

PLSC 473: American Judicial Behavior

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George and Epstein (1992)

“How legal and extralegal models of judicial decision making perform in head-to-head competition.”

Details

- SCOTUS death penalty decisions, OT1971-1988 ($N = 64$).
- Outcome: Whether ($= 1$) or not ($= 0$) the Court affirmed imposition of the death penalty.
- Recall:
 - 1972: Court struck down the death penalty as applied (*Furman v. GA*)
 - 1976: Court affirmed its constitutionality within limits (*Gregg v. GA*)
 - 1982-88: Expanded its reach (e.g., *Barefoot v. Estelle*)

George and Epstein (1992) (continued)

Legal factors:

- **Crime** in question (1 = proportional crime)
- Claim of a **death-qualified** jury (1 = not raised)?
- **Particularized circumstances** of the case (1 = no attempt to limit application)
- **Aggravating factors?** (1 = no claim of aggravating factors)
- **Psychiatric exam?** (1 = exam conducted correctly)

George and Epstein (1992) (continued)

Extralegal factors:

- **Political environment** (0/1/2 for Dem/GOP president / Senate)
- **Court change** (counter)
- Experienced **defense counsel** (1 = not)
- Repeat player **state** (1 if TX, GA, FL)
- Brief by the **U.S. solicitor general** (1 = present)
- Who **appealed** (1 = state, 0 = defendant)

Table 1

**Probit Estimates for Legal and Extralegal Models
of Decision Making Capital Punishment Cases,
1971–1988 Terms of the U.S. Supreme Court**

VARIABLE	LEGAL MODEL COEFFI- CIENTS	EXTRA- LEGAL MODEL COEFFI- CIENTS
Death-Qualified (DQ)	.94* (.61)	—
Crime (CR)	1.49** (.73)	—
Particularized circumstances (PC)	1.46*** (.44)	—
Aggravating factors (AG)	1.01** (.50)	—
State psychiatric examination (SP)	1.38** (.62)	—
Political environment (PE)	—	1.88*** (.60)
Court change (CC)	—	.70** (.30)
Appellant (AP)	—	1.74*** (.57)
Defendant counsel (DC)	—	1.20** (.56)
State (ST)	—	1.29*** (.49)
Solicitor general (SG)	—	2.67*** (1.07)
Constant	−5.35	−5.87
−2 × log-likelihood ratio	18.82***	36.69***
% categorized correctly	75	81

Issues with the Models

The “Legal Model”

“...the legal model contains an inherent flaw. Because it only considers legally relevant facts, it will continue to forecast liberal outcomes as attorneys capitalize on existing precedent even though “the law” may not actually move in that direction.”

The “Attitudinal Model”

“...stare decisis does constrain the array of available legal options. Accordingly, abrupt alterations in the political environment may not necessarily translate into concomitant, contemporaneous doctrinal change.”

Table 4**An Integrated Model of U.S. Supreme Court Decision Making**

VARIABLE	COEFFICIENT
Death-qualified (DQ)	1.23 (1.14)
Crime (CR)	2.86** (1.21)
Particularized circumstances (PC)	1.13** (.66)
Aggravating factors (AG)	1.05* (.68)
State psychiatric examination (SP)	2.19*** (.86)
Political environment (PE)	2.25*** (.79)
Court change (CC)	.64* (.39)
Appellant (AP)	1.55** (.79)
Defendant counsel (DC)	1.08** (.62)
State (ST)	1.90*** (.64)
Solicitor general (SG)	1.93* (1.44)
Constant	-13.66
-2 × log-likelihood ratio	48.99***
% categorized correctly	88

Note: Standard errors are in parentheses. N = 64. Of these cases, the Court affirmed the imposition of the death penalty in 45%.

* $p \leq .10$.

** $p \leq .05$.

*** $p \leq .01$.

- Not “either / or,” but “both / and.”
- “(L)egal factors have the greatest impact at the early stages of an issue’s life; as it evolves, however, extralegal variables dominate.”

Discussion...