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RESEARCH NOTES

Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices

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Do the political preferences of U.S. Supreme Court justices change over time? Judicial specialists are virtually unanimous in their response: The occasional anomaly notwithstanding, most jurists evince consistent voting behavior over the course of their careers. Still, for all the research that presupposes the consistency of preferences, it is startling to find that scholars have yet to explore rigorously the assumption of stability. We fill this gap by describing the behavioral patterns of the 16 justices who sat on the U.S. Supreme Court for 10 or more terms, and began and completed their service sometime between the 1937 and 1993 terms. The data reveal that many experienced significant change over time—a result with important implications for virtually all longitudinal work on the Court.

Do the political preferences of U.S. Supreme Court justices change over time? Scholars of the Court are nearly unanimous in their response: The occasional anomaly notwithstanding, most jurists evince consistent voting behavior over the course of their careers (e.g., Baum 1988; Schubert 1974).[1] Since votes constitute the best available gauge of preferences (Epstein and Mershon 1996),[2] so the

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Readers can obtain all the data and documentation necessary to replicate this analysis at: http://www.artsci.wustl.edu/~polisci/epstein/

[1] We stress "nearly" because there are important exceptions, which we discuss later in the text.

[2] Even so, using votes as indicators of sincere judicial preferences or attitudes is not unproblematic. For example, it is possible that justices strategically misrepresent their positions in their votes. For more on this point, as well as on the meaning of judicial preferences, see Epstein and Mershon 1996.

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argument goes, then preferences must remain stable as well. Indeed, the "stability assumption" is sufficiently widespread that almost all tests of preference-based theories of judicial decision making treat it as a given.

Still, for all the research that presupposes the consistency of preferences (or treats them as such), it is startling to find that scholars have yet to explore rigorously the assumption of stability.[3] We seek to fill this rather large gap by describing the behavioral patterns of the 16 justices who sat on the U.S. Supreme Court for 10 or more terms, and began and completed their service sometime between the 1937 and 1993 terms. For each, we consider whether preferences—as revealed by votes—experienced significant change over time.

The Stability Assumption and Preference-Based Theories of Court Decision Making

Two classes of preference-based theories dominate contemporary research on the Court: the social psychological (attitudinal models) and the economic (rational choice models). In what follows we briefly review these theories with an eye toward determining how they treat—theoretically and empirically—the stability assumption.

Attitudinal Models

Attitudinal models find their grounding in social-psychological theories of decision making.[4] In general, these approaches argue that political actors possess ideological attitudes—a set of "interrelated beliefs that describe, evaluate, and advocate action with respect to an object or situation"—that guide their decision making (Rohde and Spaeth 1976, 75, 76). As applied to Supreme Court justices, this model holds that justices are goal-directed actors who want case outcomes to reflect as closely as possible their particular policy preferences. They achieve this goal by voting their raw (sincere) preferences (see, e.g., Segal and Spaeth 1993).

Attitudinal theory qua theory makes no hard and fast presumption that preferences will remain completely consistent over the course of an entire judicial career.[5] Still, the stability assumption creeps into this model in the following

[3] Two exceptions are unpublished essays by Ulmer (1979) and Handberg and Tate (1990). But the researchers came to very different, nearly contradictory, conclusions: Ulmer found that the voting patterns of most justices changed systematically over time; Handberg and Tate concluded that the stability assumption is largely accurate.

[4] Certainly the first version of the attitudinal model, offered by Schubert (1965), draws heavily on the work of psychologist Clyde Combs. Later versions find their grounding in both the social-psychological and economic literatures (see, e.g., Rohde and Spaeth 1976, chap. 4).

[5] It is worth noting, however, that psychological paradigms on which some variants of attitudinalism rest characterize an attitude as, among other things, "relatively enduring" (Rohde and Spaeth 1976, 72).

ways. First, since many practitioners assume that "individual justices' policy positions generally remain stable over time" (Baum 1992, 6), they attribute observed alterations in behavior to issue fluctuation—and not preference change. Or, to put in scaling terms, the *i*-points (ideal points) of justices over particular dimensions (such as civil liberties) remain constant over the course of their careers; it is the *j*-points (representing the placement of cases along the policy dimension) that change. If, for example, the *j*-points move to the right, it would become more "difficult" for justices to vote in a conservative direction. Hence their votes would change but not because of alterations in their preferences.

