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

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Do the sincere political preferences of U.S. Supreme Court justices change over time? Scholars of the Court are virtually unanimous in their response: The occasional anomaly not withstanding, most jurists evince consistent voting behavior over the course of their careers (*e.g.,* Baum 1988; Schubert 1974). Since votes constitute the best available gauge of preferences,[1] so the argument typically 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 almost startling to find that scholars have yet to explore rigorously the stability assumption. We seek to fill this rather large void by investigating 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 Supreme Court: the social psychological (attitudinal models) and the economic (rational choice models). In what follows we briefly review these theories with 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. 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). Supreme Court justices, it is supposed under this model, "decide disputes in light of the facts of the case vis-à-vis [their] ideological attitudes and values" (Segal and Spaeth 1993, 65). In other words, justices are goal-directed actors, who "want the outcomes [of cases] to approximate as nearly as possible" their particular policy preferences (Rohde and Spaeth 1976, 72). They achieve this goal by voting their raw (sincere) preferences.

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[1] Still, using votes as preference indicators is not unproblematic. For example, it is possible that justices strategically misrepresent their positions in their votes (for explanations, see Epstein and Walker 1995; Kornhauser 1992).

Attitudinal theory *qua* theory makes no hard and fast presumption that preferences will remain completely consistent over the course of an entire judicial career. Still, the stability assumption creeps into this model in the following ways. First, the psychological paradigms on which some variants of attitudinalism rest characterize an attitude as, among other things, "relatively enduring" (see Rohde and Spaeth 1976, 72; Segal and Spaeth 1993, 69). Second, many practitioners argue that there is "strong evidence" to suggest that "individual justices' policy positions generally remain stable over time" (Baum 1992, 6; see also Baum 1995; Schubert 1974).[2] As a result, Baum (1992, 6; see also Baum 1988, 1995) supposes that if the voting patterns of individual justices exhibit alteration, it is probably due to issue change, rather than to 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 (see, generally, Baum 1988).

Finally, and perhaps most relevant here, is that the stability assumption lies at the core of many empirical tests of attitudinal models. For example, when scholars seek to show that attitudes influence votes, they often treat the independent variable (a preference or 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),[3] which have been used in numerous studies of Supreme Court decision making that invoke the premises of the attitudinal model (*e.g.,* Kearney and Sheehan 1992). These scores inherently treat preferences (which they purport to measures) 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 Segal 1984; 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. Consider studies (*e.g.,* Segal and Cover 1989) that seek to explain justices' entire voting records in a particular issue area (such as civil

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[2] Among the evidence Baum reports (1988, 911 n. 2) are "high correlations between individual levels of support for civil liberties in adjoining natural courts for justices who served in both periods. Of the 11 natural court-to natural court correlations [1946-1985], the median is .96."

[3] 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

liberties). Not unusually, these kinds of investigations aggregate that career to a single percentage. Thus, they necessarily adopt the stability assumption because, as Tate explains (1981, 358), 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."

Has the stability assumption served attitudinalists well? By all 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 nearly 80 percent of the variance in the aggregated 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) went a long way toward predicting votes in death penalty cases. And so on.

Rational Choice Models

Many *rational choice* theories of judicial decision making begin with the same assumption as the attitudinal school—that justices are goal directed, single-minded seekers of legal policy (Eskridge 1991a and 1991b). But, unlike the attitudinal model, most choice theories of judicial decisions emphasize that these goal-directed actors operate in *strategic* or interdependent decision making context: The justices know 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 Ordeshook 1992, Chapter 1).[4] This notion of interdependent choice is important for the following reason. If justices really are single-minded seekers of legal policy, then they necessarily care about the "law," broadly defined. And if they care about the ultimate state of the law—about generating policy that other institutions will not overturn—then they must act strategically, taking into account the preferences of others and the actions they expect others to take. Occasionally, such calculations will lead them to act in a sophisticated fashion (that is, in a way that does not reflect their sincere or true preferences) so as to avoid the possibility of seeing their most preferred policy rejected by their colleagues in favor of their least preferred one, of Congress replacing their preference with its own, of political noncompliance, and so forth (Murphy 1964; Rodriguez 1994).

Rational choice models do not enjoy the long tradition and status in the study of law and courts as do attitudinal theories. Yet, they are gaining ground (*e.g.,* Eskridge 1991a, 1991b; Epstein and Walker 1995;

(unanimously liberal). For a backdated and updated version of the scores, see Segal, Epstein, Spaeth, and Cameron 1995.

[4] In most rational choice models of judicial decisions, thus, it is not enough to say, as the attitudinal model does, that justice X chose action 1 over 2 because she preferred 1 to 2. Rather, the strategic assumption suggests the following proposition: justice X chose 1 because X believed that the other relevant actors—perhaps justice Y or Senator Z— would choose 2, 3, etc., and given these choices, action 1 led to a better outcome for justice X than did other alternative actions (see Ordeshook 1992, 8).

