Supreme Court Behavior Under Mandatory Jurisdiction

Benjamin Soltoff and Christopher Zorn

April 14, 2015

Abstract[*]

Scholars have long understood that the process by which the U.S. Supreme Court sets its agenda has important implications for its decisions on the merits, and thus on its ability to shape policy at the national level. Since 1925, however, nearly all of its cases have come to the Court under the same rules regarding the Court's discretionary jurisdiction. This lack of institutional variation makes inferences about the influence of the Court's agenda-setting process on its subsequent decisions difficult. An important exception, however, are cases arising under the Court's original jurisdiction, where the Court is required to hear the case and render a decision. Examining more than six decades of the Court's decisions, we leverage these cases to evaluate how the Court's agenda-setting process shapes a host of Court behavior: votes on the merits, aggregate outcomes, opinion writing, and concurring and dissenting behavior. Our findings offer important insights into how courts' jurisdictional rules shape subsequent decision making.

[*]This paper is a very preliminary draft; its content is certain to change, probably dramatically, in the near future. Please bear this in mind if you choose to cite this paper.

Introduction

More often than not, the study of policymaking is the study of agenda setting. For decades, scholars have emphasized that the policies promulgated by legislatures, agencies, courts, and a host of other bodies depend critically on the manner by which those institutions determine what problems will and will not receive attention. The significance of agenda processes, however, goes beyond its influence on which decisions do and do not get made. Because agenda processes shape the policies that are eventually made, our ability to understand the operation of those institutions through an analysis of those policies is affected by the fact that their outputs are indelibly shaped by the agenda-setting process.

Understanding agenda-setting mechanisms, then, is central to understanding contemporary political processes. But while neither Congress, nor the presidency, nor state legislative or executive institutions lack some form of agenda control, judiciaries represent something of an anomaly. In contrast to these other institutions, courts' agendas are effectively passive; unable to address issues *sua sponte*, they rely on other parties to provide the vehicles by which they make policy. In addition to its passive nature, lower court agendas are also largely mandatory, leaving those institutions with relatively slight control over the range of issues they are required to address.

In contrast to the lower federal courts, for nearly a century the bulk of the U.S. Supreme Court's jurisdiction has been discretionary in nature. The 2014 year-end report of the Chief Justice indicated that, during the October 2013 Term, the Court received 7376 total filings for review (including 5808 *in forma pauperis* filings); during that same Term, the Court heard arguments in 79 cases and disposed of 77, and handed down an additional six *per curiam* opinions in cases not argued (Roberts 2014, 13–14). This rate of review (approximately five percent of all paid filings per term, and around one percent of all such filings) has remained more or less constant for at least the past two decades.

But while the Supreme Court can, in the majority of its cases, exercise significant negative agenda control, there remain a small number of cases which arrive at the Court via its mandatory jurisdiction. These cases offer the justices no choice but to hear and decide the issues presented. At the national level, then, cases arising under the Supreme Court's mandatory jurisdiction represent the sole instance of a policy-making body with a complete absence of control over its agenda. As such, they present an intriguing opportunity to investigate the ways in which agenda-setting shapes the policy outputs of an important national policy maker.

Here, we first review existing work on the Supreme Court's agenda, including the few studies that have examined the impact of the Court's agenda-setting process on its decisions. We go on to outline the formal criteria by which cases come to the Supreme Court under its mandatory jurisdiction. We then shift our focus to data on the Court's decisions, examining the Court's decisions from 1946 to the present.

Our initial effort is largely descriptive: to characterize the Court's mandatory jurisdiction decisions, to compare them to those arriving as part of the Court's discretionary docket, and to highlight changes in those characteristics over the past 70 years. We are particularly interested in the extent to which mandatory jurisdiction cases result in decisions that are identifiably different from discretionary cases; as we describe below, such differences reveal some critical insights into the effect of the Court's agenda-setting process on its subsequent policy outputs.

Supreme Court Agenda-Setting and Decision Making

Among students of American political institutions, the issues of agendas and agenda-setting occupy a central place in the scholarly discourse. This is true both of broad inquiries regarding policy agendas in general (e.g. Kingdon 2010; Baumgartner and Jones 1993) and of the somewhat narrower questions of specific institutional agendas. The U.S. Supreme Court is no exception; for more than half a century, researchers have investigated a range of questions about the means and determinants of the Court's agenda (e.g. Schubert 1958; Tanenhaus et al. 1963; Ulmer 1972; Caldeira 1981; Ulmer 1984; Caldeira and Wright 1988; Perry 1991; Cameron, Segal, and Songer 2000; Black and Owens 2009). That research makes clear that the cases decided by the Court under its discretionary jurisdiction "look" substantially different from the universe of possible decisions: They are, for example, more likely to involve constitutional questions, conflict among lower courts, ands/or issues of great legal or political significance. Moreover, a number of analyses have probed the influences on the Court's aggregate agenda (e.g. Pacelle 1991; Epstein, Segal, and Victor 2002; Baird 2007; Rice 2014).

But while our understanding of the Court's agenda-setting procedures, the influences on case selection, and the broader drivers of the Court's agenda are increasingly well understood, less is known about how the Court's case selection process affects its subsequent decisions and the policies they advance. Caldeira, Wright, and Zorn (1999) investigated "sophisticated outcomes" during the Court's 1982 term, listing eighteen examples of instances where the Court plausibly engaged in "defensive denials" of petitions by both conservative and liberal justices. More recently, Kastellec and Lax (2008) explore the effect that such selection bias may have on our ability to draw accurate inferences about the behavior of the justices from cases decided on the merits. Their simulations illustrate a number of instances in which important aspects of our understanding of the Court's merits decision making is undermined by the non-random process by which the Court sets its agenda.

At the same time, Kastellec and Lax's analysis offers little in the way of theory as to when and

how the Court's agenda-setting process is likely to affect its decisions on the merits.[1] Some of those implications are relatively straightforward; the tendency for the Court to decide cases where the federal circuit courts of appeals have "split," for example, suggests that all else equal, the Court's docket is likely to comprise cases for which no clear, obvious legal rule or test applies. Cases harboring such ambiguity offer a greater opportunity for non-legal influences to shape the Court's decisions, and at least one study has indicated that one such influence – that of political ideology – does in fact play a greater role in decision making in the Supreme Court than in lower courts (Zorn and Bowie 2010). Similarly, the Court's emphasis on resolving constitutional questions necessarily implies that it will be the "last word" on an issue far more often than a simple random sample of litigation would suggest.