Second, the stability assumption lies at the core of many empirical tests of the attitudinal model. For example, when scholars seek to show that attitudes influence votes, they often treat the independent variable (an attitude) as if it remained stable, taking seriously the assumption that individual voting patterns evince swings only as a result of issue changes. Consider the Segal/Cover scores (1989),[6] which have been used in numerous studies of Supreme Court decision making that invoke the premises of the attitudinal model. These scores inherently treat preferences (which they purport to measure) as if they were stable because the scores are the same for justices over the course of their entire careers; once assigned they do not change. Using the partisan identification of justices (or the party of the appointing president) as a preference measure—another common approach to testing the attitudinal model (see, e.g., George and Epstein 1992)—is no different. Once one argues that party affiliation provides a reasonable gauge of judicial preferences, one is saying that preferences remain stable. It is also not atypical for scholars to invoke the stability assumption when they measure the attitudinal model's dependent variable—votes. Studies (e.g., Segal et al. 1995) that seek to explain justices' entire voting records in a particular issue area (e.g., civil liberties) are illustrative. Not unusually, these kinds of investigations aggregate that career to a single percentage. Thus, they necessarily adopt the stability assumption because, as Tate (1981) explains, this approach presupposes that "a justice's voting record across his entire career is an acceptable estimate of his voting at different times during that career, despite differences in cases and colleagues" (358).

Has the stability assumption served attitudinalists well? By most accounts the answer is yes: Virtually all of the studies cited above have achieved a very high degree of success in predicting votes. Segal and Cover (1989), for example, found that their score explains 60% of the variance in the voting records of justices in civil liberties cases; George and Epstein (1992) demonstrated that judicial preferences (as measured by the appointing party of the president) go a long way toward predicting votes in death penalty cases. And so on.

[6] Segal and Cover (1989) content-analyzed newspaper editors' assessments of justices' ideological values prior to their confirmation by the Senate. The resulting scores range from −1 (unanimously conservative) to 0 (moderate) to +1 (unanimously liberal).

Rational Choice Models

Many rational choice accounts of judicial decision making begin with the same assumption as the attitudinal school—that justices are goal-directed, single-minded seekers of legal policy. But, unlike the attitudinal model, most choice theories emphasize that these goal-directed actors operate in *strategic* or interdependent decision-making context: The justices realize that their "fates" depend on the preferences of other actors (such as Congress, the president, and their colleagues) and choices they expect those other actors to make—not just on their own actions (see, e.g., Epstein and Knight 1998; Eskridge 1991a, 1991b).

Rational choice models do not enjoy the long tradition in the study of law and courts as do attitudinal theories. Yet, they are gaining ground because their assumptions seem reasonable to make and because they provide a potentially powerful set of tools to unravel the complexities of judicial decision making. By the same token, initial tests indicate that choice models generate plausible predictions about judicial decisions (see, e.g., Spiller and Gely 1992; cf. Segal 1997).

Interestingly, these tests tend to operate under the same stability assumption as do investigations of the attitudinal model, even though there is nothing inherent in choice theory to suggest that preferences remain stable over the course of a justice's career. Consider, for example, Eskridge's (1991a) work on decision making in civil rights cases. In locating the Court's position in policy space, he occasionally invokes the Segal/Cover scores; empirically speaking, then, the posited position for the Court can change only as a result of membership changes (or alterations in the composition of other institutions). Spiller and Gely's (1992) work is also instructive. To measure judicial preferences, they use the percentage of justices who affiliate with the Democratic Party, another indicator that can change only as new members join the Bench. In both sets of studies, it is worth noting, the stability assumption appears—just as it does in attitudinally grounded work—to be a plausible one to make, for the researchers claim a high degree of explanatory power.

Preference Changes: Do They Occur and Does It Matter If They Do?

Given that two of the more influential models of Supreme Court decisions invoke, in one way or another, the stability assumption, is there any reason to question it? To this we respond positively: Scattered anecdotal and systematic evidence leads us to suspect that not all justices evince stable voting behavior over their careers. Below we consider that evidence, as well as explore the consequences of relaxing the stability assumption for empirical treatments of decision making.

Scattered Evidence Supporting Preference Change

One does not have to look too far or wide to find reports of preference change among some justices. During the past decade or so, the law reviews have been full of articles attesting to changes in Harry Blackmun's political attitudes (see,

e.g., Kobylka 1985). Although Blackmun himself denies these charges—attributing supposed changes to shifts on the Court—it is hard to believe that the same man who dissented in *Furman* (1972) wrote, 22 years later, "From this day forward, I no longer shall tinker with the machinery of death" (*Callins* 1994).