Rodriguez 1994) because their assumptions seem reasonable to make for the Court and because they provide a powerful set of tools to unravel the possible complexities of judicial decision making. By the same token, initial tests indicate that choice-based models generate plausible predictions about judicial decisions (see, *e.g.,* Eskridge 1991a, 1991b; Spiller and Gely 1992).

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.[5] Consider, for example, Eskridge's work (1991a) 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 the preferences of justices, they use the percentage of justices that affiliate with the Democratic party—another indicator that can change only as new members come on the Bench. In both sets of studies, it is worth noting, the stability assumption appears—just as it does in attitudinally-grounded studies—to be a plausible one to make. For the researchers (*e.g.,* Eskridge 1991a, 1991b; Spiller and Gely 1992) 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: Based on scattered anecdotal and more systematic evidence, we 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 attitudinal and rational choice models.

Scattered Evidence

One does not have to look too far or wide to find reports that the preferences of some justices change over the course of their career. During the past decade or so, the law reviews have been full of articles attesting to changes in Justice Harry Blackmun's political attitudes (see, *e.g., Harvard* 1983; Kobylka 1985). Although Blackmun himself denies these charges—attributing supposed changes to shifts to the Court[6]—it is hard to believe that the

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[5] To the contrary, as Eskridge notes (1991a, 385) in one of his studies modeling the separation of powers system, "for most subject areas, the Court/Congress/President game evolves over time. Not only do the players adjust their raw preferences in the short term to accommodate new information and political pressures, but as their personnel and the political landscape change, the players adjust their absolute preferences *and* their comparative preferences (relative to one another) over time." For a more general and technical explanation, see Gibbons 1992.

[6] More specifically, in a conversation with Justice Stevens in the spring of 1994, Blackmun is quoted as saying "neither of us has changed: the Court has changed under us." Blackmun then added: "How much truth there is to that, I don't know." See Greenhouse 1994.

same man who dissented in *Furman v. Georgia* (1972) wrote, in *Callins v. Collins* (1994), that "From this day forward, I no longer shall tinker with the machinery of death." Justice Owen Roberts' "switch in time that saved nine" also presents another change over which scholars have spilled much ink, though in the end that "switch" may have been less a case of a change in sincere preferences and more an example of sophisticated voting (Schubert 1958).

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 in Court personnel. 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 (p. 21) that "[m]ost of the changes in voting behavior that occurred during the 1946-1985 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 "there is good reason to think that issue change [rather than individual position change] accounts for a large portion of this voting change." For, even though his method did not permit him to separate the effects of issue change from individual change, he thought "it would be quite unlikely that so many justices simultaneously underwent a change of heart" (p. 21).

Ulmer's conclusions (1973, 1981) about the voting patterns of Justices Black and Douglas are less circumspect. After examining their support of civil liberties claims over the course of their careers on the Court, 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.[7] 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.[8] Third, he supposed that because "service on the Court is a learning process" the length of a judicial careers themselves would promote "behavioral change[s]" (though he did not specify in what direction—liberal or conservative—the change

[7] The explanations Ulmer offered differed slightly for Black and Douglas. Here we summarize the key findings and use parenthetical notes to indicate whether the explanation was offered for Black (Ulmer 1973) or Douglas (Ulmer 1981).
[8] The case mix explanation was significant for Douglas but not Black.

would occur).[9] Finally, Ulmer argued (1973) that because justices have knowledge of national trends, their behavior may be affected by environmental factors. He found, for example, that as crime rates increased, Black's support for civil liberties claims decreased (1973, 150).

Building on Ulmer's work, Atkins and Sloope (1986) provided, perhaps, the most pointed challenge to the stability assumption.[10] They too focused on Justice 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 (p. 635) "time [has] a strong and statistically significant effect that accounts for the decline in Black's level of support." Explaining this finding was beyond the scope of their article but they guessed that it was "possible that Black's political instinct alerted him to the limits of his liberalism in the 1960s" (p. 637).

Implications of Preference Change for Empirical Work

To be sure, these studies do not provide conclusive evidence of sincere preference change among the justices: Atkins/Sloope and Ulmer limited their work to 1 or 2 justices; Baum's approach did not permit him to apportion precisely collective vote changes between issue changes and individual position changes. Still, the studies, coupled with the anecdotal evidence, are suggestive. After all, if Justice Douglas—who many scholars consider the epitome of the classic, consistent liberal voter—underwent such a dramatic change and at least part of that change cannot be attributed directly 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 still 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 one example of why that would be the case. 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

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[9] Schubert (1983) has argued that justices tend to become more conservative over time. In particular, he attributed Black's growing conservatism to his advancing age (Schubert 1970).

[10] Brenner and Arrington (1983) also reexamined Ulmer's study of Douglas, finding that Douglas was a consistent civil libertarian. But they can hardly make claims about Douglas' entire career since they started their analysis with the 1946 term.

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 does not 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 percent) and the remaining ones (65 percent). 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 freshmen effect.