A related issue is that the Court's discretionary agenda power, while very broad, is also entirely one of exclusion: with rare exceptions, the Court has total control over what it *refuses* to hear, but almost no affirmative ability to place matters on its docket in the absence of a properly-brought writ of certiorari addressing that question.[2] In this sense the Court's agenda power operates as a form of "negative agenda control," defined as "the ability to block passage of proposals that a majority of the majority party oppose" (Finocchiaro and Rohde 2008, 36; see also Cox and McCubbins 2005; Gailmard and Jenkins 2007).[3] The fact that the Court's agenda control is largely a function of what it chooses *not* to hear suggests that cases where such power is removed – that is, cases where the Court has mandatory jurisdiction – offer the greatest potential for understanding how the Court's agenda process shapes its decisions. To do so, however, requires that we understand the conditions under which the Court's extensive power to set its own agenda is removed.

The Court's Mandatory Jurisdiction

At least since the passage of the 1925 Judges' Bill, the U.S. Supreme Court has largely operated as a court of discretionary jurisdiction: cases come to the Court via petitions for *certiorari*, and the votes of at least four justices are required for the Court to agree to hear the case. As indicated above, a notable exception to this rule is the small number of cases which the Court is required to hear.

---

[1] An exception is their analysis (in an appendix) of noncompliance, where they outline an explanation for the "puzzle" of seemingly ideologically-inconsistent instances of lower court noncompliance with the Supreme Court. See e.g. Priest and Klein (1984) for additional insight.

[2] Palmer and McGuire (1995) consider the ability of the Court to alter its (post-certiorari) agenda *sua sponte*; see also Epstein, Segal, and Johnson (1996).

[3] Note, however, that Cox and McCubbins' idea of negative agenda control in Congress is somewhat different than its operation in the context of the Court. In particular, the long-standing operation of the "Rule of Four" (e.g. Lax 2003), by which the votes of only four justices are required to grant a petition for certiorari, means that the Court's majority cannot always be sure that such negative control will be absolute.

The mandatory jurisdiction of the U.S. Supreme Court comprises two sets of cases: those arising under the court's original jurisdiction, and those designated as mandatory under the Court's appellate jurisdiction. The Court's original jurisdiction extends to "all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party" (U.S. Constitution, Article III, §2). As we are famously reminded in *Marbury v. Madison*, the Court's original jurisdiction is established in Article III and cannot be altered except by Constitutional amendment.[4] Such cases occur infrequently; a 1959 *Stanford Law Review* note indicated that there were 123 such cases decided by the Court in its first 170 years of existence (Note 1959, 665), while McKusick's more recent (1993) study counted 51 such cases between 1961 and 1993. The conventional explanation for the existence of the Court's original jurisdiction is to ensure that states in particular receive a fair hearing in such disputes, and (secondarily) as a mechanism for ensuring state compliance with federal law (Pfander 1994; Zimmerman 2006). This is also reflected in the fact that while Supreme Court has exclusive jurisdiction over cases involving disagreements between two or more states, its jurisdiction is concurrent (typically with federal district courts) in cases where only one disputant is a state. This "nonexclusivity in practice means that the Court's original jurisdiction is nearly a dead letter" (Lee 2004, 1779); as a result, nearly all original jurisdiction cases decided by the Supreme Court involve disputes between states.[5]

A somewhat larger body of mandatory cases are those arising under the Court's appellate jurisdiction. Because it is determined by federal law, the scope of the Court's mandatory appellate jurisdiction has varied widely over the years. The 1925 "Judges Bill" was largely an effort to reduce the scope of the Court's mandatory appellate jurisdiction; in testimony before Congress in 1924, Justice Van Devanter noted that "more than two-thirds of the cases that come to us under our obligatory jurisdiction – from State courts, circuit courts of appeals, district courts, and the Court of Claims – result in judgments of affirmance by our court, and also a goodly number are ultimately dismissed for want of prosecution" (Frankfurter and Landis 1928, 1). Subsequent acts of Congress in the 1950s, 1960s and 1970s further reduced the scope of the Court's mandatory appellate jurisdiction.[6] The trend culminated in 1988 with the

[4]Amar (1989) argues that Justice Marshall in fact misread the key Section 13 of the Judiciary Act of 1789, and that the latter did not, in fact, attempt to expand the Court's original jurisdiction at all. Amar also argues that while Congress may not expand the Court's original jurisdiction, it may reduce or eliminate it in certain cases.

[5]McKusick (1993, 187) notes that "in two hundred years, the Supreme Court has decided only two cases on the merits under the foreign envoy branch of its original jurisdiction." McKusick attributes the dearth of such cases to the relative ease with which such claims can be pursued in the federal district courts and to the liberal granting of diplomatic immunity to the parties likely to be involved.

[6]It is important to note that while the Court's appellate jurisdiction is (or, more accurately, was) mandatory in theory, it was highly discretionary in fact. Formally, in many such appeals the Court declined to "note probable jurisdiction" (NPJ), a decision that was for all practical purposes the equivalent of a denial of certiorari. Moreover, while the Court was generally somewhat less willing to decline to NPJ than to deny certiorari, the differences were not large. Data on the 1968, 1982, and 1990 terms of the Court from Caldeira, Wright, and Zorn (2012) suggest that appeals were "granted" at approximately twice

passage of the Supreme Court Case Selections Act of 1988 (102 Stat. 662) which effectively eliminated the Court's mandatory appellate jurisdiction. Writing in December of that year, the authors of the leading treatise on Supreme Court practice noted that "(T)he Supreme Court's mandatory jurisdiction is all but gone" (Stern, Gressman, and Shapiro 1988, 66).

But while the Court's agenda has grown increasingly discretionary over the past century, there remain a handful of important instances in which no such agenda control occurs. As with all of the Court's decisions, the political significance of those cases varies widely;[7] more interesting for our purposes is the extent to which such cases provide an opportunity to investigate the influence of the Court's agenda-setting process on its subsequent decisions.

The Court's Mandatory Agenda

We begin our investigation of the Court's mandatory agenda cases by drawing upon the *Supreme Court Judicial Database* (Spaeth et al. 2014), an extensive collection of data related to the Court's decisions. The database covers the Court's activity since the end of World War II (October term 1946-present); among the many variables it includes is an indicator for the manner in which the Court took jurisdiction over the case. At this stage of our analysis, our goals are largely descriptive: to outline the incidence, timing, and nature of cases decided by the Court under mandatory jurisdiction, and to compare those cases to those arising under the Court's discretionary jurisdiction.