Anecdotal evidence aside, several systematic studies give us pause to rethink the stability assumption. In a 1992 article, Baum considered the merits of the conventional explanation of collective voting change on the Supreme Court—that it is primarily a function of the periodic turnover on the Bench. The results surprised even Baum: To be sure, membership change is a "primary source of change in [the Court's] decisional tendencies . . . [but] it is not as dominant as many observers think." He further noted, "Most of the changes in voting behavior that occurred during the 1946–85 terms included at least some element of change in the voting behavior of continuing members, and this component of change played a surprisingly large role in the development of the early Warren Court and in the Court's conservative movement during the Burger Court." But, ultimately, Baum concluded that it was issue alterations, rather than position change, that accounted for the bulk of the vote change. For, even though his method did not permit him to separate the effects of issue change from individual change, he thought it "quite unlikely that so many justices simultaneously underwent a change of heart" (21).

Ulmer's conclusions (1973, 1981) about the voting patterns of Hugo Black and William O. Douglas were less circumspect. After examining their career support of civil liberties claims, he found (1981, 403) that both justices "underwent some metamorphosis and that [parabolas] accurately depict the contours of that change." Ulmer offered four explanations—all of which turned out to be significant—for these rather startling findings. First, he posited (1981) that because the Supreme Court is a "small group," members should conform to "the will of the majority." In other words, he anticipated high correlations between the Court's support for civil liberties and those for Black and Douglas. Second, he hypothesized that because justices were more likely to support one or more component parts of civil liberties (such as First Amendment) over another (such as criminal procedure), changes in the case mix would produce changes in overall support for civil liberties. Third, he supposed that because "service on the Court is a learning process" the length of a judicial career itself would promote change. Fourth, Ulmer argued (1973, 150) that because justices have knowledge of national trends, their behavior may be affected by environmental factors.[7]

[7] Building on Ulmer's work, Atkins and Sloope (1986) provided perhaps the most pointed challenge to the stability assumption. They too focused on Black but found that his preferences shifted even after controlling for changes in case stimuli and in the Court's level of support. As they put it, "[T]ime [has] a strong and statistically significant effect that accounts for the decline in Black's level of support" (635). Explaining this finding was beyond the scope of their research, but they guessed it was "possible that Black's political instinct alerted him to the limits of his liberalism in the 1960s" (637).

Brenner and Arrington (1983) also reexamined Ulmer's (1981) study of Douglas, finding that Douglas was a consistent civil libertarian. But they cannot make claims about Douglas's entire career since they started their analysis with the 1946 term.

Finally, we should take note of the literature on vote fluidity. Brenner's (1989) work shows that during the Vinson and Warren Court eras at least one justice changed his vote between conference and publication of the final opinion in about 50% of the cases. One explanation for this finding, of course, may lie in individual preference change, but as Maltzman and Wahlbeck (1996) assert, many others exist, including institutional and strategic considerations.

Implications of Preference Change for Empirical Work

To be sure, these studies do not provide conclusive evidence of sincere preference change among the justices: Baum's approach did not permit him to apportion precisely collective vote alterations between issue changes and individual position changes; Ulmer's work is limited to two justices; and Brenner's finding, while raising the possibility of preference change, could be the result of other forces. Still, these efforts, coupled with the anecdotal evidence, are suggestive. After all, if Douglas—who many scholars consider the quintessential liberal voter—underwent such a dramatic change (at least part of which cannot be attributed to *j*-point shifts), then it is certainly possible that other justices have experienced an equally striking "metamorphosis."

If we take previous research seriously, then we might plausibly conclude that the stability assumption does not rest on as firm ground as it appears. The questions remain: Of what consequence would that be for models of decision making? Should it matter to scholars whether preferences remain stable or not? On a theoretical level, the answer to these questions is probably no because, as we suggested above, neither attitudinal nor rational choice models qua models deny the possibility of preference change. On an empirical level, though, the answer is a resounding yes, with work on the "freshman effect" providing a prime example. Some of the more important studies published in this area (e.g., Hagle 1993) operate under the premise depicted in Figure 1a: Once justices "acclimate" (say, after a year or two), they evince relatively stable voting behavior—or, at least, behavior anticipated by the attitudinal model. If this assumption is accurate, then it is not unreasonable to follow the kind of research strategy adopted by Hagle: compare the proportion of conservative votes cast by jurists during the first two years of their careers with the proportion cast during the remaining terms. But, as Figure 1b shows, if this assumption fails to hold, then a comparison between the first two terms and the remaining ones could easily lead to errors in inference. Based on Hagle's method it would be possible to conclude that a freshman effect existed for Figure 1b data: after all, the comparison would be between the first two years (10% and 20%) and the remaining ones (65%). But, of course, that conclusion would miss the larger point; the first two years were simply the start of a monotonically increasing liberal pattern, not evidence of a freshman effect.

