



Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978.

Author(s): C. Neal Tate

Source: *The American Political Science Review*, Vol. 75, No. 2 (Jun., 1981), pp. 355-367

Published by: [American Political Science Association](#)

Stable URL: <http://www.jstor.org/stable/1961370>

Accessed: 06/10/2010 15:32

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=apsa>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



American Political Science Association is collaborating with JSTOR to digitize, preserve and extend access to *The American Political Science Review*.

<http://www.jstor.org>

Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978

C. NEAL TATE
North Texas State University

The prevailing view among students of judicial politics is that judges' background characteristics or personal attributes cannot provide satisfactory explanations for variation in their decision-making behavior. Parsimonious attribute models reported here account for 70 to 90 percent of the variance in the voting of postwar Supreme Court justices in split decisions concerning civil rights and liberties, and economics. Seven variables representing six meaningful and easily interpretable concepts achieve this success. The concepts are Judge's Party Identification, Appointing President, Prestige of Prelaw Education (economics only), Appointed from Elective Office, Appointment Region (civil liberties only), Extensiveness of Judicial Experience, and Type of Prosecutorial Experience. The impressive performance of these models is attributed to superior measurement, operationalization, and model building; to a greater similarity between personal attribute models and more fully specified ones than has been assumed; and to the possibility that the attitudes which intervene between the personal attributes and the voting of judges are causally very closely linked to voting.

There is a substantial consensus among most prominent students of judicial politics that the background characteristics or personal attributes of judges cannot provide satisfactory explanations of their decision-making behavior. Goldman and Sarat state this consensus well (1978, p. 374):

In general, the background-behavior studies of aggregates of judges have not satisfactorily established clear-cut linkages between most background variables and decision-making. The reason for this is that taken literally, the sociological model of decision-making does not make sense. . . . What is essentially being argued is that the fact that one has certain attributes means that one will have had certain socializing experiences that have stimulated the development of certain attitudes and values or even conceptions of the judicial role. But in reality each of the background or attribute variables is too crude to be associated with the same or similar experiences; hence each of the variables is not easily linked to just one set of attitudes and values. There are some weak-to-moderate associations between a few attributes and certain types of behaviors; however, the background-behavior model has not been conclusively proven, and for the reasons just suggested it is unlikely that it can be.

Very similar arguments have been put forward by Schubert (1964, p. 446), Grossman (1966, p. 1562), Becker (1970, p. 79), and Murphy and Tanenhaus (1972, pp. 107-09).

These scholars agree that personal attributes have limited explanatory potential because they are only indirect causes of judicial decision making. A variety of important attitudinal variables intervene (see Figure 1, below). It is these intervening variables that should account for most of the variation in decision behavior.

Despite the persuasiveness of the above arguments, it appears that scholars have assumed what Ulmer (1973b, p. 627) called the "risk of premature closure" in rejecting attempts to explain the voting behavior of Supreme Court justices through the use of judges' background characteristics or personal attributes. This article reports parsimonious attribute models which explain 70 to 90 percent of the variance in the justices' liberalism in the two case areas, civil rights and liberties and economics, which have received paramount attention from the modern Supreme Court. It demonstrates that satisfactory "attribute" models of judges' decision-making behavior can be developed, at least for the justices of the United States Supreme Court.

The data analyzed in this article accompany Ryan and Tate (1980). The data for the 1946-69 terms were originally collected by Glendon Schubert; those for the 1969-72 terms by Richard E. Johnston; those for the 1973-77 terms by Andrew Van Esso under the supervision of John Ryan. The Schubert data were supplied by the Inter-University Consortium for Political and Social

Research. Financial support has been provided by the National Science Foundation through APSA and by the American Judicature Society. I am grateful to all these individuals and agencies for their assistance. However, none of them bears any responsibility for the analyses reported here.

The Analysis

Justices. Limitations on available, comparable decision data restrict this analysis to the 25 justices serving on the Supreme Court from the beginning of the 1946-47 term to the end of the 1977-78 term. The group includes all but two of Franklin Roosevelt's seven appointees and the appointees of subsequent presidents through Gerald Ford.

Decision Behaviors. In the period since the end of World War II, the United States Supreme Court has devoted most of its efforts to resolving cases concerning two broad substantive issues: civil rights and liberties, and economics. Over two-thirds of all decisions rendered since 1946 have been unambiguously classifiable into these two categories. No other issue accounted for as much as one-sixth of all decisions. (See Ryan and Tate, 1975, p. 11.) Almost every case decided in these two categories can be classified as having a "liberal" or "conservative" outcome, depending upon whether the Court's majority favored the claims put forward by civil liberties claimants or economic "underdogs." Similarly, the votes of the individual justices can be classified as liberal or conservative according to whether they favored or opposed the legal demands of civil liberties claimants and economic underdogs.