As illustrated in Figure 1, during this period cases in which the Court heard the case under its original jurisdiction represented only about 1.6 percent of the Court's docket $(N = 163)$. As expected, the large majority of the Court's decisions were decided following a grant of a petition for certiorari.[8]

Figure 2 plots the incidence of mandatory jurisdiction cases decided by the Court over the 1946-2013 terms, with the top panel illustrating the raw frequencies of such cases and the lower panel plotting the percent of the Court's total agenda each term comprising such cases. Following the end of World War II both the frequency and the percentage of mandatory cases on the Court's docket grew, first sporadically and then more consistently during the period from 1970 until the late 1980s. Such cases began growing less common during the late 1980s, and since 1990 have consistently represented 1-3% of the Court's

---

the rate of paid petitions for certiorari (e.g., 15.6% vs. 7.5% for the 1982 term). For this reason, we consider appeals as more discretionary than mandatory, and our discussion below focuses only on those cases for which the Court may not refuse to hear cases at such high rates.

[7] In one recent such case, *Montana v. Wyoming*, commentators noted that "(T)he most notable thing about the opinions in that case was Justice Scalia's attempt to rename the people of Wyoming" (Hatton and Wexler 2012, 20).

[8] Unsurprisingly, an examination of the number of cases taken via the appeal mechanism over time shows a dramatic decrease in such cases following the 1988 Act that reshaped the Court's appellate jurisdiction.

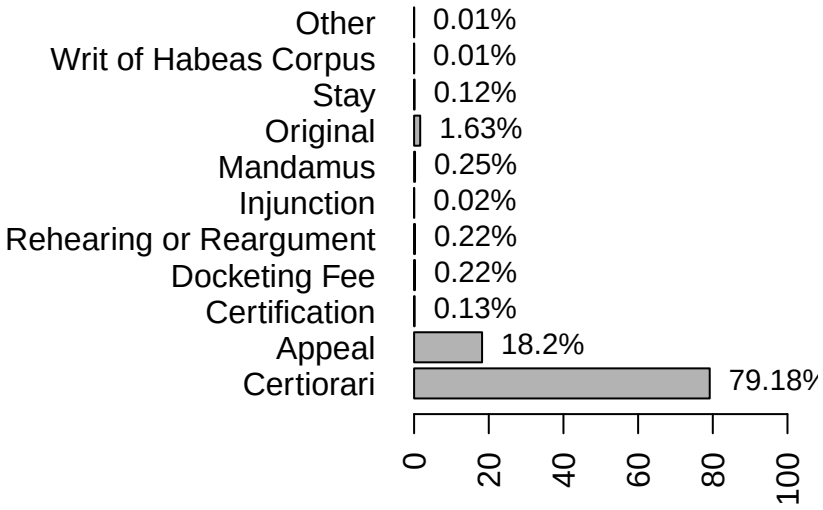

Figure 1: Frequency of SCOTUS Jurisdiction Types, OT1946-2013

docket. The relatively recent decline also corresponds to the most recent statutory changes to the Court's appellate agenda in 1988 (indicated by the vertical line).

Turning to the cases themselves, we note in Figure 3 that the modal (broad) issue addressed in the Court's mandatory jurisdiction cases is – unsurprisingly – interstate relations; such cases make up nearly half $(N = 79)$ of all mandatory cases during the period studied. Federalism cases $(N = 50)$ are the second-largest category, with smaller numbers of cases in judicial power, economic activity, civil rights, and criminal procedure.

Plotting the issues raised in mandatory cases by year reveals the pattern shown in Figure 4. There, we note the abundance of interstate relations cases heard by the Court in the 1970s through to the 1990s, and the decline in mandatory federalism cases beginning around 25 years ago. The small number of cases involving questions of judicial power tended to cluster during the 1950s and 1960s. Perhaps most striking is the dominance of interstate relations cases as a fraction of all mandatory cases beginning in the early 1990s.

Comparing Mandatory and Discretionary Decisions

As we discussed above, one potential difference between mandatory and discretionary cases lies in the extent to which they lead to different justice-level dynamics. One dimension of this is in the degree of consensus present; because cases of first impression are more likely to be legally and procedurally straightforward (Priest and Klein 1984), and because such cases are less likely to allow ideological and other personal factors come into play in their resolution, we might expect that such cases would exhibit a