FIGURE 1

Hypothetical Voting Patterns

Figure 1a

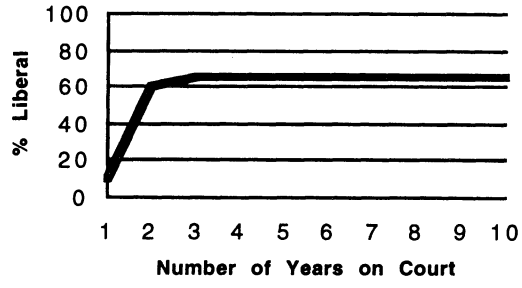
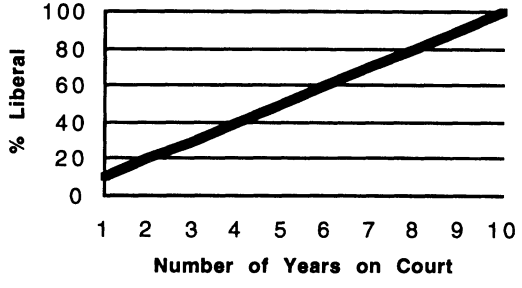


Figure 1b



Rational choice work that treats preferences as stable is subject to the same inferential pitfalls. Consider Figure 2, which shows two distributions of preferences over a policy space. Given the stability assumption, these configurations—*empirically speaking*—remain constant unless a turnover occurs in the composition of the institutions, and that change generates a reordering of the players. So assume, for a moment, that Figure 2b shows an alteration in the distribution as a result of a turnover in institutional composition.

Based on the position of the ideal points depicted in Figure 2a and the common assumption that the Court makes the first "move," the equilibrium result is $x \approx J$. In other words, rational choice theory would predict that the Court would

FIGURE 2

Hypothetical Distributions of Preferences

Figure 2a. Equilibrium Result, $x \approx J$

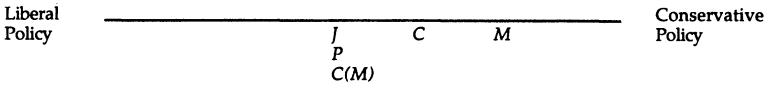
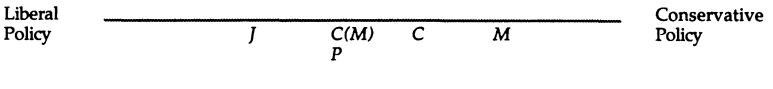


Figure 2b. Equilibrium Result, $x \approx C(M)$



Note: J is the justices' preferred position based on the attitudes of the median member of the Court; M and P denote, respectively, the most preferred positions of the median member of Congress and the president; C is the preferred position of the key committees in Congress that make the decision of whether or not to propose legislation to their respective houses; and $C(M)$ represents the committees' indifference point (between their preferred position and that desired by M).

Adopted from: Eskridge 1991b.

read its raw preferences into law.[8] Figure 2b yields a very different expectation. Because the Court's preferences are now to the left of $C(M)$, it would not vote sincerely; the equilibrium result is $x \approx C(M)$. Suppose, however, that Ulmer and the others are right and the Court's ideal point can move as a result of changes in sincere individual preferences—and not solely as a result of membership turnover (i.e., it would be possible for the configuration depicted in Figure 2b to occur without any changes in institutional composition). Surely, if that were the case, we would run the risk of making incorrect predictions about voting behavior and of rejecting hypotheses out of hand.

These are but two examples; we could extend the same logic to all other measures of preferences that assume stability. The general point, though, would be the same: If the assumption does not hold, errors in inference may result when scholars attempt to test specific propositions flowing from virtually any policy-based decision-making model.

Research Strategy

Where do the above discussions lead us? On the one hand, tests of influential theories—tests that treat justices' sincere preferences as stable—have been quite successful in explaining Court decisions. Those studies, accordingly, suggest that we should anticipate few alterations in the patterns of *individual* judicial voting,

[8] Of course, attitudinal theory would make the same prediction. The difference between the two approaches is seen in Figure 2b, where the attitudinal model would still predict $x = J$.

once controls are established for changes in issue stimuli. On the other hand, scattered (but systematic) evidence indicates the presence of change for some of the justices. If those studies are generalizable, then we might expect to find substantial alterations in the individual positions of many of the justices.