(Figure 1 about here)

Rational choice work that treats preferences as stable is subject to the same inferential pitfalls. Consider Figure 2, which shows two hypothetical distributions of preferences over a policy space—both of which include of the ideal points of the median member of Congress (M) and the Court (J), key congressional committees (C), and the President (P). It also depicts the point at which the congressional committees are indifferent between their preferred position and that desired by the median member of Congress, C(M). Given the stability assumption, these configurations—*empirically speaking*—remain constant unless a change occurs in the composition of the institutions (*e.g.,* elections for the president and Congress; membership turnover on the Court), 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 change in institutional composition.

(Figure 2 about here)

Based on the distribution of ideal points depicted in Figure 2a and the assumption (common in these games) 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 read its raw preferences into law.[11] Figure 2b yields a very different expectation. Because the Court's preferences are now to the left C(M), it will not vote sincerely since the Committee would override its decision; the equilibrium result is $x \approx C(M)$. What if, however, 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 (*e.g.,* 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.

[11] 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*.

These are but two examples. The same logic could be extended to any other independent or dependent measure of preferences that assumes stability. Simply put, if the assumption does not hold, errors in inference may occur when scholars attempt to test specific propositions flowing from virtually any preference-based decision making model.

Research Strategy

Where do the above discussions lead us? On the one hand, tests of important and influential theories—tests which 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, once controls are established for changes in issue stimuli.[12] 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 changes in the individual positions of many of the justices.

Obviously, thus, any particular prediction about attitudinal 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 change—linear or non linear— over time. Our independent variable, accordingly, is "time," even though we recognize that "time" itself is not a particularly interesting or explanatory variable. But, in this the paper, 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.[13] 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.[14] The initial vote data are the raw percentages of liberal voting in civil liberties cases.[15] Following Spaeth's U.S. Supreme Court Judicial Database definition, the civil

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[12] Under the stability assumption, models of Court behavior require controls for changes in the issue stimuli and membership (see Baum 1988, 1992, 1995).

[13] Using votes as measures of preferences has its problems (see note 1). But they are still the best available gauge of preferences (see Epstein and Mershon 1996; Spaeth 1995).

[14] Excluded from consideration, then, were justices who begin their careers prior to 1937, even if they were still on the Court after 1937 (*e.g.,* Harlan Fiske Stone) and those who begin their service after 1937 and remain on the Court (*e.g.,* Sandra Day O'Connor).

[15] 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 a NSF-funded project designed to be compatible with the Spaeth data base. All data are or will be archived with the ICPSR. We use civil liberties cases because there are ample numbers of them per term.

liberties category combines criminal procedure, civil rights, First Amendment, due process, privacy, and attorneys. (For more complete definitions of civil liberties and liberalism, see Epstein, Segal, Spaeth, and Walker 1994, 455.)

To build in controls for issue stimuli, we took the following steps. We first examined the various components of civil liberties (criminal procedure, civil rights, etc.) to determine whether they changed substantially over time. This step was necessary because massive changes in the subcase mix could confound our results (see Atkins and Sloope 1986; Ulmer 1973).[16] For each justice, we examined the standard deviations of the components of civil liberties (as a percentage of all civil liberties cases) during the time of their service. Standard deviations of over .10, we thought, 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 reasonably low standard deviations across all issue areas). For these four justices, we explored the correlations between their voting in criminal cases and the other components of civil liberties. Burton and Reed produced high correlations, meaning that even though the percentage of criminal cases varied over the course of their career, we need not worry too much since their support for criminal issues moved in roughly the same direction as it did for other components of civil liberties. Jackson and Frankfurter, however, yielded negative correlations for criminal and civil rights. Hence, in the analyses 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, as Baum has suggested, is that civil liberties issues can become "harder" or "easier" over time. This is an important point, for even if the *i*-points of the justice 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 control for this possibility, we "corrected" the raw vote percentages using the procedure advocated by Baum (1988): For each adjacent pairs of natural courts, we computed the median change in support for continuing justices (see Baum 1988, 908 for details); we then subtracted that figure from each justices' raw percentage for those terms contained in the natural court era. These computations resulted in a "Baum" adjusted percentage for each justice for each term.

Results

[16] To see why, consider a justice who typically casts about 80 percent of her votes in the liberal direction in civil rights cases but only 20 percent 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 actually may have remained stable.

As is appropriate with longitudinal data we begin our investigation with a "visual test" of the stability assumption. Figure 3 displays pictures of the 16 justices' adjusted vote records over the course of their career. While the plots are presented on the same metric (0-100 percent), note that we have smoothed the data by taking a moving average. We did this so that "the eye not be distracted by random movement" and so that we could obtain some indication of the shapes of judicial preferences (see MacKuen, Erikson, and Stimson 1989, 1130-1131).