Such classification is by now routine in studies of judicial decision making. Specifically,

in a civil liberties case, justices who were in favor of granting (or granting more of) the claimed civil right were classified as supporting the *liberal* position; justices who were opposed to granting (or who wanted to grant less of) the claimed right were classified as supporting the *conservative* position. . . . *Liberals* in economics cases support unions over management, government regulation of business activities, workers claims against employers, and small businessmen over large corporations. *Conservatives*, then, do the opposite (Ryan and Tate, 1975, p. 13).

Cases which could not be clearly classified as either civil rights and liberties or economics cases were excluded from the analysis, as were civil rights and liberties and economics cases in which the outcome could not be classified as liberal or conservative.

The availability of legally respectable liberal and conservative positions to individual justices depends upon the Court's decision being non-unanimous, which is usually the case. For this reason, the decision data analyzed here are drawn from the justices' voting in all split decisions in civil rights and liberties and economics cases reported from October 1946 through September

1978 ($N = 2327$). From these data, two simple measures of Supreme Court justice decision behavior have been calculated:

1. Percent liberal of all civil rights and liberties case votes cast by the justice (%LIBCL);
2. Percent liberal of all economics case votes cast by the justice (%LIBECON).

The number of cases falling into the substantive areas and summary statistics for these dependent variables and their relationship are reported in Table 1.

The use of these percentages deserves some discussion. Since they do not represent judicial responses to identical sets of case stimuli, comparing them requires the assumption that each justice's particular set of, say, civil rights and liberties cases constitutes an essentially random sample of all possible civil rights and liberties cases to which he could have responded. Under this assumption, each justice's proportion of liberal votes in the sample cases is an unbiased estimate of the proportion of liberal votes he would have cast in the universe of all possible civil rights and liberties cases. Such estimates are subject to sampling error, of course, but are directly comparable.

Clearly it is not possible to demonstrate unequivocally the validity—or invalidity—of the above assumption. I will compare Supreme Court justices' voting percentages because the percentages are superior to any other measurement of the voting ideologies of the justices which might have been appropriate for this analysis. The percentages are simple, robust measures of the behavior of the justices across their entire careers. They constitute macro-level measures of the central tendencies of the justices' voting. In addition, the percentages appear to have strong face validity as measures of what scholars and lay observers of the Court mean when they label particular justices "liberals," "conservatives," or "moderates."

There are several reasons for using these percentages to compare the behavior of justices with non-overlapping or only partially overlapping careers. Such a practice is consistent with the literature on the relation between judges' characteristics and judicial decision making. Bowen (1965), Johnston (1976), Lindstrom (1968), Rowland and Carp (1978), Ulmer (1973), and Vines (1964) all used percentage measures to compare the voting of judges deciding different sets of cases, while Goldman (1966, 1975) used a simple linear transformation of a percentage score incorporating a middle classification position for partial support of the liberal position. In fact, of the backgrounds-decisions studies surveyed for this study, only those of Nagel (1961, 1974) used different measurements of dependent decision be-

Table 1. Liberalism in Voting on Civil Rights and Liberties and Economics Decisions in the U.S. Supreme Court, 1946-1978

Justice	Civil Rights and Liberties Cases (% LIBCL)		Economics Cases (% LIBECON)	
	Votes (N)	% Liberal	Votes (N)	% Liberal
Black	1044	73.3	740	85.4
Reed	282	11.0	305	45.2
Frankfurter	487	46.6	452	21.0
Douglas	1230	93.4	772	82.1
Murphy	87	94.3	110	96.4
Jackson	218	36.7	208	13.9
Rutledge	89	80.9	113	96.5
Burton	367	20.4	373	30.3
Vinson	208	17.3	217	41.5
Clark	685	25.3	532	65.2
Minton	181	16.0	177	52.0
Warren	743	79.1	510	82.0
Harlan	795	23.3	477	23.3
Brennan	1120	81.4	553	74.5
Whittaker	195	26.3	169	17.2
Stewart	1038	45.8	464	35.6
White	884	41.5	346	58.4
Goldberg	167	89.2	100	66.0
Fortas	248	84.3	102	67.6
Marshall	569	84.2	154	67.5
Burger	450	16.2	120	20.0
Blackmun	420	26.0	109	32.1
Powell	351	30.8	93	36.6
Rehnquist	352	4.5	96	15.6
Stevens	148	54.7	39	48.7
<hr/>		<hr/>	<hr/>	<hr/>
COURT	Cases (N)	50.6	Cases (N)	60.5
	1452		875	
Mean (25 Justices)		48.1		50.9
Standard Deviation		30.2		26.3
Correlation (r) with % LIBCL		1.000		.7972

Source: Computed from data accompanying John Paul Ryan and C. Neal Tate, *The Supreme Court in American Politics: Policy Through Law*, 2nd ed., Washington, D.C.: American Political Science Association, 1980.

havior. Even so, Nagel's measure still required assuming that the sets of decisions heard by different courts constituted essentially random samples of all the decisions which could have been heard by the courts concerning a particular issue.

