the judiciary. The reason is simple. In my
experience, most judges do not believe there is any real connection between congressional cooperation or interference and the content of the decisions we reach as judges. Indeed, I have not seen evidence that Congress decides to make judges' lives difficult administratively because it either likes or dislikes the kinds of decisions we are making. Instead, I have found these sorts of actions to be based on a variety of political considerations that are really quite independent of any particular judicial decisions. Thus, no matter how we decide particular cases, Congress' actions in the administrative realm depend on its own complicated political incentives and motivations. And, more importantly, these actions do not have any appreciable influence on the decisional independence of the judiciary.

Administrative obstruction can, however, be terribly burdensome to the judiciary. Let me give you an example, one that I know well. Congress must fund all courthouse construction, and so courthouse construction becomes a line item in the federal budget. This legislative appropriations function is not in itself a threat to an effective judiciary. But in the process of deciding to allocate funds, Congress and the President can sometimes turn courthouse funding into a political football.

Just before I took over as Chief Judge of the D.C. Circuit, several independent studies confirmed that an annex to the U.S. Courthouse in Washington, D.C. should be built to solve serious problems of safety, security, and space in the existing building, and Congress approved funding for a building design. The courts, architect, and various government agencies then engaged in nearly seven years of work, thousands of man hours of effort, and the expenditure of over $6 million in appropriated funds to design a new annex. We faced unanticipated political problems, however, once the design work was done.

In the spring of 2000, the Office of Management and Budget ("OMB") suddenly, without consulting with any officials in the judicial branch, announced that it would not support any courthouse building project unless the building was premised on a design that contemplated "courtroom sharing" by trial judges. In the case of the D.C. Circuit, OMB claimed that its new courtroom-sharing requirement would save $5 million on a $109 million construction project. That assessment was short-sighted, for we were able to demonstrate that, if the D.C. Circuit was forced to redesign the annex, the building project would be delayed by over two years and the net cost of a building with four fewer courtrooms would be nearly $6 million more than the building that had been designed with the four disputed courtrooms included. We finally secured funding for construction, but only after I and my staff spent countless hours preparing testimony and appearing before a number of congressional committees to plead our case.

The worst part of the process was that OMB officials really did not seem to care about the truth of the matters in dispute. They appeared to be on a mission to force "courtroom sharing" on the federal courts, no matter what the cost. Unsurprisingly, the judiciary as a whole has been far from pleased with OMB's unilateral attempt to force trial judges to "share" courtrooms pursuant to a formula developed solely by officials in the executive branch with no input from the judicial branch.

It is clear that political gamesmanship of this sort affects the ability of judges to do their jobs efficiently. And it puts judges in an uncomfortable situation, because we have no natural constituency to lobby for us and we do not feel at ease ourselves in doing battle in the political arena. Yet, there is nothing about the way Congress or the President act on our funding requests that would lead judges to think that these political actors are trying to influence us in deciding cases. And given the many diverse personalities and strong characters among federal judges - all of whom are equally affected by sub-par facilities - I think it is fanciful to suppose that day-to-day political decisions over matters such as courthouse funding cause members of the judiciary to develop institutional doctrines of restraint. It simply does not happen. Furthermore, the kind of politics that affects funding for things such as courthouse projects is not typically issue-specific. Thus, when the political branches tie up or slow down judicial activity through their politicking, they may affect the efficiency of the judicial process, but not its content.
There is another way in which Congress can engage in costly administrative obstruction, and that is by isolating the judiciary from the currents of intellectual life in the law. Many federal judges teach, lecture, judge moot courts, or serve on bar association committees. These all are valuable mechanisms for making certain that we know what is going on in the legal world and the life of the mind outside our courtrooms. Many judges, myself included, find this sort of contact to be profoundly valuable. It enhances the quality of our judicial work by enhancing the range and depth of our thinking. Yet, there have been some moves in Congress to limit or obstruct the way judges interact with the rest of the legal world.