Obviously, therefore, any particular prediction about preference change could find some support. So our task becomes one of investigating competing claims about the nature of preferences. To accomplish this, we describe the voting patterns of justices over time. That is, we run a series of tests to determine whether or not they evinced significant linear or nonlinear change. Our independent variable, accordingly, is "time" (represented by a counter) even though we recognize that "time" itself is not a particularly interesting or explanatory variable. But, in this note, we only seek to describe preference patterns, not explain them. *After all, before we can explain change, we must document whether it in fact exists.*

Our dependent variable is the sincere preference, measured by the vote. More specifically, the data consist of the voting records of the 16 justices who sat on the Court for 10 or more terms and who began and completed their service sometime between the 1937 and 1993 terms.[9] The initial vote data are the raw percentages of liberal voting in civil liberties cases. Following Spaeth's definition, the civil liberties category combines criminal procedure, civil rights, First Amendment, due process, privacy, and attorneys.[10]

To build in controls for issue stimuli, we took two steps. First, because massive changes in the various components of civil liberties (criminal procedure, civil rights, etc.) could confound our results,[11] we examined the standard deviations of the mean liberal votes of the components of civil liberties (as a percentage of all civil liberties cases) for each justice. Standard deviations of over .10 would provide some indication that the case mix had experienced some shift over a given career. As it turned out, only four justices—Reed, Jackson, Burton, and Frankfurter—produced standard deviations of around .10, and only for criminal cases at that. (The rest of the justices yielded relatively low standard

[9] Excluded from consideration, then, were justices who began their careers prior to 1937, even if they were still on the Court after 1937 and those who began their service after 1937 and remain on the Court. We excluded sitting justices, even those who have served 10 or more terms, because we would not know if we were making a correct inference of change (or stability) based on less-than-full career voting records. To see this problem, consider a sitting justice whose preferences were reasonably stable *to date* but became increasingly liberal with time.

[10] The data for the 1946 through 1993 terms come from Spaeth's U.S. Supreme Court Judicial Data Base. Data for the 1937 through 1945 terms are from a preliminary version of an NSF-funded project designed to be compatible with the Spaeth data. All data, along with complete definitions of civil liberties and liberalism, are available at: http://www.artsci.wustl.edu/~polisci/epstein/

[11] To see why, consider a justice who typically casts about 80% of her votes in the liberal direction in civil rights cases but only 20% in criminal procedure cases. If formally decided civil rights cases (as a percentage of all civil liberties cases) declined precipitously, while criminal cases increased dramatically, then our justice would appear to be becoming far more conservative, even though her preferences may have remained stable.

deviations across all issue areas.) For these four justices, we inspected the correlations between their voting in criminal cases and the other components of civil liberties. Burton and Reed produced moderately high correlations (both over .33) meaning that, even though the percentage of criminal cases varied over the course of their careers, we need not worry too much since their support for criminal procedure issues moved in roughly the same direction as it did for other components of civil liberties. Jackson and Frankfurter, however, yielded negative correlations. Hence, in the analysis to follow we extract—for Jackson and Frankfurter—criminal procedure cases from the civil liberties category.

Case mix is only one potential issue stimuli problem. Another is that civil liberties issues can become "harder" or "easier" over time. This is important, for even if the *i*-points of the justices remain constant throughout their careers, the percentage of liberal votes cast, say, may appear to decline if the *j*-points move to the left. To account for this possibility, we corrected the raw vote percentages using the procedure advocated by Baum (1988, 1995). As developed by Baum, this adjustment requires researchers to compute the median change in support for continuing justices for each adjacent pair of natural courts. Since we are interested in annual changes, we simply calculated the difference between each justice's vote from one term to the next. For example, during the 1937 term Justice Black took the liberal position in 51.7% of the cases; that figure was 52% for the 1938 term. The .3 difference between Black's votes during these terms represents the median change among all justices who also served during both these terms, and serves as the measure of issue change for the 1938 term. Specifically, this figure of .3 means that, on average, the facts of the cases that the Court heard and decided in 1938 made it easier for the justices to cast liberal votes than did those presented in the previous term. Had a negative value resulted, we would say that the facts made it more difficult for the justices to cast liberal votes. These calculations resulted in a "Baum-adjusted" percentage for each justice for each term.