Not only are the percentage measures consistent with the prevailing practice in the literature, they also are highly correlated with a variety of alternative measures used in comparing the justices' behaviors. Thus the results obtained using them would converge strongly with results obtained using any of these alternative measures. For example, the simple correlations between the percentage measures reported in Table 1 and Schubert's "composite scale rankings" for the 20 justices analyzed both here and in his *The Judicial Mind Revisited* (1974, p. 60) were —.94 for civil rights and liberties percentages-C scale rankings

and —.88 for economics percentages-E scale rankings. The composite scale scores were derived from Schubert's analysis of a series of "dominance matrices" which sought to determine the relative ordering the 20 justices *would have exhibited* had they all voted on the same C and E scale cases.

If one analyzes like correlations for the groups of 9 justices who actually sat together and decided essentially the same cases in the 10 "natural courts" covered by Schubert's analysis, one finds a similar result. The mean correlations between the *overall* voting percentages reported in Table 1 and the justices' ranks on Schubert's C and E scales for the 10 natural courts are —.89 for the civil rights and liberties percentages-C scale rank scores, and —.92 for the economics percentages-E scale rank scores.

The percentage liberal scores used here correlate highly with the C scale and E scale ranks of the 10 different groups of Supreme Court justices represented in Schubert's natural courts. This indicates 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. Beyond this it is not possible to go. One can never demonstrate conclusively that a justice with a conservative voting record during the late 1960s and 1970s might not have been a moderate or even a liberal had he encountered the cases and colleagues of the late 1940s and early 1950s. To require such a demonstration is simply to prohibit multivariate analysis of the behavior of Supreme Court justices, since one will never be able to be sure of the relative liberalism or conservatism of more than the 9 justices serving at any one time.¹

Independent Variables. The independent attribute variables used here to predict Supreme Court justices voting behavior were selected according to availability and use in previous research. Information on the justices' personal attributes was coded from readily available sources such as biographical directories (e.g., *Who's Who in America*) and the data collections of scholars such as Schmidhauser (1959), Krislov (1972), and Abraham (1974, 1975).

All significant attributes which theory or previous research suggest as relevant to Supreme Court decision making can be operationalized from available data. As far as possible, all characteristics found to be potentially important in previous research are investigated. Indeed, because the treatment of some characteristics has varied across previous studies, several versions of some traits (age, for example) have been created for consideration for inclusion in the prediction equations. Table 2 summarizes the attributes investigated.

The attributes are divided into four major categories. The first category includes traits relating to the birth, upbringing, and education of the justices.² Previous research suggests that, among

¹The problem is essentially one of equivalence of measures across the "cultures" represented by differing judicial careers. Students of comparative politics recognize that there are no easy solutions to such problems. But they also recognize that difficulties in establishing equivalence of measurement do not justify abandoning comparative research. (See Holt and Turner, 1970; Przeworski and Teune, 1970; Warwick and Osherson, 1973.)

²It proved impossible to code reliably a more direct measure of family status than the education status in-

these traits, religion should be expected to have the greatest impact on the justices' voting behavior in civil liberties and economic cases, and that the magnitude of its impact should be greater for civil liberties than for economics (see Ulmer, 1973b; also see Nagel, 1974; Goldman, 1975; Bowen, 1965; Vines, 1964). Scattered evidence can be found to support expectations that each of the other variables in this category will also be related, weakly, to the justices' voting in either civil liberties, economics, or both.³

The second category in Table 2 lists the justices' career characteristics. Ulmer's research (1973b) suggests that federal administrative experience should be negatively related to a justice's liberalism on civil liberties issues; Johnston's study (1976) indicates that having been either a federal judge or prosecutor should be negatively related to a justice's liberalism on both civil liberties and economic issues.⁴ Lindstrom's work (1968) showed prior judicial experience to be negatively related to a justice's liberalism on civil liberties questions. However, Vines (1964) showed that having held federal elective or judicial office is positively related to southern district judges' decisions on desegregation issues. Most research focusing on non-Supreme Court judges suggests that there are few important relationships between judges' career traits and voting (see Goldman, 1975; Nagel, 1974; Bowen, 1965).

The third category in Table 2 consists of measures of the justices' age and tenure. *Appointment* and *End Tenure Years*, essential for calculating the other age and tenure variables, were also considered in the analyses in order to detect secular trends in Supreme Court justice voting.

A number of researchers have found relation-

dex. The index is very similar to that used by Bowen (1965, p. 13) to measure family status.

³See Bowen (1965, p. 199) for the impact of region and status and Nagel (1974, pp. 266-67) for the impact of prestige of legal education and size of town and Vines (1964) for the impact of southern origins on civil liberties voting.

⁴Exploratory analyses of these data revealed the apparent nature of the statistical interaction which Johnston's "judge or prosecutor" measure may have been tapping. Justices who had been prosecutors were less liberal than non-prosecutor judges, but prosecutor-justices with judicial experience were substantially more liberal than prosecutor-justices without such experience, though still less liberal than non-prosecutor justices. Since this interaction effect can be meaningfully interpreted in terms of the moderating influence of judicial service on the basic civil liberties conservatism induced by prosecutorial experience, it is represented in the *Type of Prosecutorial Experience* index.