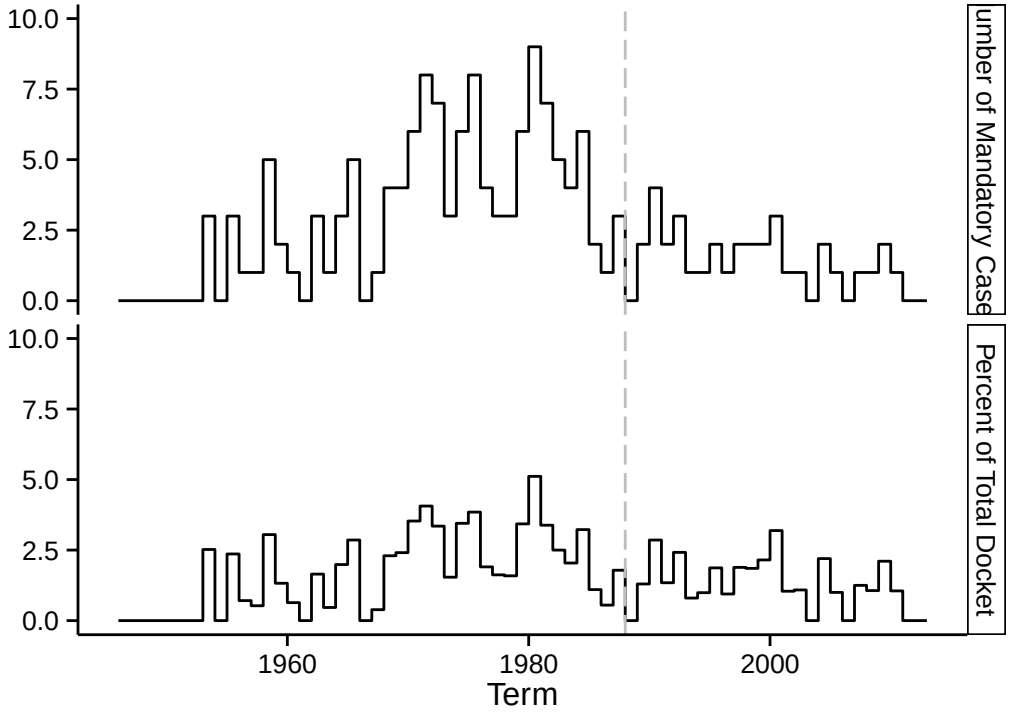

Figure 2: Number of Mandatory Jurisdiction Cases by Term, OT1946-2013

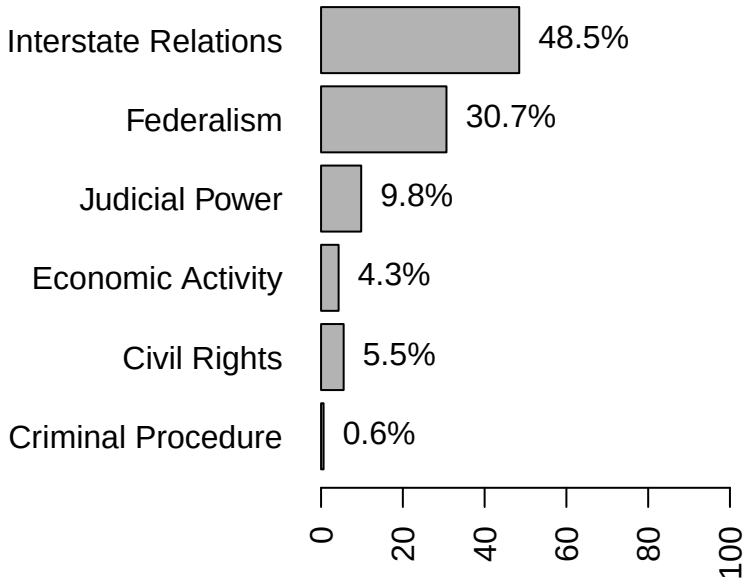

Figure 3: Percentage of Mandatory Jurisdiction Cases by Issue, OT1946-2013

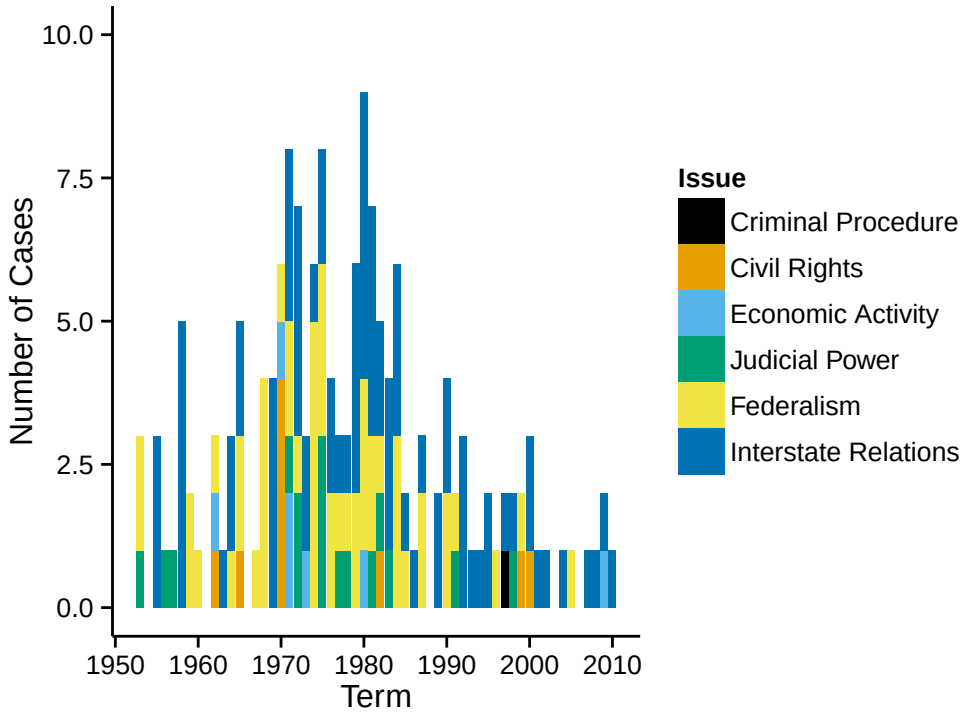

Figure 4: Number of Mandatory Jurisdiction Cases by Term and Issue, OT1946-2013

higher level of consensus among the justices than those from their discretionary docket.

Figure 5 does so by examining vote splits on the merits. It plots the proportion of each type of case (mandatory or discretionary) decided by each possible margin of the Court (9-0, 8-1, etc.).[9] As a fraction of all such cases, more than twice as many mandatory jurisdiction cases were decided unanimously than were cases from the Court's discretionary pool. The converse is true for cases decided by one vote margins; such decisions represent more than twice as many discretionary cases (as a proportion of the total) as mandatory ones.

A similar insight can be gained by examining the number of separate opinions (both concurring and dissenting) written in each case. Figure 6 plots the term-specific averages in the number of concurring (lower panel) and dissenting (upper panel) opinions for cases arising under the Court's mandatory and discretionary jurisdiction. Because of small Ns, the averages for mandatory decisions are substantially "noisier;" nonetheless, it is apparent that the frequency of discretionary opinion-writing of all kinds is substantially higher in discretionary cases.

[9]Here we limit our analysis to cases where all nine sitting justices participated in the decision.