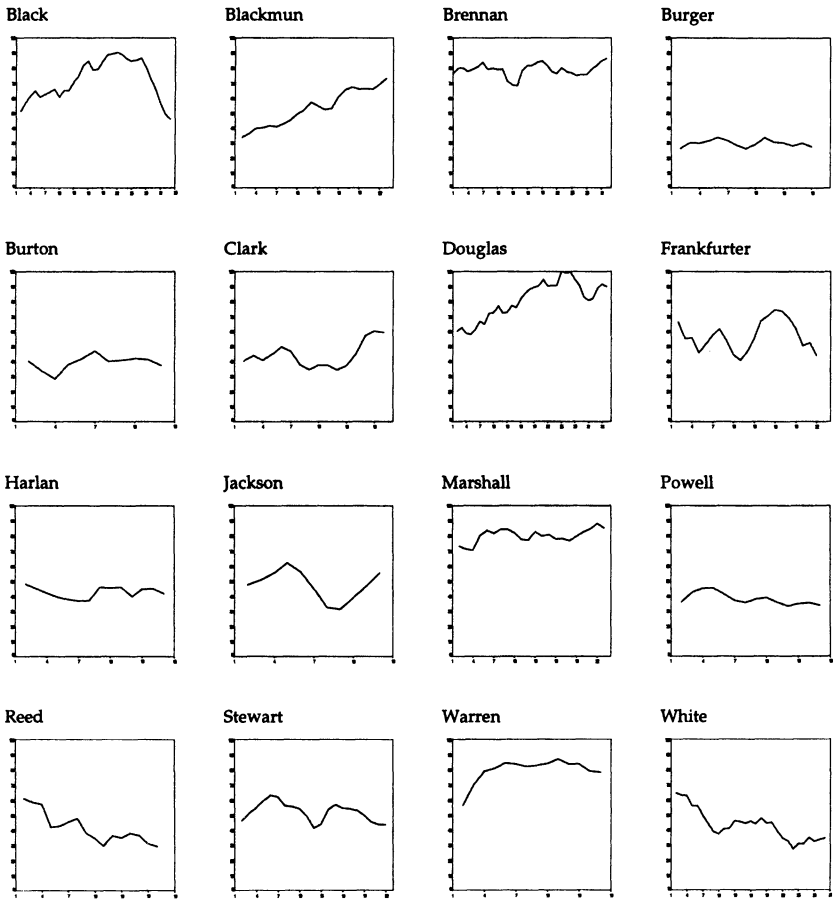
Results

As is appropriate with longitudinal data, we begin our investigation with a visual test of the stability assumption. Figure 3 displays pictures of the Baum-adjusted career vote records of the 16 justices. While the plots are presented on the same metric (0–100%), note that we have smoothed the data by taking a centered moving average. We did this so that we could obtain some indication of the shapes of judicial preferences, without the distraction of random movement.

What does this visual inspection reveal? Overall, we see a complexity in voting patterns that is far greater than the extant literature suggests. The preferences of some justices appear to have changed in linear ways: Blackmun grew monotonically more liberal over time; Reed, more conservative. Others altered in nonlinear ways: as Ulmer (1973) suggested, Black's pattern looks like a

FIGURE 3

Justices' (Baum-Adjusted) Support for Civil Liberties Cases



Note: The x-axis represents the number of terms served on the Court; the y-axis is percent liberal support (range 0–100). The data used in the graphs are three-year, centered moving averages. The data for Frankfurter and Jackson include all civil liberties cases except criminal procedure.

parabola. The voting patterns of Marshall and Brennan, in contrast, remained relatively constant over the course of their careers.

The most important lesson, then, from our visual test is this: Since we are interested in determining if a significant relationship exists between preferences and time (again, our goal is largely descriptive as opposed to explanatory), these pictures suggest that we approach our modeling task differently for each justice.

For example, because Black's votes are clearly nonlinear, simply correlating his adjusted percentage with time is not sensible; rather, we would want to model his preferences in a way that could capture the curvilinear nature of the change. Hence, for each justice we devised—based on our visual inspection of the data depicted in Figure 3—a distinct modeling strategy. These are listed in Table 1, along with the coefficients and relevant summary statistics. (The results in the table are based on the actual Baum-adjusted percentages, not on the smoothed values.)

As noted, the preferences of seven justices (Brennan, Burger, Burton, Harlan, Jackson, Marshall, and Stewart) remained constant over the course of their careers; three met a minimal level of statistical significance (Clark, Frankfurter, and Powell); and the balance changed in significant linear or nonlinear ways. Of particular interest, of course, are the results for Black and Douglas. On the one hand, they confirm Ulmer's (1973, 1981) finding that quadratic models do, indeed, capture their vote patterns. On the other, they shore up a fundamental problem with relying on studies of one or two exemplars: Black and Douglas are the only justices in our study who fit this pattern.