(Figure 3 about here)

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 change in linear ways: Blackmun seems to have grown monotonically more liberal over time; Reed—more conservative. Others changed in non-linear ways: as Ulmer suggested, Black's pattern looks like a "parabola," as does Powell's. The voting patterns of Marshall and Brennan, in contrast, appear to have changed very little over their Court careers.

Perhaps, then, the most important lesson from our visual test is this: Since we are interested in determining if any significant relationship between preferences and time exists (again, our goal at this point 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 non-linear, simply correlating his adjusted percentage with time is not sensible. Rather, we 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 2—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.)

(Table 1 about here)

As noted, the preferences of four justices (Brennan, Burton, Frankfurter, Marshall) evinced no major change over the course of their careers, and our attempt to model a fifth's pattern (Burger) was largely unsuccessful. Jackson presents a somewhat mixed case. His liberal votes in all civil liberties cases declined significantly over his career but, when we extract the criminal cases, no change emerges. In other words, only in criminal cases did Jackson's preferences undergo a major alteration.

The findings are clearer for the remaining ten justices, all of whom changed in statistically significant linear or non-linear ways. Of particular interest, of course, are the results for Black and Douglas: They confirm Ulmer's finding that quadratic models do, indeed, capture their vote patterns.

What is equally as fascinating (and not entirely unanticipated [see Figures 1 and 2]) is that our results may go a long way toward explaining the occasionally counter-intuitive 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, though, 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 (using the Segal/Cover score) ideological attitudes 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' liberalism (his ideological value score is .46) and overpredicted Jackson's (his value score is 1.00). We can now understand why. Douglas was in fact no liberal at the onset of his career, nor was Jackson a conservative. Both underwent a major change, one which would go undetected by aggregated vote measures. Such a result has obvious implications for scholars invoking attitudinal models but, as the example depicted in Figure 2 indicates, it also speaks to those working in the rational choice. Simply put, our findings suggest that measures of preferences, which treat decision making as stable, may be less than optimal for longitudinal research.

A final 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 Congress, as represented by the median legislator; 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 stability 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 "a number of...Burger Court decisions in the late 1970s...appeared more liberal than the Court's own preferences" (*e.g.,*

United Steelworkers v. Weber [1979]; *United States v. Board of Commissioners* [1978]): The Court did not wish to risk override by a legislature it perceived to its left.

(Figure 4 about here)

But our results admit an alternative explanation. *During this latter period, a period of stability in Court membership*, the median justice grew increasingly liberal (from Baum adjusted scores of 41.1 and 38.4 in the 1975 and 1976 terms to 56.0 in 1977)— due largely to Blackmun's "metamorphosis." And, since we know that Blackmun's movement was part of 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.[17]

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 appear to change over time; others appear to change in linear ways; and still others in non-linear directions. Even so, we agree with those scholars who suggest 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 it 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 particular paper and, thus, a task we leave for future research. It is sufficient to note for now that we need not approach these questions blindly, for there exists an important body of literature that may prove quite useful. That literature invokes a contextual theory of politics to study individual choice. As two leading proponents of contextual theory, Huckfeldt and Sprague (1995, 12), explain it: "We understand individual choice as being located at the intersection between individual purpose, individual cognition, and individual preferences on the one hand, and environmentally imposed opportunities and constraints on the other." The difference between this approach and other theories of behavior is evident: "the distinguishing irreducible element of a contextual analysis is that, in addition to measures of individual properties and preferences, the political behavior of individuals is characterized as contingent on the environment" (Huckfeldt

[17] 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.

and Sprague 1993).[18] In other words, if opinion formation depends in some part on environmental and contextual effects, then those said opinions are susceptible to change.[19]

This, at least, was the lesson of MacKuen and Brown's (1987) classic study on political attitude change. They hypothesized that alterations in citizens' views of Reagan could be explained, in part, by their social environments. To capture that notion of context (or environment) they employed two definitions: the macroenvironment (the long-term partisan orientation of the respondents' counties) and the microenvironment (respondents' perception of their neighbors' partisanship). The results, as they (p. 484) explain, were crisp:

> We were able to confirm the basic proposition that individuals' political views are subject to social influence. The expected effects appear in both the county- and neighborhood-level analysis, and crucially, stand out in individual attitude changes over time. Beyond ascertaining existence, the analysis shows that context operates through interactions with identifiable friends and neighbors: concrete personal relations rather than amorphous community norms are the proximate cause... We are convinced that the social factor in shaping political information and political evaluation is real, tangible, and important.

Based on these findings, we might simply hypothesize that justices are affected by their work (*e.g.,* the other members of the Court) and political (*e.g.,* Congress, public opinion, etc.) milieus. But this would be too simple, because contextual theory does not anticipate that environments will impact all individuals equally. Quite the contrary: research clearly indicates that individuals without strong prior beliefs are more susceptible to persuasion than those whose views are established. As Kenny (1994, 717) explains: "One of the most important aspects of political attitudes is the intensity which they are held. It stands to reason that strongly held attitudes are harder to change. Individuals holding attitudes of this sort are less tolerant of opinions that differ from their own and, thus, are less likely to influenced by the bearer of such messages" (see also Milburn 1991).