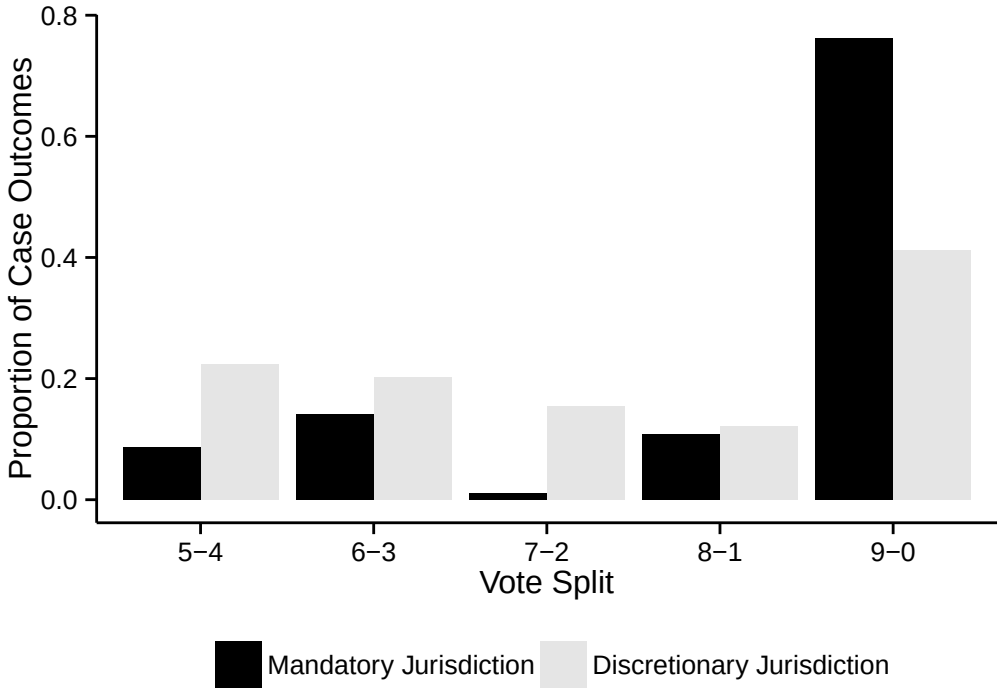

Figure 5: Voting Splits, Mandatory vs. Discretionary Jurisdiction Cases, OT1946-2013

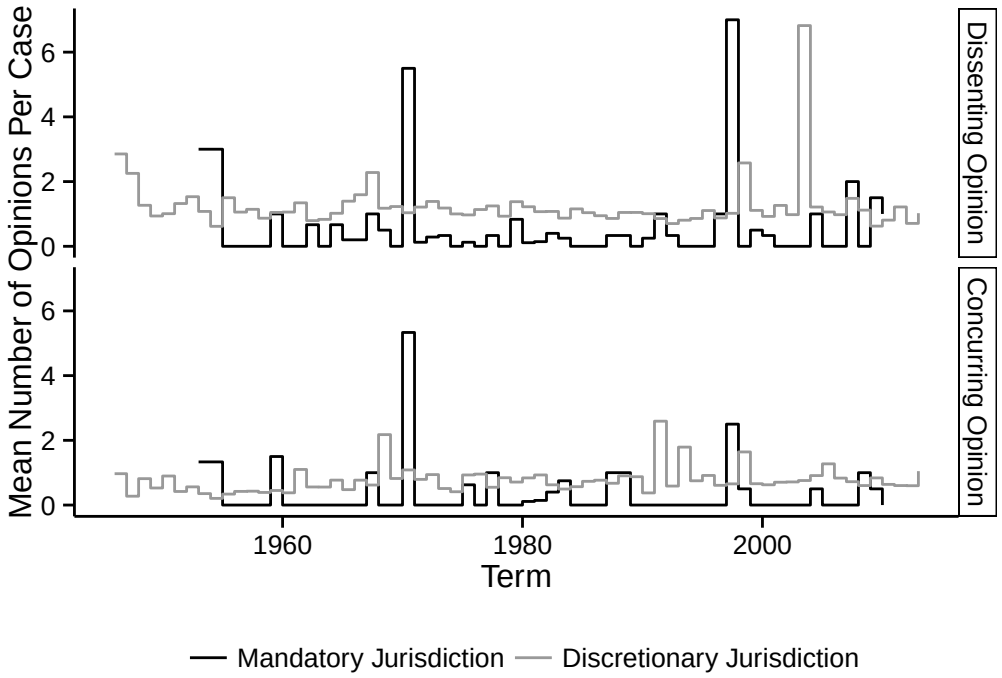

Figure 6: Number of Written Opinions, Mandatory vs. Discretionary Jurisdiction Cases, OT1946-2013

Agenda Mechanisms and Ideological Outcomes

Another subject of central interest to scholars of the Court is the policy / ideological valence of its decisions. Note that at the outset, we have no reason to expect that decisions made in mandatory cases will be more liberal or conservative than the bulk of discretionary cases. Note that the coding rules in Spaeth's data define the ideological outcomes of cases involving suits between states as "unspecifiable" (Spaeth et al. 2014, 49). We thus limit our analysis in this section to mandatory cases that are not disputes between states; for comparability, we also limit the comparison set to those discretionary cases which share an issue with at least one of the mandatory ones (see Figure 3).[10]

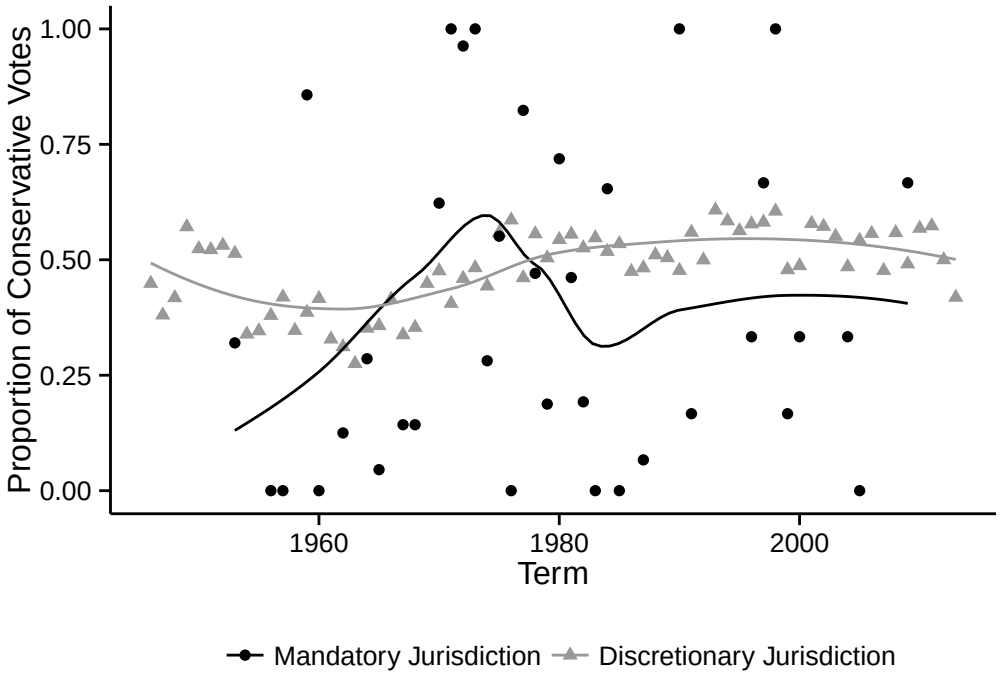

Figure 7: Proportion of Conservative Votes by Term, Mandatory vs. Discretionary Jurisdiction Cases, OT1946-2013