A second result concerns the importance of accounting for issue change in longitudinal analyses of individual-level decision making. This lesson emerged quite clearly when we reestimated the models depicted in Figure 1 using the raw votes (rather than the Baum-adjusted ones) and found nontrivial differences. Jackson and Stewart, who evince no significant change in preferences in Table 1, exhibit quadratic patterns of change when we fail to control for issue alteration. Invoking the Baum procedure to adjust Clark's votes suggests that he became more liberal over time (see Table 1), but his raw votes reveal no significant change. Powell and Warren, whose adjusted votes resemble a cubic, also exhibit different patterns when we ignore issue change: Powell's show no significant trend over time, while Warren's resemble a quadratic pattern. Even our interpretation of Black's and Douglas's patterns would change without the Baum adjustment—with Douglas's fitting a cubic and Black's, a linear model.

Finally, we should note that our results may go some distance toward explaining the occasionally counterintuitive or anomalous finding in the extant literature. Reconsider research on the freshman effect, and recall Hagle's (1993, 1147) comparison of votes cast by jurists during the first two years of their careers with those cast during the remaining terms. This design strategy led him to conclude that "significant acclimation effects" existed for 9 of the 13 justices under analysis, including White and Blackmun. Our examination, however, suggests quite a different conclusion. Neither Blackmun nor White evinced a freshman effect; rather, their votes in the first two terms were part of broader linear trends (an upward one for Blackmun and a downward one for White).

Also consider the attempt by Segal et al. (1995) to correlate measures of judicial attitudes that are independent of the vote (the Segal/Cover scores) with the aggregated voting records of justices who served since the start of the Vinson

Court era. Although that effort was largely successful, the resulting model severely underpredicted Douglas's liberalism (Segal/Cover score = .46). We can now understand why. Douglas was in fact no liberal at the onset of his career; he underwent a major change, one which would go undetected by aggregated vote measures. Such a result has obvious implications for scholars testing attitudinal models, but as Figure 2 indicates, it also speaks to those testing rational choice theories. Simply put, our findings suggest that measures of preferences that treat decision making as stable may be less than optimal for longitudinal research.

Yet another example has even more direct bearing on empirical tests of expectations derived from rational choice approaches. For it concerns the median justice, who is often used to signify "the Court" in separation-of-powers games (see, e.g., Figure 2). As mentioned earlier, a typical assumption in these games is that the ordering of the players (the Court as represented by the median justice, etc.) in policy space will remain stable until an institutional turnover occurs. That is because the preferences of the medians are presumed to remain stable. Our results, though, provide some fodder to question this assumption. To see why, consider Figure 4, which shows how Eskridge (1991b) mapped the players' preferences over civil rights legislation. Note that Eskridge assumes that stability exists in the median justices' preferences between 1972 and 1981; or, at the very least, that the Court remains to the right of Congress and the president throughout this period. Note too that Eskridge uses this configuration of preferences, coupled with the logic of rational choice theory, to explain why some Burger Court decisions of the late 1970s appeared more liberal than the median's preference: A majority did not wish to risk override by a legislature it perceived to its left.

But our results admit an alternative explanation. *During this latter period, a period of stability in Court membership,* the median grew increasingly liberal (from .378 in 1975 to .527 in 1977)—due largely to Blackmun's "metamorphosis." And, since we know that Blackmun's movement was part of a larger linear trend, a reasonable interpretation of the resulting (more liberal) Court decisions is that they were based on nothing more than attitudinal factors, independent of congressional desires.[12]

Discussion

These examples, of course, have implications for future research. At the very least, they underscore the importance of our overall finding; namely, alterations in preference patterns are complex, far more so than much of the literature suggests. Some justices do not change over time; others change in linear ways; and still others in nonlinear directions. Even so, we agree with those who suggest

[12] To be sure, our data could also be used to support a rational choice account of Court decisions in the mid- to late 1970s; one could argue that, since the Court's position moved to the left (to align with the president and Congress) during this period, it was free to vote its sincere preferences.