Taking this finding to heart, contextual theory would lead us to the following general expectations about the changing nature of judicial preferences. First, justices who came on the bench with strongly-held beliefs about civil liberties would be less open to influence and, hence, less likely to change their sincere preferences over time; they would, in other words, be less likely to discount the past. And, second, those justices who ascended to the Court with weakly-held beliefs would be more susceptible to their environment(s) and contexts and, hence, more

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[18] Huckfeldt and Sprague (1995) provide many examples (and, of course, empirical results) to support this perspective. Moreover, Chapter 1 of their book (1995; see also Huckfeldt and Sprague 1993) contains an excellent review of the vast literature in this area. Interestingly, they trace the roots of modern-day contextual analysis to Durkheim (1951 [1897]), Tingsten (1963 [1937]), Key (1949), and Berelson et al. (1954). Prominent later-day examples are Finifter (1974) and Carmines and Stimson (1989).

[19] An environmental effect is "any effect on individual behavior that arises due to extraindividual factors. In contrast, a contextual effect is any effect on individual behavior that arises due to social interaction within an environment." For a variety of reasons, Huckfeldt and Sprague (1995, 10) argue that analyses of contextual effects should consider both kinds—

likely to change their sincere preferences over time; they would, in other words, be more likely to discount the past.[20]

Having now bandied about a possible set of explanations for the observed trends, we realize that difficult questions of measurement remain. How might operationally define the Court's micro- and macro-contexts? How should we tap important notions concerning the nature of beliefs (strong or weak) held by justices before they ascend to the Bench? These are among the challenges we commend to future researchers who, we hope, will seek to explain the intriguing patterns uncovered here.

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and we agree.

[20] Of course, no correlation necessarily exists between extremeness and intensity. For example, one can be extremely moderate.

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Figure 1. Hypothetical Voting Patterns

Figure 1a

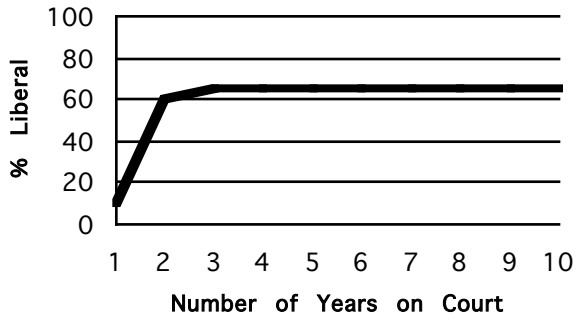


Figure 1b

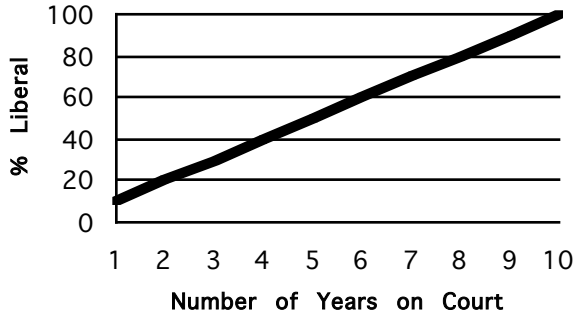


Figure 2. Hypothetical Distributions of Preferences

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

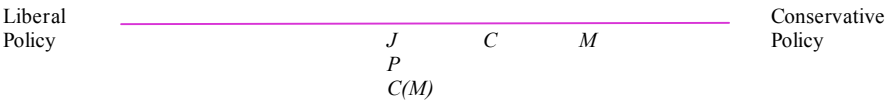
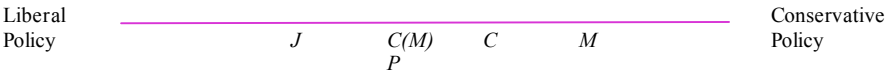


Figure 2b. Equilibrium Result, $x \approx C(M)$



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.