Let me offer a couple of examples. A few years ago, when I became Chief Judge of my circuit, a subcommittee of the Senate Judiciary Committee sent questionnaires to Chief Judges inquiring in extraordinary detail about the work practices and habits of the members of their courts. One question even asked about my secretary's work assignments and patterns! Many of the purported inquiries were more like statements than questions. One strand of the questionnaire appeared aimed at suggesting that judges on my court should spend less time interacting with the legal academy. In responding to the questionnaire, I explained that interactions with the outside world serve to enhance our minds, helping to make us better judges. I explained that when I teach, I am more learned; and when I am more learned, I am better able to grasp the cases that come before me on the court. Beyond this straightforward syllogism, though, it should be obvious that more ethically permissible intellectual engagement means better judges. Answering the questionnaire was a demeaning and pointless exercise, but the Chief Judges had no choice, because the judiciary's operating funds come from Congress.

The proposed Judicial Education Reform Act of 2000, known as the Kerry-Feingold Bill, is another example of possible administrative obstruction. Under the bill, the Board of the Federal Judicial Center would be given the power to determine whether a federal judge will be allowed to participate in seminars and conferences sponsored by law schools, bar associations, and other such institutions. In other words, judges' lawful extrajudicial activities would be subject to censorship by the FJC. This threat to our academic and intellectual independence was great enough to elicit a strong protest, both from the Judicial Conference of the United States last fall and from Chief Justice Rehnquist in his 2000 Year-End Report on the Federal Judiciary.

The Kerry-Feingold Bill and other such proposals that seek to regulate judges' lawful activities outside of the courtroom are odious forms of censorship. Such proposals are also shortsighted. Most federal judges are not wealthy. Our salaries, which are less than those our law clerks will receive as starting associates at many big-city firms, certainly do not make us rich. That means that, if we are going to attend conferences, lectures, and symposia such as this one, we need to do so as the guests of the academic or other institutions that fund them. To the extent that Congress chooses to constrain our ability to travel and engage intellectually, Congress will be getting worse judges, judges less engaged with legal colleagues outside the narrow judicial world. I need hardly add that, if our salaries continue to remain relatively low, the quality of the pool of persons who are willing to serve as judges will be diminished.

But if Congress does choose to obstruct judges' intellectual development by limiting teaching or lecturing or attending symposia, there is no reason to think that our decisional independence will be limited. Judges will still be able to decide cases as they see fit pursuant to the rule of law. It is just that we would be doing our jobs less well, because we would not have the benefit of the educational development produced during our interactions with thoughtful colleagues outside the courthouse.

My point, then, is that administrative obstruction is serious business, much more serious than most people realize. There is no doubt that Congress can act in a way that will adversely affect the quality of the judicial work product. This matters profoundly to individual judges, to the judiciary generally, and to
the country. But I do not accept the view that administrative obstruction threatens decisional independence. Administrative obstruction is not a precise enough weapon to be targeted only at certain judges or certain outcomes. It is therefore largely unconnected to the outcomes of the cases that judges try and decide.

III. Limitations on Jurisdiction

The third type of obstruction that Professor Ferejohn and Professor Kramer identify pertains to limitations on the jurisdiction of the federal courts. Here I also disagree with the authors, but for a different kind of reason. I agree that administrative obstruction is dangerous, but I think that at its worst it threatens only decisional quality, not decisional independence. With regard to limitations on jurisdiction, however, I would contend that a proposal in Congress to strip or alter the jurisdiction of a federal court is not really a threat to the judiciary at all.

Federal courts are courts of limited jurisdiction, not general jurisdiction. Normally, that means that it is up to Congress to provide the definition of the scope of our jobs. My goal as a judge is not to wield the maximum power that I can get in the most independent way possible. It is, rather, to decide the cases that are properly before me by exercising my independent judgment under the law. When and if Congress decides to take away jurisdiction over a given category of cases, those cases no longer fall within my job description.

I do not mean to suggest that jurisdiction-altering acts never affect the judicial function, or that judges care little about such matters. Judges' strong opposition to legislation such as the federal Sentencing Guidelines proves otherwise. But, I can see no meaningful connection between judges' reactions to such acts and the development of institutional doctrines of restraint.

In thinking about this issue, I recalled a story that I once heard about an exchange between Judge Learned Hand and Justice Oliver Wendell Holmes, Jr. One day, following lunch together, as the two men parted on the steps of the Supreme Court, Hand is supposed to have said to Holmes, "Do justice." And Justice Holmes is supposed to have answered, "Justice? We don't do justice here. We just follow the rules of the game."