Figure 7 focuses on the votes of the justices, plotting the average proportion of votes cast in each term in support of an ideologically conservative outcome in mandatory and discretionary cases, along with smooth trend lines for each. Two patterns are apparent. First, as in Figure 6, the proportions for mandatory cases are significantly more variable than those in discretionary cases. Second, and related, the pattern for discretionary cases more closely follows the conventional wisdom regarding the ideological trends of the Court during the past seventy years: Relatively conservative decisions in the 1940s and 1950s, becoming more liberal in the 1960s and 1970s before reversing course and becoming more conservative throughout

[10]In the conclusion, we discuss some additional ideas for how to make this comparison empirically stronger.

the last 30 years. This pattern is not reflected in the aggregate statistics on the mandatory cases.

We can also explore the extent to which each justice's ideology is associated with his or her votes by examining the association between the widely-used Martin-Quinn (MQ) ideology measures (Martin and Quinn 2002) and their aggregate voting patterns. Figure 8 plots the mean proportion of conservative votes cast by each justices during the 1946-2013 period against their mean (case-weighted) MQ score. On the X-axis, scores farther to the right indicate more conservative justices. Once again, the Court's discretionary cases exhibit the familiar S-shaped distribution of voting percentages, with the most liberal justices (Justices Douglas, Marshall, and Brennan) having the most liberal records while the Court's conservatives (Justices Thomas, Rehnquist, Scalia, and Alito) voting more conservatively. The pattern for mandatory cases is much less consistent.

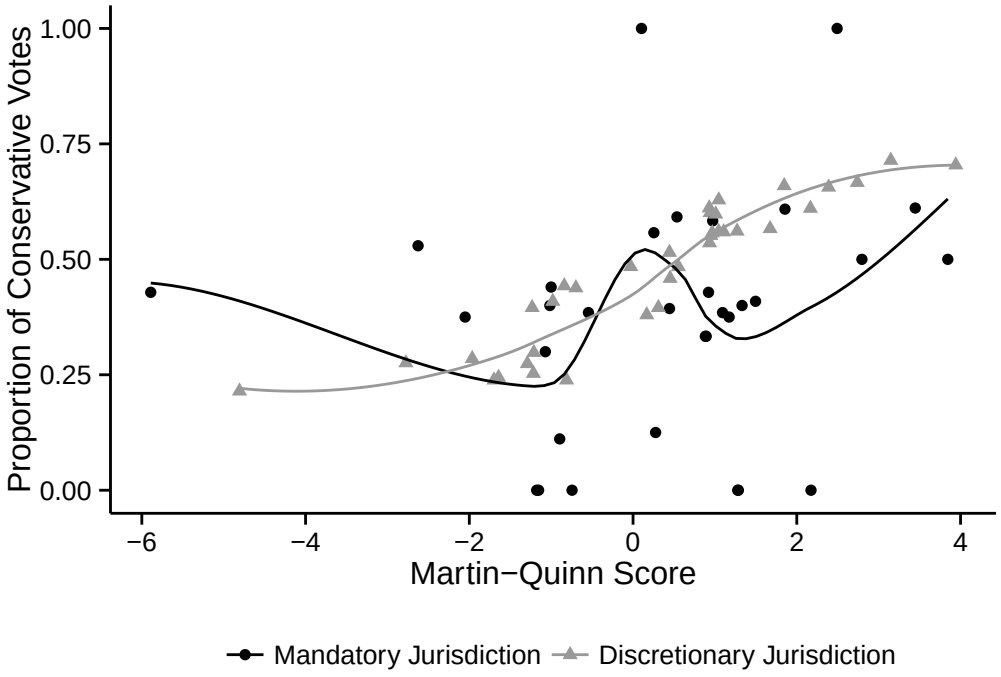

Figure 8: Proportion of Conservative Votes by Justice Ideology, Mandatory vs. Discretionary Jurisdiction Cases, OT1946-2013

As a more direct examination of this association, we fit a series of very simple regression models. The first model the Court's decisions, and take the form:

$$\Pr(Y_i = 1) = f[\beta_0 + \beta_1(\text{Ideology}_i)]$$

where Y_i indicates the ideological direction of the Court's decision in case i (1 = conservative and 0 = liberal) and $f[\cdot]$ is the logistic function. As we have throughout the paper, we estimate separate models

for mandatory and discretionary cases; we also fit models using averages of both MQ (Martin and Quinn 2002) and "Segal-Cover" (Segal and Cover 1989) scores as our measure of *Ideology*. The coefficient estimates and their estimated 95 percent confidence intervals are plotted in Figure 9.

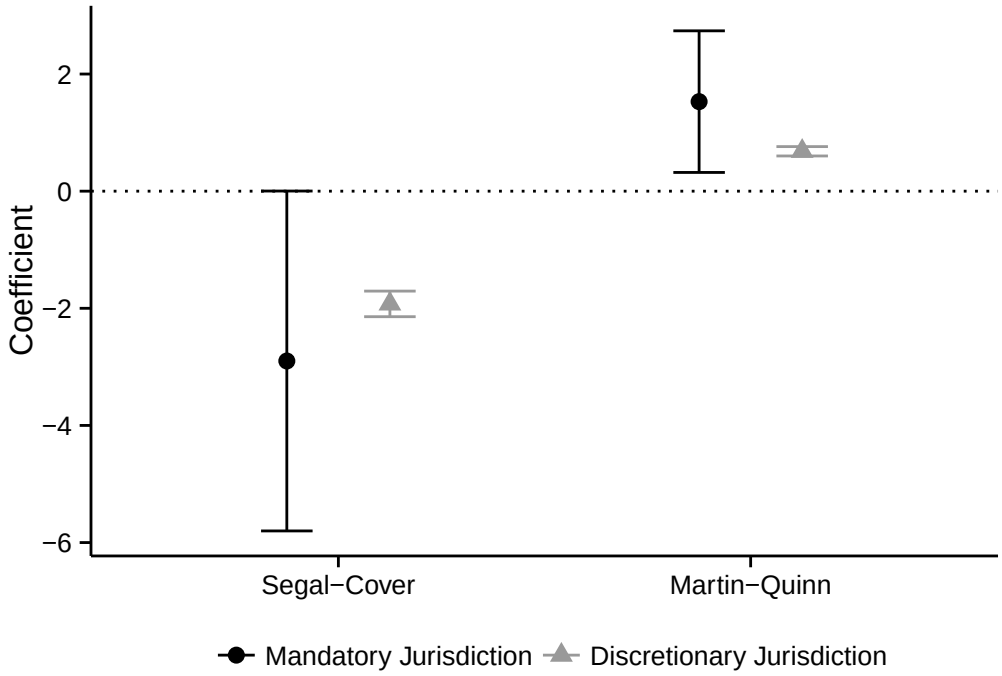

Figure 9: Estimates of Ideological Case Outcomes, Mandatory and Discretionary Jusisdiction Cases, OT1946-2013