**Table 2. Supreme Court Justices' Personal Attributes
Investigated with Their Operational Definitions**

Category 1: Birth, Upbringing, Education

1. Year of birth: last 3 digits coded.
2. Region of birth: 1 = South or border state; 0 = other.
3. Religion: 1 = Non-Protestant; 0 = Protestant.
4. Size of town of upbringing: 1 = urban area; 0 = other.
5. Educational prestige measures
 - a. Prestige of prelaw education: 1 = high; 0 = average.
 - b. Prestige of legal education: 1 = high; 0 = average.
 - c. Education status index: sum of 5a and 5b; range 0-2.

Category 2: Career Characteristics

6. Judicial experience measures
 - a. Any judicial experience? 1 = some; 0 = none.
 - b. Extensive judicial experience (5 or more years)? 1 = Yes; 0 = No.
 - c. Extent of judicial experience index: 2 = 5 or more years; 1 = some, less than 5 years; 0 = none.
 - d. Some judicial experience? 1 = some, but less than 5 years; 0 = none or more than 5 years.
7. Compound experience measures
 - a. Served as either federal judge or federal prosecutor? 1 = yes; 0 = no.
 - b. Type of prosecutorial experience index: 2 = none; 1 = prosecutors with judicial experience; 0 = prosecutors with no judicial experience.
8. Ever hold elective office? 1 = yes; 0 = no.
9. Ever serve in Department of Justice? 1 = yes; 0 = no.
10. Office held at appointment
 - a. Federal administrative office (cabinet, etc.)? 1 = yes; 0 = no.
 - b. Judicial office? 1 = yes; 0 = no.
 - c. Elective office? 1 = yes; 0 = no.
 - d. No office held? 1 = yes; 0 = no.
11. Appointment region: 1 = South or border state; 0 = other.

Category 3: Age and Tenure

12. Age at appointment: in years.
13. Appointment year: last 3 digits coded.
14. Year tenure ended (1978 for those still serving): last 3 digits.
15. Tenure on Supreme Court: in years.
16. Age at mid-tenure: in years.
17. Age cohort: 1 = birth post-1900; 0 = birth pre-1901.

Category 4: Partisanship

18. Justice's party identification: 1 = Democrat; 0 = non-Democrat.
19. Appointing president's party identification: 1 = Democrat; 0 = Republican.
20. Party identification indexes:
 - a. Party index 1: 3 = justice and appointing president Democrat; 2 = justice Democrat, appointing president Republican; 1 = justice non-Democrat, appointing president Democrat; 0 = justice non-Democrat, appointing president Republican.
 - b. Party index 2: 5 = justice and appointing president Democrat; 4 = justice Democrat, appointing president Republican; 3 = justice Independent, appointing president Democrat; 2 = justice Independent, appointing president Republican; 1 = justice Republican, appointing president Democrat; 0 = justice and appointing president Republican.

Continued on next page

Table 2. (continued)

Category 4: Partisanship (continued)

21. Appointing president:

- a. Roosevelt: 1 = yes; 0 = no.
- b. Truman: 1 = yes; 0 = no.
- c. Eisenhower: 1 = yes; 0 = no.
- d. Kennedy: 1 = yes; 0 = no.
- e. Johnson: 1 = yes; 0 = no.
- f. Nixon: 1 = yes; 0 = no.
- g. Ford: 1 = yes; 0 = no.

Source: Operational definitions devised by the author.

ships between age (variously operationalized) and judicial voting, particularly concerning civil rights and liberties (see Ulmer, 1973b; Lindstrom, 1968; Goldman, 1975). However, others (Nagel, 1974; Bowen, 1965) have found age to be of little value in predicting how judges vote. On balance, the evidence appears to suggest that one should expect to find a relationship between a measure of age and Supreme Court voting behavior, especially in civil rights and liberties. The same is *not* true for tenure: none of the studies cited here demonstrated any substantial or consistent impact of length of service on judicial voting in any type of decision.⁵

The final category in Table 2 is "Partisanship." Many studies have found judges' party identifications to be among the most important influences on their voting across all kinds of issues. (See Johnston, 1976; Lindstrom, 1968; Goldman, 1975; Nagel, 1974; and Bowen, 1965; plus many of the "pioneering studies": Schubert, 1959; Nagel, 1961; Ulmer, 1962; and Goldman, 1966.) Although Ulmer's study (1973b) did not find the justice's party identification to be an important predictor of criminal case voting, it is anticipated here that it will be a significant predictor of Supreme Court justice voting in civil rights and liberties and economics cases.

The correlation ($r = .67$) between the party identifications of the justices and those of their *Appointing Presidents* makes it problematic that both variables will make independent contribu-

tions to the explanation of the justices' voting (but see Lindstrom, 1968, pp. 70-71). The "Party Index" attempts to measure the joint effects of the two identifications.