I do not embrace the view that judicial work has nothing to do with justice. And, to be fair, Justice Holmes probably never really thought so, either. In all likelihood, the point he was making is that a judge's job is to apply the laws as they exist. The judicial function is not to reach out to the maximum number of cases, or to guard zealously the broadest possible jurisdiction. Most judges, I think, see the job as I do: as a serious undertaking in which we do the best we can to apply the law fairly and to decide cases in the manner that seems correct to us under the law. Judicial independence is absolutely essential to performing this task. But the threat of limiting jurisdiction has no appreciable impact on our capacity to decide cases independently pursuant to established law.

IV. Collegiality and Independence

I would like to conclude by mentioning an aspect of judicial practice that has seemed increasingly important to me over the last decade: the practice of collegiality. By collegiality I mean an attitude among judges that says, we may disagree on some substantive issues, but we all have a common interest and goal in getting the law right. What is more, because in the federal judiciary we all have life tenure, we as judges are in this together. We are, in a word, one another's colleagues.

An attitude of collegiality means, in practice, that we respect one another's views, listen to one another,
and, where possible, aim to identify areas of agreement. It does not mean that we horse trade with the law, nor does it mean that we decline to express our views about the law in the strongest terms. Collegiality does mean, however, that, even when I disagree with another judge, I recognize that we are part of a common endeavor, and that each of us is, almost always, acting in good faith according to his or her own view of what the law requires.

The reason I am raising the issue of collegiality in the context of the "Independent Judges" paper is that I view collegiality as relevant to the development of the institutional practices of self-restraint that Professor Ferejohn and Professor Kramer see as key to establishing and maintaining judicial independence. The reason for self-restraint by judges in the way we conceive the judicial role has a lot to do with how judges see themselves in collective terms. That is where collegiality becomes relevant to judicial self-restraint.

Because I see myself as engaged in a common endeavor with my judicial colleagues, it follows that I have the interests of the judiciary as a whole at heart. I would still feel bound by my oath to the Constitution if I did not feel a collegial bond with my colleagues, but beyond that I would be a free-lancer. When there is little or no judicial collegiality, there is less incentive for judges to exercise self-restraint. Absent collegiality, we would see, far more than we do, judicial cowboys, outliers who abuse their decisional independence and thereby subvert the rule of law.

In other words, collegiality is important not only for working together effectively, but also at a deeper structural level. An attitude of judicial collegiality helps reinforce judges' incentives to behave in a principled and responsible fashion. I think that any discussion of judicial independence, either at the level of institutions or individuals, should take this practice of collegiality into account.

V. Some Comments on Professor Friedman's Judging the Judges

In his paper Judging the Judges, Professor Friedman reflects on a "real paradox or dilemma or contradiction in the common law tradition." On the one hand, he says, this tradition puts so much emphasis on the personality, brain, philosophy, craftsmanship, and skill of the judge "in manipulating legal stuff"; and, yet, on the other hand, the tradition "rejects as completely improper exactly those kinds of creativity and suppleness which made judges like Brandeis or Cardozo or Holmes or Lemuel Shaw famous." He explores notions of judicial "impartiality" (neutrality, open mindedness), "independence" (freedom from political interference), and "autonomy" (independence from social norms, "from the not-legal"). He concludes that judges are neither impartial nor autonomous. His conclusions, so far as I can tell, are based primarily on his sense of history and his intuitions about how judges judge.

Professor Friedman's critique of judges is quite harsh. He says that judges believe themselves to be insulated from society and therefore autonomous. But in truth, according to Professor Friedman, judges are heavily influenced by social, non-legal, pressures in their decision making. He is wrong on both counts.

Very few judges nowadays think of themselves as monks, cloistered in the judicial realm, largely oblivious to the world around them. We interact socially in many ways and with many people and, in my view, this improves the quality of our decision making. This does not mean, however, that a judge's social interactions invariably destroy the capacity for independent, honest, and impartial decision making. My view on these matters is that

an appellate judge has not only the right, but the duty to involve himself in the world. If he
is to continue developing as a person after he comes on the bench-and if he is to decide
cases as well as he is able-he should maintain a diverse group of friends, travel widely, give
speeches (that do not engage political disputes or improperly pertain to matters before the
court), and seek out opportunities for exchanges of ideas. I believe that these things can be
done easily without a judge infringing his responsibility to insure honest, fair and thorough
treatment of the cases before the court, and also without any "appearances of impropriety."