This simple descriptive exercise is nonetheless revealing. First, note that for both *Ideology* measures the direction of association is the same in both mandatory and discretionary cases.[11] Moreover, magnitude of the estimates is in both cases greater for mandatory cases than for discretionary ones. At the same time, owing largely to the small number of mandatory jurisdiction cases for which we have a measure of ideological direction, the estimates are not statistcally distinguishable, suggesting that – at least for the aggregate outcomes – the degree of ideological decision making is not substantially different across the two types of cases.

Figure 10 presents the results of the same analyses, this time conducted at the level of the justices' individual votes. Formally, the model is:

$$\Pr(Y_{ij} = 1) = f[\beta_0 + \beta_1(\text{Ideology}_j)]$$

[11] Because of their intrinsic directionality (higher MQ scores equate to more conservative ideology, while higher Segal-Cover scores denote greater liberalism), we expect $\hat{\beta}_1 < 0$ for the former and $\hat{\beta}_1 > 0$ for the latter.

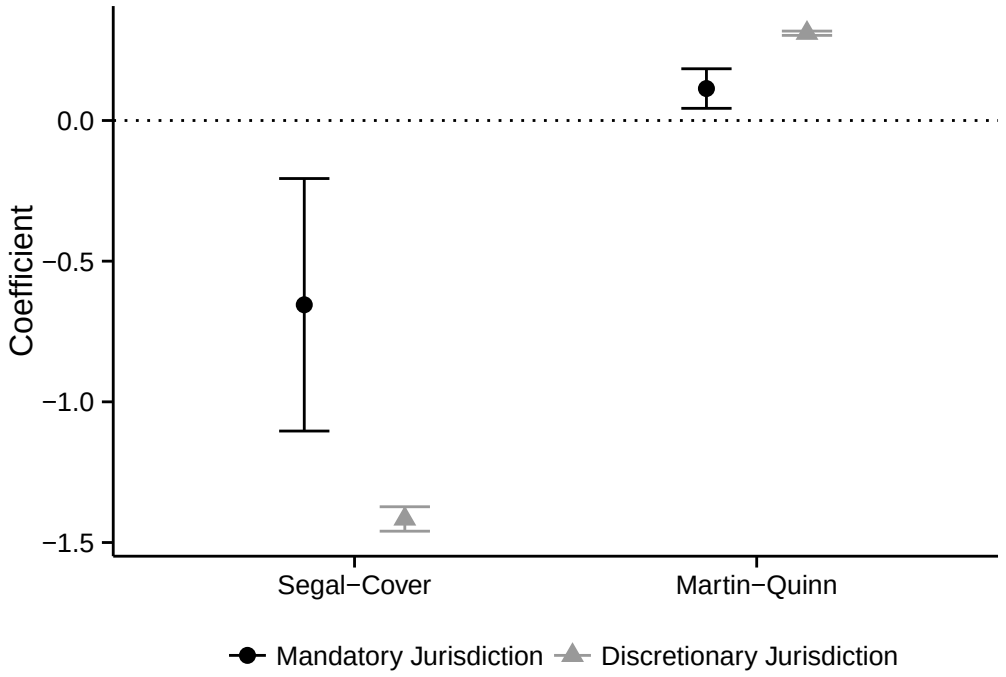

Figure 10: Estimates of Ideological Voting, Mandatory and Discretionary Jusisdiction Cases, OT1946-2013

where Y_{ij} now indicates the direction of justice j's vote in case i, and Ideology$_j$ is (variously) justice j's MQ or Segal-Cover score. In comparison to Figure 9, two significant differences are apparent. First, unlike the aggregate (case-level) analyses, the vote-level models indicate that the marginal association between ideology and voting is *stronger* in discretionary cases than in mandatory ones. Second, those differences are now statistically differentiable; that is, the results in Figure 10 support the notion that, at least at the level of individual justices, cases that come to the Court via its discretionary jurisdiction allow for a greater influence (both potential and actual) of non-legal factors such as ideology.

Taken together, Figures 9 and 10 begin to limn a picture of the differences between cases on the Court's mandatory and discretionary dockets. The relatively lesser association of individual-level cotes and ideology among mandatory jurisdiction cases is consistent with our earlier findings that those cases tend to be decided in a more consensual fashion, with larger vote margins and correspondingly lower average levels of discretionary opinion writing. At the same time, the relatively stronger associations between ideology and aggregate decisions likely reflects the fact that, in reaching those decisions, the Court's decisions track reasonably closely with its aggregate preferences. This would be the case if (for example, and as we describe above) mandatory jurisdiction cases were in generally less "politically charged" and less salient from a policy perspective.

Summary and Conclusion

Here we have offered a preliminary look at the contemporary Supreme Court's mandatory jurisdiction cases. Our initial results indicate that the Court's mandatory docket varies in important ways from the bulk of the discretionary cases it decides each term. While our efforts here have been mostly descriptive, future work will extend these analyses to a more fullsome comparison of the differences and a deeper inquiry into how those differences shape the Court's decision making.

Perhaps the most significant issue facing such analyses is the proper means for comparing mandatory and discretionary jurisdiction cases, and in particular how one defines the relevant comparable cases in the latter group. Because mandatory jurisdiction cases are intrinsically different (addressing different questions of law, involving different types of litigants, and so forth) establishing a credible set of comparison cases is key to learning about the role agenda-setting plays in shaping the Court's subsequent decisions.

More generally, we believe our broader approach – finding instances in which institutional rules and procedures offer the potential for critical case studies of institutional influence – is one that is adaptable across a range of contemporary political institutions. This seems especially useful in the study of agendas. While we noted at the outset that the Court's mandatory docket is somewhat unique among national political institutions, such is not the case in (e.g.) the U.S. states, where courts of last resort exhibit wide variation in the scope, manner, and temporal stability of their jurisdictional rules. We have already begun investigating such variation.