Because appointing presidents are often very self-conscious about the need to appoint justices who have the correct ideology or "real politics" (Scigliano, 1971), the significance of this variable for shaping Supreme Court decision making would seem obvious. Surprisingly, however, none of the backgrounds-decision studies cited above makes an effort to include the identity of the appointing president as a predictor of judicial voting. This exclusion does not seem justified. The potential significance of *Appointing President* is suggested by some of the conclusions of a recent massive study of the influence of background characteristics on the voting behavior of federal district judges:

This study presents updated information to reaffirm our belief that the appointing President is a variable of considerable importance in influencing the behavior of trial judges. For example, the percentage of Johnson appointees voting on the liberal side of judicial questions is some 21 points higher than for Nixon appointees for the same years. Our investigation further suggests that the variables of political party affiliation and appointing President are not entirely synonymous. That is, some Presidents have obviously selected (or been able to select) district court judges with greater ideological care than others. . . . Thus . . . to a fair degree, Presidents tend to get out of their judicial appointees the kind of decisions they want from them (Rowland and Carp, 1978, pp. 27-28).

It is anticipated that the appointing president will be a significant influence on Supreme Court voting behavior in civil liberties and economics cases.

To include all the background variables listed in Table 2 in prediction equations for the civil liberties and economics voting behavior of the 25 justices would not have been possible, even if it

⁵But see Lamb (1976) for some suggestive, though ultimately inconclusive, results on increasing conservatism with aging among court of appeals judges, and Ulmer (1973a, 1979), who shows that a justice's degree of liberalism may vary somewhat across the terms of his tenure. In fact, Ulmer suggests that such variation may even follow distinct curvilinear patterns for some long-serving justices. Of course, the fact that a variable has a variance does not prohibit meaningful analyses based on its central tendency, and it is that sort of analysis which is the focus of this article.

were wise. The number of variables would have exceeded available degrees of freedom. Furthermore, several of the variables were quite substantially correlated, either because they represented merely alternative ways of coding the same basic characteristic, or because they reflect true "real world" covariances. To include such variables would have led to intolerable multicollinearity in the prediction equations. Beyond such limiting technical considerations, however, was the necessity for parsimony. Good personal attribute explanations of Supreme Court voting behavior should rest upon as few, and as potent, interpretable independent variables as possible.

Statistical Procedure. Stepwise regression analysis, including both forward inclusion and backward elimination procedures, was used to assist in determining which attributes were sufficiently potent and stable to merit reporting in the final regression models of "Civil Liberties Liberalism" (%LIBCL) and "Economic Liberalism" (%LIB-ECON). However, the final composition of these models was in no way the choice of the computer's stepwise algorithms. On the basis of previous research, I assumed that the final models would contain measures of partisanship, particularly jus-

tice's party identification and appointing president, religion, some kinds of career experience indicators, and, perhaps, age. I did not automatically accept models emerging from the stepwise selection process which failed to include measures of these attributes. Rather, I estimated the statistical properties of alternative models including these attributes but excluding previously included attributes which were collinear and thus competing with these attributes. In addition, I computed models including alternative measurements of those attributes which had alternative measurements and compared them for their statistical potency and stability.

A variable found important in previous research was excluded from the final regression equations only when all model-building and testing procedures suggested that it had no explanatory power or that its explanatory power was a spurious result of its correlation with other, more potent and stable attributes. These final equations, presented in Table 3, included only predictors which were substantively appealing, statistically robust, and minimally collinear; which were highly statistically significant (probability of F for the regression less than .001); which contained only predictors with t values whose absolute magnitude exceed 1.25; and which yielded the maximum adjusted R^2 .

Table 3. Personal Attribute Models of Liberalism in Voting in Civil Rights and Liberties and Economics Cases for U.S. Supreme Court Justices, 1946-1978

Liberalism on Civil Rights and Liberties Cases (% LIBCL)				Liberalism on Economics Cases (% LIBECON)			
Independent Variable	Beta	B	t	Independent Variable	Beta	B	t
Party Identification	.48	29.1	4.58	Party Identification	.73	38.4	4.78
Appointing President:				Appointing President:			
Truman	-.54	-43.9	-5.65	Truman	-.26	-18.5	-1.92
Johnson	.14	14.9	1.45	Nixon	-.19	-13.4	-1.34
Nixon	-.24	-19.2	-2.27	Prestige of Prelaw			
Appointment Region	-.34	-22.2	-3.14	Education	.19	10.0	1.37
Extent of Judicial				Appointed from			
Experience	.17	6.3	1.89	Elective Office	.34	27.0	2.20
Type of Prosecutorial				Extent of Judicial			
Experience	.56	24.2	5.95	Experience	.31	9.9	2.33
Intercept		12.0		Type of Prosecutorial			
R^2		.87		Experience	.29	10.7	1.97
Adjusted R^2		.82					
Standard Error of Estimate		13.0					
F (d.f.)		16.12 (7,17)					
Probability of F		<.00005					
Determinant of Correlation							
Matrix of Predictors		.45					

Source: Computed from data accompanying John Paul Ryan and C. Neal Tate, *The Supreme Court in American Politics: Policy Through Law*, 2nd ed., Washington, D.C., American Political Science Association, 1980.