While a judge typically will not need to resort to personal beliefs in deciding cases, some
consideration of these beliefs may be unavoidable in the occasional "very hard" case where
the legal arguments are indeterminate. In such a case, a judge's informed and critical
development of his beliefs is a prerequisite to intelligent resolution of the dispute. Further,
in all cases, the nature of one's personal beliefs should be consciously, rather than
subconsciously, recognized. The likelihood of such recognition occurring will be
heightened when a judge remains intellectually active and aware of the world around him.
In other words, a judge who openly seeks legitimate exchanges of ideas, and thereby
continues to cultivate personal beliefs, is in a good position to evaluate and minimize the
influence of such beliefs in most cases. The real threat that a judge's personal ideologies
may affect his decisions in an inappropriate case arises when the judge is not even
consciously aware of the potential threat. (1)

Professor Friedman sees judges as mostly incapable of avoiding personal biases, ideological preferences,
and political leanings in deciding the cases before them. In other words, he seems to believe that judging
is largely an unprincipled function. I do not accept Professor Friedman's premises.

I maintain that "federal appellate judging, although not 'infallible' or 'unaffected by ideological
influences,' is 'significantly constrained.' (2) For the most part, judges are governed by and apply
discernible legal principles. The legal system is therefore largely coherent and predictable. I have written
extensively on this subject, so I will not repeat myself here? (3) Rather, I would prefer to highlight a
telling section of Professor Friedman's paper to show why his critique of the judicial function is suspect.

Near the conclusion of his paper, just before he pronounces that judges are neither impartial nor
autonomous, Professor Friedman offers the following argument:

Let me go back to Judge Manton, the famous corrupt judge. We could perform an
interesting experiment. We could take a flock of Manton opinions, including some that we
know were bought and paid for, and some that were not. Take his name off the opinions.
Give them to skilled lawyers and law professors. Ask them to pick out the fakes - the
decisions that were corrupt. I guarantee you that they could not do it. This would not be a
surprise to the lawyers at all. As they would gladly tell you, any lawyer worth his salt can
argue both sides of any contested issue. Any judge worth his salt-or maybe it would be
more accurate to say, any judge handed professional briefs by the two parties - can write an
opinion coming out either way; in fact, the judge can write an opinion coming out any
possible way -- in any case that is difficult enough to get to the level of an appellate court.

This argument mirrors the naysayer view of judging, (4) but it fails from the weight of its own fallacious
reasoning.

First, Professor Friedman's example of the corrupt Judge Manton offers no useful support for his thesis.
Lawyers and law professors might not be able to pick out the "fake" opinions, because the judgments in
those cases might be correct. In other words, it is true that we do not tolerate judges whose opinions are
"bought and paid for"; but the fact that an opinion is corrupt does not mean that the judgment reached was wrong. An honest judge might have reached the same result.

Second, Professor Friedman says that "any lawyer worth his salt can argue both sides of any contested case." However, this tells you absolutely nothing about judicial impartiality or autonomy. Of course most good lawyers can marshal arguments on both sides of an issue, but that does not mean that both sides are equally meritorious under the law. The more telling point is that great lawyers can argue both sides of a case and then predict the correct outcome on the merits. Great lawyers, like great judges, assess the merits of their cases pursuant to applicable legal principles. Indeed, the reason that so many cases are not litigated is because lawyers explain to their clients that the likelihood of their prevailing on the merits is not good.

Finally, Professor Friedman asserts that "any judge worth his salt . . . can write an opinion coming out either way; in fact, the judge can write an opinion coming out any possible way." This is a specious contention, because not every opinion reflects the correct judgment. Principled decision making - which entails decisions that are based on the applicable rules of law - demands judgments that are faithful to the law. And it is the role of a judge to adhere to the law in deciding cases. When we are disdainful of this mission, we are transparently corrupt; and smart lawyers and judges know when a judicial decision is lawless. There are some "very hard" cases in which there are no right answers, so appellate judges sometimes "make law". These cases are relatively few, however. In most cases, judges are significantly constrained in applying the law.

