

PLSC 473: American Judicial Behavior

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- Reliance on previous cases/decisions that are “similar”
- Common law systems
- Goal: Ensuring consistency
- Types:
 - “Binding” vs. “Persuasive”
 - “Vertical” vs. “Horizontal”

Precedent and the Supreme Court

Conventional Wisdom:

- SCOTUS precedent binds the justices
- Especially true for opinions in which the justice “signed on”

Segal & Spaeth (1996)

- Institutional factors → No influence for precedent, BUT
- Observational equivalence in behavior

Segal and Spaeth (1996)

Key point:

“When future related cases are decided, it is impossible to distinguish whether justices in the original majority who adhere to their position are following precedent, are following their original revealed preferences, or are following some combination of the two. We do, however, have a test of precedent for those justices who were in the minority. If they subsequently adopt the majority position, arguably they did so out of respect for precedent...”

Segal and Spaeth (1996)

Design:

- Begin with “landmark” precedents ($N = 131$) from the Warren and Burger Courts; take a 40% random sample ($N = 54$)
- Find all “progeny” of those cases via *Shepard's Citations* ($N = 146$)
- Examine votes in progeny cases by justices who dissented in the original precedents ($N = 346$)
 - Support original (dissenting) position = “preference”
 - Support majority position = “precedent”

Segal and Spaeth (1996)

Table 1. Justices' Support for Preference and Precedent

Justice	Preference	Precedent	% Preference
Douglas	17	0	100.0
Clark	5	0	100.0
Warren	1	0	100.0
Rehnquist	55	1	98.2
Marshall	49	2	96.1
Brennan	38	2	95.0
Stevens	15	1	93.8
O'Connor	11	1	91.7
White	42	4	91.3
Burger	20	3	87.0
Blackmun	25	4	86.2
Black	6	1	85.7
Harlan	8	2	80.0
Stewart	12	6	66.7
Powell	<u>10</u>	<u>5</u>	<u>66.7</u>
Totals	314	32	90.8

Precedent: Another Look

Idea:

- SCOTUS occasionally overrules its own precedents...
- Conventional wisdom: Only when “clearly erroneous” (at a minimum)
- Segal-Spaeth: Whenever there is a majority to do so

Two phenomena:

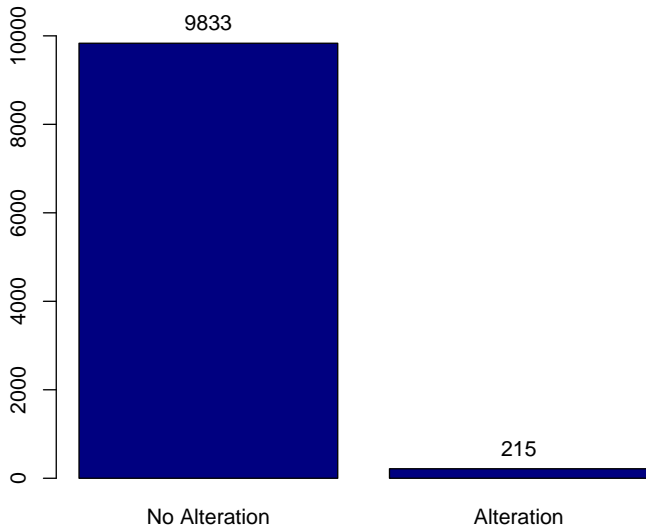
- *Majority size*
 - CW implies large(r) majorities for overruling precedent
 - S&S implies no difference
- *Ideological voting*
 - CW: *Weaker* correlation between ideology and voting in precedent-altering cases
 - S&S: Ideological voting will be *at least as prevalent* (if not more so) in precedent-altering cases

49 Formal Alteration of Precedent

Variable Name precedentAlteration	Spaeth Name ALT_PREC	Normalizations varPrecedentAlteration (2)
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A "1" will appear in this variable if the majority opinion effectively says that the decision in this case "overruled" one or more of the Court's own precedents. Occasionally, in the absence of language in the prevailing opinion, the dissent will state clearly and persuasively that precedents have been formally altered: e.g., the two landmark reapportionment cases: *Baker v. Carr*, 369 U.S. 186 (1962), and *Gray v. Sanders*, 372 U.S. 368 (1963). Once in a great while the majority opinion will state--again in so many words--that an earlier decision overruled one of the Court's own precedents, even though that earlier decision nowhere says so. E.g, *Patterson v. McLean Credit Union*, 485 U.S. 617 (1988), in which the majority said that *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 35 L Ed 2d 443 (1973) overruled a 1948 decision. On the basis of this later language, the earlier decision will contain a "1" in this variable. Alteration also extends to language in the majority opinion that states that a precedent of the Supreme Court has been "disapproved," or is "no longer good law."

SCOTUS Cases Altering Precedent, 1946-2014



Majority Coalition Size, By Precedent Alteration

```
> with(AltC, mean(MajVotes,na.rm=TRUE))
```

```
[1] 6.65
```

```
> with(NoAltC, mean(MajVotes,na.rm=TRUE))
```

```
[1] 7.1
```

```
> with(Cases, t.test(MajVotes~AltPrec))
```

Welch Two Sample t-test

data: MajVotes by AltPrec

t = 4, df = 200, p-value = 3e-05

alternative hypothesis: true difference in means is not equal to 0

95 percent confidence interval:

0.242 0.656

sample estimates:

mean in group 0 mean in group 1

7.10

6.65

Ideology-Vote Correlations, By Precedent Alteration

```
> with(AltV, cor(ideology,LibVote,use="complete.obs"))  
[1] 0.318
```

```
> with(NoAltV, cor(ideology,LibVote,use="complete.obs"))  
[1] 0.217
```

- Segal & Spaeth: Justices don't generally follow precedents with which they explicitly disagree
- Precedent-altering majority coalitions are *smaller* than non-precedent-altering ones
- Voting is *more ideological* in precedent-altering decisions than in others.
- Also: Hansford and Spriggs, *The Politics of Precedent on the U.S. Supreme Court* (2008)