Findings

Each attribute model contains seven independent variables. Five variables, *Party Identification*, *Extent of Judicial Experience*, *Type of Prosecutorial Experience*, *Truman Appointee*, and *Nixon Appointee*, are included in both models, thus reflecting the substantial zero-order correlation of these two forms of judicial liberalism. Both models are statistically robust and predictively successful. The model for %LIBCL explains 87 percent of its variance; that for %LIBECON 72 percent of its variance.

Neither model's explanatory power rests to any appreciable degree upon the relatively limited residual degrees of freedom remaining after the seven variables are introduced into the regression equations: the Adjusted R² for %LIBCL is .82; for %LIBECON, it is .61. Both models are highly statistically significant, since the probability of their F coefficients is less than one in 20,000. Finally, neither equation is plagued by serious multicollinearity.

Given the inevitable crudity of measurement of the independent variables and the prevailing scholarly understanding that such attributes must be limited in their ability to account for variations in judicial decision making, the levels of statistical explanation achieved by the models must be regarded as impressive.

Civil Rights and Liberties Liberalism. The model depicts the justices' voting on civil liberties cases as a product of their career experiences and partisan affiliations. Its coefficients predict the most liberal score for the fictitious justice who is an experienced judge without prosecutorial experience, and who is a Democrat appointed from a non-southern state by Lyndon Johnson. Conversely, its most conservative score is predicted for the also fictitious justice who was a prosecutor without judicial experience, and who is a Republican (or Independent) appointed from the South by Harry Truman.

The %LIBCL model contains seven independent variables, but actually represents only five distinct attributes, since two of the independent variables are dichotomies measuring *Appointing President*. The most significant of these variables, relatively speaking, are *Party Identification*, *Truman Appointee*, and *Type of Prosecutorial Experience*. It is worth noting that the %LIBCL model does not include religion as an independent variable. This finding is surprising, since in the literature Protestantism was consistently associated with conservatism on civil liberties, and since religion had the highest zero-order correlation with %LIBCL. However, extensive analysis of these data has made it clear that, once the impacts of

the variables listed in Table 3 have been taken into account, religious affiliation adds little or nothing to the explicability of %LIBCL.

The attributes included in the model for %LIBCL all have sound and interpretable relationships with civil liberties liberalism. Party identification is shown to affect the behavior of America's top judicial elite in the same way it affects that of other political elites and the masses. The influence of the appointing presidents' presumed concern with the values of their appointees is clearly documented. Judges appointed from the southern states are shown to be less favorable toward civil liberties claims than their northern counterparts. And finally, the important interactive efforts of two types of career experience—judicial and prosecutorial—are documented: non-prosecutors are shown to be much more favorable toward civil liberties claims than their prosecutor colleagues, as one would predict, while, among prosecutors, those with some judicial experience are likewise more favorable than those without it, reflecting the moderating influence of sitting on the other side of the bench. Although the most important impact of judicial experience occurs in the just-mentioned moderating effect it has on the behavior of prosecutors, its influence is not limited to that group of justices. The regression coefficient for *Extent of Judicial Experience* demonstrates that the longer a justice's prior service as a judge, the greater his willingness to support civil rights and liberties claims, regardless of his other characteristics.

Economic Liberalism. The overall relationship between civil liberties and economic liberalism is fairly strong ($r = .797$). Thus one should expect considerable congruence between the regression models for these two kinds of behavior. The %LIBECON model in Table 3 shows that congruence. But it also is sufficiently different from the %LIBCL model to make a separate attribute analysis of economic liberalism worthwhile.

The economic liberalism model predicts the most liberal score for the mythical justice who is a Democrat appointed from elective office, but with extensive judicial and no prosecutorial experience, who attended a high-prestige prelaw school and was not appointed by Harry Truman or Richard Nixon. The most conservative score, conversely, is predicted for the again mythical Republican (or Independent) justice who attended an average-prestige undergraduate school, was not appointed from an elective office, had prosecutorial, but not judicial, experience, and was appointed by Harry Truman.

The substantive interpretations of the relationships in the economic liberalism model are generally clear and meaningful. The most consistent

dimension related to American partisanship since the 1928-36 realigning election period has been that measured by the economic liberalism index used here. It is thus highly appropriate and consistent with previous research to find that the Supreme Court justices' party identifications are the most important influences on their voting behavior on economic issues. The relationship for appointment from elective office is also meaningful. Mass electorates are more liberal on economic questions than elites. Thus lawyers who have found favor with a mass electorate are likely to be more liberal than their counterparts who continue to labor mostly in the service of the socioeconomic elites. The relationship between %LIB-ECON and *Prestige of Prelaw Education*, which at first glance may appear to go in an unexpected direction, may also be comfortably interpreted as reflecting the economic conservatism of the self-made man who lacked the initial advantage of a high-prestige education.