References

Amar, Akhil Reed. 1989. "Marbury, Section 13, and the Original Jurisdiction of the Supreme Court." *University of Chicago Law Review* 56 (2): 443–99.

Baird, Vanessa. 2007. *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda*. Charlottesville: University of Virginia Press.

Baumgartner, Frank, and Bryan Jones. 1993. *Agendas and Instability in American Politics*. Chicago: University of Chicago Press.

Black, Ryan, and Ryan Owens. 2009. "Agenda Setting in the Supreme Court: The Collision of Policy and Jurisprudence." *Journal of Politics* 71: 1062–75.

Caldeira, Gregory. 1981. "The United States Supreme Court and Criminal Cases, 1935-1976: Alternative Models of Agenda Building." *British Journal of Political Science* 11 (4): 449–70.

Caldeira, Gregory, and John R. Wright. 1988. "Interest Groups and Agenda-Setting in the Supreme Court of the United States." *American Political Science Review* 82: 1109–27.

Caldeira, Gregory, John R. Wright, and Christopher Zorn. 1999. "Strategic Voting and Gatekeeping in the Supreme Court." *Journal of Law, Economics and Organization* 15 (3): 549–72.

———. 2012. "Organized Interests and Agenda Setting in the U.S. Supreme Court Revisited."

Cameron, Charles, Jeffrey Segal, and Donald Songer. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions." *American Political Science Review* 94: 101–16.

Cox, Gary, and Mathew McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives*. New York: Cambridge University Press.

Epstein, Lee, Jeffrey Segal, and Timothy Johnson. 1996. "The Claim of Issue Creation on the U.S. Supreme Court." *American Political Science Review* 90 (4): 845–52.

Epstein, Lee, Jeffrey Segal, and Jennifer Victor. 2002. "Dynamic Agenda-Setting on the United States Supreme Court." *Harvard Journal on Legislation* 39: 395–433.

Finocchiaro, Charles, and David Rohde. 2008. "War for the Floor: Partisan Theory and Agenda Control in the U.S. House of Representatives." *Legislative Studies Quarterly* 33 (1): 35–61.

Frankfurter, Felix, and James M. Landis. 1928. "The Supreme Court Under the Judiciary Act of 1925." *Harvard Law Review* 42 (1): 1–29.

Gailmard, Sean, and Jeffrey Jenkins. 2007. "Negative Agenda Control in the Senate and House: Fingerprints of Majority Party Power." *Journal of Politics* 69 (3): 689–700.

Hatton, David, and Jay Wexler. 2012. "The First Ever (Maybe) Original Jurisdiction Standings." *Journal of Legal Metrics* 1: 19–24.

Kastellec, Jonathan, and Jeffrey Lax. 2008. "Case Selection and the Study of Judicial Politics." *Journal of Empirical Legal Studies* 5 (3): 407–46.

Kingdon, John. 2010. *Agendas, Alternatives, and Public Policies, Update Edition*. Longman.

Lax, Jeffrey. 2003. "Certiorari and Compliance in the Judicial Hierarchy." *Journal of Theoretical Politics* 15 (1): 61–86.

Lee, Thomas H. 2004. "The Supreme Court of the United States as Quasi-International Tribunal: Reclaiming the Court's Original and Exclusive Jurisdiction over Treaty-Based Suits by Foreign States Against States." *Columbia Law Review* 104 (7): 1765–1885.

Martin, Andrew, and Kevin Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court." *Political Analysis* 10 (2): 134–53.

McKusick, Vincent L. 1993. "Discretionary Gatekeeping: The Supreme Court's Management of Its Original Jurisdiction Docket Since 1961." *Maine Law Review* 45: 185–242.

Note. 1959. "The Original Jurisdiction of the United States Supreme Court." *Stanford Law Review* 11 (4): 665–719.

Pacelle, Richard. 1991. *The Transformation of the Supreme Court's Agenda: From the New Deal to the Reagan Administration*. Boulder: Westview.

Palmer, Barbara, and Kevin McGuire. 1995. "Issue Fluidity on the U.S. Supreme Court." *American Political Science Review* 89: 691–702.

Perry, HW. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge: Harvard University.

Pfander, James E. 1994. "Rethinking the Supreme Court's Original Jurisdiction in State-Party Cases." *California Law Review* 82 (3): 555–659.

Priest, George, and Benjamin Klein. 1984. "The Selection of Disputes for Litigation." *Journal of Legal Studies* 13: 1–55.

Rice, Douglas. 2014. "The Impact of Supreme Court Activity on the Judicial Agenda: Calling to Action or Settling the Law." *Law and Society Review* 48 (1): 63–90.

Roberts, John. 2014. *Chief Justice's Year-End Report on the Federal Judiciary*. U.S. Government Printing Office. http://www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx.

Schubert, Glendon. 1958. "The Study of Judicial Decision-Making as an Aspect of Political Behavior." *American Political Science Review* 52 (4): 1007–25.

Segal, Jeffrey, and Albert Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83: 557–65.

Spaeth, Harold, Lee Epstein, Ted Ruger, Sara Benesh, Jeffrey Segal, and Andrew Martin. 2014. *The Supreme Court Data Base Codebook*. http://supremecourtdatabase.org/.

Stern, Robert L., Eugene Gressman, and Stephen M. Shapiro. 1988. "Epitaph for Mandatory Jurisdiction." *ABA Journal* 74 (12): 66–68, 70.

Tanenhaus, Joseph, Marvin Schick, Matthew Muraskin, and Daniel Rosen. 1963. "The Supreme Court's Certiorari Jurisdiction: Cue Theory." In *Judicial Decision-Making*, edited by Glendon Schubert. New York: Free Press.

Ulmer, Sidney. 1972. "The Decision to Grant Certiorari as an Indicator to Decision 'on the Merits'." *Polity* 4: 429–47.

———. 1984. "The Supreme Court's Certiorari Decisions: Conflict as a Predictive Variable." *American Political Science Review* 78 (4): 901–11.

Zimmerman, Joseph F. 2006. *Interstate Disputes: The Supreme Court's Original Jurisdiction*. Albany, NY: SUNY Press.

Zorn, Christopher, and Jennifer Bowie. 2010. "Ideological Influence in the Federal Judicial Hierarchy: An Empirical Assessment." *The Journal of Politics* 72.