Table 1. Models of Preference Change

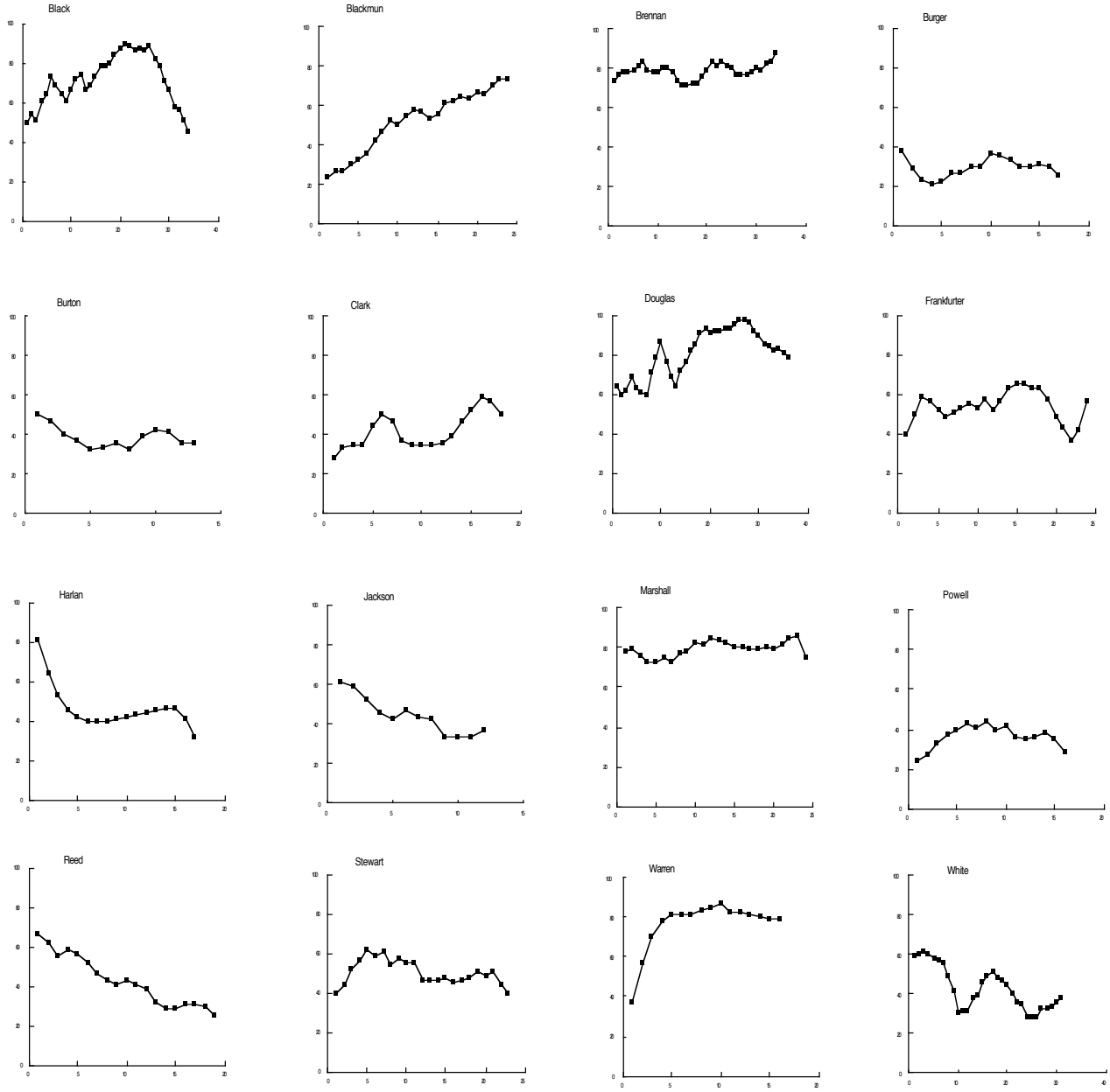
Justice	*Model*	*Coefficients* b_1 (t)	b_2 (t)	b_3 (t)	*Adj.* r^2	*SEE*	*F*
Brennan	no significant change						
Burton	no significant change						
Frankfurter[a]	no significant change						
Jackson[b]	no significant change						
Marshall	no significant change						
Blackmun	linear	2.13 (11.44)	---	---	.85	6.33	130.82**
Clark	linear	1.17 (2.63)	---	---	.26	9.78	6.93**
Jackson[c]	linear	-2.53 (-3.98)	---	---	.57	7.60	15.87**
Reed	linear	-2.14 (-7.13)	---	---	.73	7.16	50.84**
White	linear	-.91 (-4.73)	---	---	.42	9.59	22.33**
Black	quadratic	4.51 (6.25)	-.12 (-5.99)	---	.53	10.03	19.59**
Douglas	quadratic	3.32 (2.42)	-.06 (-4.06)	---	.57	9.45	24.69**
Powell	quadratic	4.58 (3.47)	-.26 (-3.39)	---	.40	5.71	6.01**
Burger	cubic	-7.37 (-2.39)	1.06 (2.71)	-.04 (-2.79)	.28	5.36	3.05
Harlan	cubic	-19.10 (-4.11)	2.11 (3.57)	-.07 (-3.21)	.53	8.09	7.04**
Stewart	cubic	6.57 (2.50)	-.62 (-2.50)	.02 (2.25)	.23	7.50	3.15*
Warren	cubic	19.15 (5.95)	-1.89 (-4.37)	.05 (3.38)	.84	5.05	28.03**

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]Frankfurter evinces no significant change in civil liberties cases, in subsets of civil liberties cases, or in civil liberties cases without criminal procedure cases
[b]Jackson for civil liberties without criminal procedure cases.
[c]Jackson for all civil liberties cases.