The other relationships in the economic liberalism model reflect, with differing magnitudes, relationships in the %LIBCL model. The influence of appointing presidents is again revealed. So are the impacts of judicial and prosecutorial experience. The interpretations of the latter are not as clear-cut in the case of economic liberalism as they were in the case of civil liberties liberalism. But it is clear that judicial experience is a liberalizing influence in the Supreme Court justices' voting on economic issues. It seems likely that judges are more removed from service to the interests of the economically privileged than most non-judge lawyers, and that the longer their service on the bench, the more they find the protection of the interests of economic underdogs to be a central part of their judicial duties. Prosecutorial experience is, on the other hand, a conservatizing influence. Perhaps the effort to convict defendants, who are overwhelmingly economic underdogs, leads prosecutors to have little sympathy for the claims of economic underdogs outside criminal cases. More generally, prosecutors spend most of their time defending the position of the "haves" against the criminal attacks of the "have nots." Such experience would logically engender sympathetic attitudes toward economic "top dogs."

Discussion

The success of the personal attribute models presented here is quite impressive. Statistically, there can be little doubt that they overcome the supposedly inherent limitations on the explanatory potential of background models discussed by the authors cited earlier. If an attribute model can, contrary to prediction, produce strong rather than weak or moderate associations with judicial

voting behavior, is one justified in rejecting the argument that attributes are only indirect causes of judicial behavior? I think not. The models reported here refer only to one relatively unique court, and only to the 25 justices serving on that court in the period since the end of World War II. It is not clear that similarly successful models can be constructed for the judges of lower federal courts or state appeals courts. Thus the findings reported above must be regarded as suggestive, but hardly conclusive, on the utility of attribute models in explaining the decision making of judges in general. Despite this caveat, it is worth exploring why the attribute models presented here achieve very positive results.

Leaving aside all theoretical considerations, it is clear that these models are predictively successful because of the data and measurement procedures used. This research paid more attention to identifying and including significant measurable attributes relating to the justices' birth and socialization, career, age and tenure, and partisanship than have many previous studies. Equally important, it paid close attention to the operationalization of indicators for the attributes included. Multiple indicators of important attributes were constructed and tested for their predictive efficacy and statistical stability; indicators reflecting potential nonlinear or non-additive effects were constructed and tested for their contribution. Because previous attribute models have often been based on the most readily available data and have used crude and sometimes unimaginative operationalizations of potentially crucial variables and only straightforward linear and additive regression models, it is not surprising that their results should have been less impressive than those reported here.

Skeptical readers may doubt that better measurement and model-building alone could produce these results. In addition, the theoretically inclined reader may assert that attribute models still fly in the face of good theory concerning judicial decision making, no matter how statistically potent they may be. In answer to both, I would argue that at least two other factors may underlie the explanatory success of the attribute models. First, attribute models may not (or need not) be as far removed from properly specified models of judicial decision making as has usually been assumed in the literature. Second, judges' attitudes such as socio-political values or role orientations, which have been assumed to be crucial intervening variables between their attributes and decisions, may be such proximate causes of judicial decisions that they are, for many analytical purposes, all but indistinguishable from decisional behavior. If this should be so, then attribute models could provide highly statistically

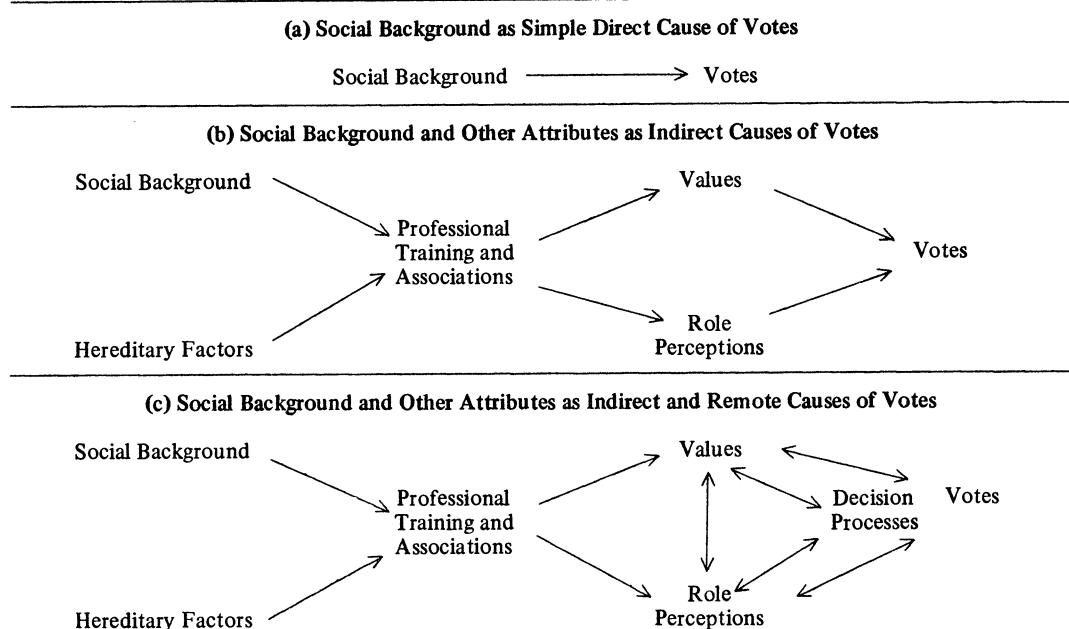
satisfactory explanations of judicial behavior even though they failed to include the unmeasured (and often unmeasurable) attitudinal variables which intervene between the attributes and decisions in the models.