I sometimes hear it said by naysaying lawyers that they can predict the outcome of a case in my court as soon as the panel of judges is announced. This invariably calls to my mind the story of the New England eccentric who claims that by clapping his hands he can keep away the alligators. When his crusty Cape Cod neighbors ask him how he knows this technique works, he slyly responds: "Seen any alligators around here lately?" Smart lawyers appearing before my court can predict the outcome of cases because they know how to assess the merits of the claims - lawyers know that weak appeals will be rejected and strong appeals will be sustained. Outcome is rarely affected by the particular judges assigned to hear a case, as evidenced by the fact that most judgments from my court are unanimous.

Professor Friedman's questions regarding the independence, impartiality, and autonomy of federal judges are important. We must continue to assure ourselves that judges are faithful to the mission of principled decision making, so my concern with his paper is not with the questions raised. Rather, I am troubled by some of his assertions - based largely on his own intuitions - that find little real credence in the judicial function that I know and practice. And I remain of the view that our judicial system will be unable to tolerate public misperceptions beyond a certain point of distortion. Our tolerance level has not yet been surpassed, but I think that we are on a fast track heading in the wrong direction. And if we continue on this course, we will destroy our grand vision of a judicial function premised on principled decision making.

VI. Some Comments on Professor Abrams' Interrogating Interdependence

"Interrogating Interdependence" takes a very different look at questions relating to judicial independence and impartiality. In her paper, Professor Abrams examines judicial interdependence in the context of ascriptive group membership. In particular, Professor Abrams seeks to determine whether African-American judges bring a different perspective to the judicial function and, if so, whether that perspective has any decisional or other effects.

Professor Abrams' principal finding is unsurprising: the judges who were the focus of her study
manifested few perspectives explicitly traceable to race that had the potential to bear on substantive decision making. To the extent that these African-American judges were found to respond to perceived needs of their ascriptive communities, they did so mostly in situations external to the formal judicial role. And the consequence of group based membership for many of the judges in the sample was "an ability to look without prejudice or preconceived notions at the parties before the court," but without affording those parties any special decisional advantage because of racial affinity.

In light of my comments on the paper by Professor Friedman, I surely can find no fault with Professor Abrams' thesis. My race does not determine my judgments. If I sometimes bring unique perspectives to the judicial conference room, perspectives that help to sort out some of the issues that come before the court, that is a good thing. But there is no "race card" to be played in judicial deliberations. And minority judges have no monopoly on "an ability to look without prejudice or preconceived notions at the parties before the court." In my experience, open-minded judges come in all shades.

Professor Abrams' findings are, as she concedes, based on a very limited sample. Thus, her conclusions can claim no empirical purity. And much of the evidence upon which she relies comes from the sample judges' "self-reporting" narratives, i.e., from "a group of professionals who are widely expected to enact or embody certain norms, including the very norms at issue in [the] analysis, objectivity or impartiality." Her study data are thus somewhat suspect. But Professor Abrams understands the limits of her study, offers no bold claims, and promises further studies. The importance of Professor Abrams' piece is to show both that there is no good evidence to support the fears of those who might believe that African-American judges are driven by ascriptive group membership in their decision making, and that there is decent anecdotal, and some empirical, evidence to suggest otherwise.

After reading the Abrams paper, an agent provocateur might ask: if ascriptive group membership is largely irrelevant in the judicial process, then why worry about racial or sexual diversity on the federal bench? Professor Abrams offers one answer - a more diverse judiciary helps all judges to remain mindful of "the inevitable partiality of all perspectives." With this understanding, judges are less likely to fall prey to the temptations that trouble Professor Friedman.

Diversity also enhances collegiality among judges, which in turn enhances decision making. A court composed of judges with a diversity of different professional experiences and personal perspectives makes for better-informed deliberations. (7) It provides for constant input from judges who have seen different kinds of problems in their pre-judicial careers, and indeed have sometimes seen the same problems from different angles. (8) We all gain from this diversity, by listening to and taking seriously the views of our colleagues.

In sum, the papers from Professors Ferejohn, Kramer, Friedman, and Abrams present some challenging thoughts on judicial norms. Their works offer useful insights and raise provocative questions relating to judicial restraint, independence, impartiality, autonomy, and interdependence.

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5. See Murchison, supra note 2, at 159-62.