TABLE 1

Models of Preference Change

Justice	*Model*	*Coefficients*				*Adj.* R^2	*SEE*	*F*
		b_0 (t)	b_1 (t)	b_2 (t)	b_3 (t)			
Brennan	no significant change							
Burger	no significant change							
Burton	no significant change							
Harlan	no significant change							
Jackson[a]	no significant change							
Marshall	no significant change							
Stewart	no significant change							
Blackmun	linear	30.02	1.89			.88	4.96	166.24***
		(14.35)	(12.89)					
Clark	linear	35.96	.87			.11	11.03	3.04*
		(6.63)	(1.74)					
Reed	linear	58.39	−1.79			.46	10.08	15.26***
		(11.78)	(−3.91)					
White	linear	59.12	−.99			.57	7.65	41.32**
		(2.82)	(−6.43)					

Black	quadratic	37.76	4.94	−.13		.59	9.68	25.17***
		(5.29)	(7.10)	(−6.87)				
Douglas	quadratic	48.28	3.19	−.06		.69	8.20	39.40***
		(11.27)	(5.99)	(−4.18)				
Frankfurter[a]	cubic	77.64	−9.70	1.01	−.03	.15	14.45	2.40*
		(5.58)	(−2.06)	(2.38)	(2.50)			
Powell	cubic	27.12	6.71	−.86	.02	.30	4.97	3.19*
		(4.23)	(2.12)	(−2.01)	(1.75)			
Warren	cubic	23.58	19.78	−1.92	.06	.83	5.51	25.96***
		(3.32)	(5.64)	(−4.07)	(3.08)			

Note: The following are the equations for the models: Linear: $Y = b_0 + b_1 t$ Quadratic: $Y = b_0 + b_1 t + b_2 t^2$ Cubic: $Y = b_0 + b_1 t + b_2 t^2 + b_3 t^3$

[a]For civil liberties without criminal procedure cases.

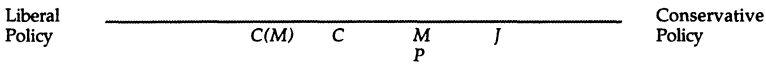
*$p \leq .10$

**$p \leq .05$

***$p \leq .01$

FIGURE 4

Eskridge's (1991a, 650) Mapping of Civil Rights Preferences, 1972–1981



Note: *J* is the justices' preferred position based on the attitudes of the median member of the Court; *M* and *P* denote, respectively, the most preferred positions of the median member of Congress and the president; *C* is the preferred position of the key committees in Congress that make the decision of whether or not to propose legislation to their respective houses; and *C(M)* represents the committees' indifference point (between their preferred position and that desired by *M*).

that "time as a variable has no inherent theoretical meaning" (Kernell 1978, 508); that is, however interesting and, even, important our results may be, they beg the more fundamental question: How might we explain these curious patterns? Or, to put in modeling terms, why is it that some justices seem to discount the past (e.g., Blackmun), while others (e.g., Marshall) never do?

Addressing these questions systematically is beyond the scope of this note and, thus, a task we leave for future research. It is sufficient to write here that we need not approach them blindly, for the existing literature suggests a number of possible responses. One comes from contextual studies of politics, which suppose that the "political behavior of individuals is characterized as contingent on the environment" (Huckfeldt and Sprague 1993). If this is so (that is, if preferences depend in some part on environmental and contextual effects), then those said preferences are susceptible to change. Thus, based on this literature, we might hypothesize that justices are affected by members of their work (i.e., the other justices) and political (e.g., Congress, the president) milieus. Yet, because scholars developed the contextual account to explain preference change among members of the mass public, the question arises: Does it aptly capture the behavior of elite actors, such as Supreme Court justices? Ulmer's (1973, 1981) studies of Black and Douglas suggest that it might, but further investigation is warranted. A second explanation for the alterations depicted in Figure 1 emanates from work finding a relationship between Court output and public preferences. More specifically, some argue that because the Court responds to its external environment, its support for such things as individual rights will necessarily vary over time (see Stimson, MacKuen, and Erikson 1995).

Having now bandied about a possible set of explanations for the observed trends, we realize that difficult questions of measurement remain. How might we best detect whether Court members influence one another's votes? How should we operationally define the Court's external context? These are among the challenges we commend to future researchers who, we hope, will seek to explain the intriguing patterns uncovered here.

Of course, these recommendations pertain most directly to scholars of judicial politics. But the general questions we raise apply to all analysts of the decisions of elite political actors—be they U.S. senators, representatives of interest groups, or members of parliaments. For, more often than not, these scholars too assume stability in sincere preferences—an assumption that permeates their models of behavior and the measures that they use to assess that behavior (see, generally, Epstein and Mershon 1996). We thus urge them to consider whether this is a reasonable assumption to make, and if it is not, to develop explanations for the changes they observe.

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