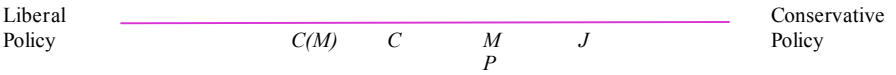
** $p \leq .01$
* $p \leq .05$

Figure 3. 16 Justices' (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 (ranging from 0-100).

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*).

Appendix
Justices' Support for Civil Liberties (Percent Liberal)

TERM	BAUM ADJ.	BLACK	BLACKMUN	BRENNAN	BURGER	BURTON	CLARK	DOUGLAS
1937	.00	50.00	.	.	.	.	.	.
1938	2.20	52.20	.	.	.	.	.	.
1939	7.30	71.40	.	.	.	.	.	71.40
1940	7.30	47.60	.	.	.	.	.	45.00
1941	-15.60	64.50	.	.	.	.	.	62.50
1942	-15.60	56.60	.	.	.	.	.	54.70
1943	8.55	75.00	.	.	.	.	.	67.90
1944	8.55	75.80	.	.	.	.	.	67.70
1945	1.85	60.50	.	.	.	52.60	.	65.80
1946	-7.05	48.70	.	.	.	25.60	.	52.60
1947	-7.05	78.00	.	.	.	50.00	.	78.30
1948	-7.05	66.70	.	.	.	23.10	.	75.00
1949	7.80	71.40	.	.	.	31.40	36.00	72.70
1950	7.80	71.00	.	.	.	53.10	50.00	73.50
1951	7.80	85.70	.	.	.	38.90	39.30	66.70
1952	7.80	86.80	.	.	.	39.50	38.90	75.60
1953	1.50	82.10	.	.	.	35.70	44.40	85.70
1954	1.50	78.40	.	.	.	52.80	62.20	78.40
1955	1.10	83.30	.	.	.	43.30	48.30	86.70
1956	-.90	94.20	.	72.70	.	30.20	32.10	94.30
1957	.35	87.30	.	78.70	.	36.50	30.60	92.10
1958	1.15	88.10	.	79.10	.	.	41.90	93.00
1959	1.15	91.70	.	77.80	.	.	36.10	91.70
1960	1.15	83.60	.	79.10	.	.	31.30	95.50
1961	1.15	92.10	.	84.60	.	.	43.60	92.30
1962	1.10	88.20	.	84.30	.	.	47.10	94.10
1963	1.10	87.90	.	86.00	.	.	55.20	98.30
1964	1.10	73.80	.	70.50	.	.	59.10	97.70
1965	-5.95	71.70	.	73.90	.	.	58.70	93.50
1966	-5.95	56.90	.	78.00	.	.	43.90	91.20
1967	-.35	60.00	.	77.10	.	.	.	91.40
1968	-.35	50.00	.	79.40	.	.	.	87.10
1969	-6.45	51.60	.	69.20	30.80	.	.	83.10
1970	10.36	55.60	34.60	75.90	36.30	.	.	90.90
1971	10.36	.	37.40	81.80	34.10	.	.	94.50
1972	10.36	.	38.90	86.30	29.50	.	.	91.60
1973	10.36	.	37.10	80.90	30.30	.	.	93.30
1974	10.36	.	46.60	80.80	38.40	.	.	89.10
1975	-3.32	.	32.20	84.40	26.70	.	.	.
1976	-3.32	.	33.30	75.50	17.00	.	.	.
1977	-3.32	.	51.60	79.30	36.00	.	.	.
1978	-3.32	.	45.80	79.30	27.70	.	.	.
1979	-3.32	.	51.20	82.40	35.30	.	.	.
1980	-3.32	.	44.80	72.10	31.30	.	.	.
1981	-2.17	.	59.30	76.50	23.80	.	.	.
1982	-2.17	.	61.00	74.10	28.00	.	.	.
1983	-2.17	.	43.60	74.00	30.90	.	.	.
1984	-2.17	.	51.10	76.40	28.10	.	.	.
1985	-2.17	.	64.90	76.50	23.50	.	.	.
1986	9.00	.	74.50	92.70	.	.	.	.
1987	9.00	.	65.40	82.90	.	.	.	.
1988	-3.20	.	68.70	85.70	.	.	.	.
1989	-3.20	.	58.60	84.30	.	.	.	.
1990	11.10	.	77.60	.	.	.	.	.
1991	2.93	.	73.20	.	.	.	.	.
1992	2.93	.	78.20	.	.	.	.	.
1993	-1.70	.	.	.	.	.	.	.

