No one believes Ketanji Brown Jackson, now confirmed to the Supreme Court, would ever vote the same way on an abortion case as her new colleague, Justice Amy Coney Barrett. Their ideologies are too different. As Judge Richard Posner points out, regardless of what they say about their adherence to precedent and the like, judges are fundamentally ideological. They cannot be anything else without a methodological approach to decision-making, such as cost-benefit analysis, that could lead to alternative outcomes.

Constructive steps, however, could be taken to help justices and judges make more informed and less ideological decisions.

“A case is just a dispute,” Posner explains. “The first thing you do is ask yourself—forget about the law—what is a sensible resolution of this dispute?” Next, “See if a recent Supreme Court precedent or some other legal obstacle stands in the way of ruling in favor of that sensible resolution. And the answer is that’s rarely the
case, or when you have a Supreme Court case or something similar, they’re often extremely easy to get around.”

Evidence exists that judges’ decisions are not sensible resolutions but are influenced by their ideologies. For example, the legal scholars Alma Cohen and Crystal Yang found that Republican-appointed judges in federal district courts gave longer prison sentences to Black defendants than did Democratic-appointed judges.

My co-authored book provides evidence on the effect of ideology on Supreme Court Justices’ votes on business cases. We find that “liberal” justices have strong preferences to vote against businesses and “conservative” justices have strong preferences to vote in favor of businesses.

Ideologies are formed and reinforced by life experiences. Ideologies are challenged by formal education and by intellectual engagement with people who provide conceptual counterarguments and compelling evidence against ideological beliefs.

Judges are highly educated people who engage with intelligent people who sometimes disagree with them. However, in their pre-judicial careers, they engage primarily with their fellow lawyers (and some clients). This is limiting because effective judging amounts to resolving a policy debate encompassing multiple disciplines.

The siloing of embryonic judges that begins in law school can be eliminated by deregulating the legal profession. Aspiring lawyers should be free to choose the type of legal education and credentialing that is most desirable for practicing law in their specialty. Law schools would be more likely to offer rigorous multidisciplinary programs in law were the American Bar Association’s monopoly control over legal education to be eliminated. Doing so would also ease the concern that the ABA may not accredit multidisciplinary law school programs. Because students would not be concerned that multidisciplinary programs may violate ABA’s education requirement, they would be more inclined to enroll in them and benefit from exposure to a broad set of intellectual disciplines and from better preparation for a career path in government that culminates in a judgeship.
A multidisciplinary program in law, economics, political science, and policy analysis, for example, would enable students to gain a deeper understanding of how to analyze and interpret the effects of social science-based policies and work effectively with people who have intellectual backgrounds in those disciplines. As judges, those students would likely be receptive to empirical evidence that provides insight on a case and less likely to resort to their ideological preferences.

If they became Supreme Court justices, they would likely be receptive to forming and working with panels of independent experts from appropriate academic disciplines. Such panels would improve the justices’ understanding of, and their decisions about, cases that involve complex social and technical issues but also may evoke ideological preferences.

Expert panels would provide an additional and transparent opportunity for justices to benefit from experts in an environment that would facilitate more targeted and balanced discussion. Ultimately, justices would determine how to make expert panels as effective as possible, but they are likely to do so if they have worked with people trained in other disciplines throughout their careers and have come to appreciate the insights other disciplines bring to deciding a case.

Consider the evidence an expert panel of economists could bring to an abortion case. They might look at the effects of abortion rights on teenagers’ fertility, the maternal age distribution, completion of high school and college education, female labor supply, childcare and career advancement, the male-female
earnings gap, and the variation of those effects across demographic groups. I doubt that as colleagues both Barrett and Jackson would ignore that evidence; it may even cause the difference in their views to narrow. But if they had a foundation in multidisciplinary coursework, their views might even converge.

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