TERM	FRANK	HARLAN	JACKSON	MARSHALL	POWELL	REED	STEWART	WARREN	WHITE
1937	.	.	.	.	.	66.70	.	.	.
1938	41.70	.	.	.	.	57.10	.	.	.
1939	71.40	.	.	.	.	70.00	.	.	.
1940	52.40	.	.	.	.	57.10	.	.	.
1941	53.10	.	45.50	.	.	46.70	.	.	.
1942	39.60	.	51.10	.	.	41.20	.	.	.
1943	42.90	.	57.10	.	.	44.80	.	.	.
1944	65.50	.	51.60	.	.	54.50	.	.	.
1945	63.90	.	48.20	.	.	47.40	.	.	.
1946	35.90	.	30.60	.	.	23.10	.	.	.
1947	60.70	.	48.90	.	.	40.70	.	.	.
1948	47.50	.	30.80	.	.	32.50	.	.	.
1949	61.10	.	42.90	.	.	33.30	.	.	.
1950	58.80	.	35.50	.	.	41.20	.	.	.
1951	76.30	.	44.40	.	.	31.00	.	.	.
1952	80.50	.	45.20	.	.	35.00	.	.	.
1953	57.10	.	.	.	.	40.00	.	38.50	.
1954	70.30	81.80	.	.	.	27.00	.	61.10	.
1955	67.90	50.00	.	.	.	26.70	.	75.90	.
1956	51.90	50.00	.	.	.	.	.	75.00	.
1957	54.10	42.90	.	.	.	.	.	83.30	.
1958	42.50	44.20	.	.	.	.	41.00	85.70	.
1959	36.10	36.10	.	.	.	.	41.70	80.00	.
1960	34.80	35.40	.	.	.	.	53.00	82.10	.
1961	57.90	51.30	.	.	.	.	66.70	92.10	.
1962	.	35.30	.	.	.	.	54.90	84.30	60.80
1963	.	38.60	.	.	.	.	68.40	87.90	63.20
1964	.	54.50	.	.	.	.	55.80	78.60	60.00
1965	.	37.00	.	.	.	.	54.30	77.30	58.10
1966	.	30.50	.	.	.	.	41.40	78.00	52.60
1967	.	45.70	.	77.60	.	.	63.80	73.90	50.00
1968	.	55.60	.	84.50	.	.	54.00	79.40	61.30
1969	.	46.90	.	69.50	.	.	41.50	.	49.20
1970	.	42.00	.	78.20	.	.	47.50	.	40.00
1971	.	.	.	85.70	34.70	.	64.80	.	49.50
1972	.	.	.	85.70	36.20	.	57.40	.	31.20
1973	.	.	.	83.90	42.00	.	52.30	.	44.90
1974	.	.	.	79.50	52.90	.	57.50	.	49.30
1975	.	.	.	83.90	35.60	.	47.80	.	37.80
1976	.	.	.	76.10	35.10	.	40.40	.	35.10
1977	.	.	.	79.70	47.30	.	54.70	.	53.30
1978	.	.	.	78.30	30.40	.	42.20	.	49.40
1979	.	.	.	86.10	42.70	.	45.90	.	41.70
1980	.	.	.	76.50	34.80	.	36.40	.	44.10
1981	.	.	.	75.90	38.30	.	.	.	45.70
1982	.	.	.	82.50	26.80	.	.	.	36.60
1983	.	.	.	75.00	34.70	.	.	.	33.70
1984	.	.	.	74.70	40.70	.	.	.	30.70
1985	.	.	.	81.40	31.60	.	.	.	32.70
1986	.	.	.	90.50	37.50	.	.	.	26.30
1987	.	.	.	83.30	.	.	.	.	39.70
1988	.	.	.	86.90	.	.	.	.	31.80
1989	.	.	.	88.60	.	.	.	.	27.10
1990	.	.	.	86.20	.	.	.	.	43.10
1991	.	.	.	.	.	.	.	.	41.10
1992	.	.	.	.	.	.	.	.	40.00
1993	.	.	.	.	.	.	.	.	.

Note on the Baum Adjustment: We followed the same procedure outlined in Baum 1988. The median justice change from one natural Court era to the next is depicted above as the Baum adjustment.

*Note on **Civil Liberties*:** The percentages depicted above are justices' support for civil liberties claims. Civil Liberties combines Criminal Procedure, Civil Rights, First Amendment , Due Process. Privacy, as well as cases involving attorney issues (attorneys' fees, commercial speech, admission to and removal from the bar, and disciplinary matters). **Criminal**

Procedure: the rights of persons accused of crime except for the due process rights of prisoners. **Civil Rights:** non-First Amendment freedom cases that pertain to classifications based on race, Native Americans, age, indigence, voting, residence, military or handicapped status, sex, or alienage. **First Amendment:** guarantees contained in this constitutional provision. **Due Process:** non-criminal procedural guarantees, plus court jurisdiction over non-resident litigants and the takings clause of the Fifth Amendment. **Privacy:** abortion, contraception, the Freedom of Information Act and related federal statutes.

Note on Ideology: We use the term "liberal" to represent the voting direction of the justices across the various issue areas. It is most appropriate in the areas of Civil Liberties (Criminal Procedure, Civil Rights, First Amendment, Due Process, and Privacy), where it signifies pro-defendant votes in criminal procedure cases, pro-women or -minorities in civil rights cases, pro-individual against the government in First Amendment, due process, and privacy cases and pro-attorney in attorneys' fees and bar membership cases.

Sources: See footnote 16.