Figure 1 details three models of judicial voting which Murphy and Tanenhaus (1972, p. 109) put forward to illustrate why social background variables are likely to be only weakly related to decisional behavior such as voting. Figure 1a, which represents a simplistic, straightforward link between social backgrounds and votes, is the model which, Murphy and Tanenhaus contend (1972, p. 108), underlies studies of the impact of social backgrounds on judicial voting behavior. Such a model "so oversimplifies the real world as to be of slight use." Reality, they hypothesize, might better be represented by more intricate models such as those in Figures 1b and 1c.

Certainly the models in Figures 1b and 1c represent richer and more theoretically appealing explanations of judicial decision making than that in Figure 1a. However, it is a mistake to conclude that attribute models must reflect the simplistic logic of Figure 1a. The models tested in this research included not only measures of what Murphy and Tanenhaus appear to mean by "social background" (e.g., size of town of upbringing, educational prestige), but also indicators of

"hereditary factors" (birth region, age) and a broad range of measures of the justices' "professional training and associations" (judicial and prosecutorial experience, holding of elective office, etc.). Thus the models in Table 3 are not so far removed from "realistic" models of judicial voting as might have been assumed.

The key difference between the attribute models studied here and the most elaborately specified model in Figure 1c is the former's exclusion of the two categories of attitudinal variables, values and role perceptions, and the decision processes variable category. The exclusion of decision processes is entirely proper for the dependent variables studied here. Decision processes may well intervene between a judges' attitudes, values, and role perceptions and his decision to cast a particular vote or even a few votes in a direction not indicated by these characteristics. However, over the hundreds or even thousands of votes cast by the Supreme Court justices included in this study, the influence of decisional processes should be minor and self-canceling. If decisional processes caused a justice to cast a conservative vote on one case when other factors would have produced a liberal vote, they would probably cause him to cast a liberal vote when other factors would have produced a conservative vote on another case. The result would be to remove the influence of



Source: Slightly adapted from Walter F. Murphy and Joseph Tanenhaus, *The Study of Public Law*, New York, Random House, 1972, p. 109.

Figure 1. Potential Models of Judges' Voting Behavior

decision processes from models of the career voting behavior of the Supreme Court justices.

The failure of the attribute models considered to include measures of the justices' values and role perceptions is potentially more serious from a theoretical standpoint. There is good evidence to suggest that the voting behavior of Supreme Court justices reflects their values, perhaps fairly closely (see Schubert, 1974; Spaeth, 1979, for example). And while the evidence for the impact of role perceptions on decisions is more mixed (see Vines, 1969; Howard, 1977), recent research (Gibson, 1978) indicates that the interaction of values and perceptions of roles may be very important in explaining at least some kinds of decisional behavior for at least some judges.

Unfortunately, there is no practical way of including measures of the Supreme Court justices' values and role perceptions in this analysis. The first problem is operationalization of these attitudinal measures. Studies of the values of a substantial number of Supreme Court justices have invariably operationalized values from behavioral indicators, usually votes. While criticism has been leveled at the inferential leap involved in defining values from votes, there is no reason to object to this inference as long as the inferred values are not then used to "explain" the judicial voting used to document their existence. Since it is my avowed objective to explain differences in justices' career voting behavior, the usual method of inferring values from votes cannot be used. Some independent measures of values would be required.

It is difficult to imagine what independent measure of judicial values could be used in this study. Attitude surveys, often used to measure the values (and role perceptions) of sitting lower court judges, have their limitations when most of the justices being analyzed are dead. An alternative method, inferring values from written works of judges (Danelski, 1966), might be applicable in principle, but would require a research investment which is well beyond the resources of most researchers if applied to 25 justices.

The independent operationalization of role perceptions poses no more tractable a problem. Dead justices cannot respond to role inventories even if living ones should prove willing to do so, and the content analysis of written materials in search of role perceptions would be just as impractical as for values.

Given the impossibility or the extreme difficulty of operationalizing values and role perceptions for the Supreme Court justices analyzed here, to argue that attribute models are unsatisfactory unless they include such variables is to reject the possibility of useful research on the explanation of Supreme Court justice voting behavior. It does more to establish and protect intellectual sacred

cows than to advance our knowledge of judicial behavior. However, before abandoning this discussion of values and role perceptions, one should note once again that the models reported in Table 3 do include at least one attribute—*Appointing President*—which may more or less directly index the values and role perceptions held by Supreme Court justices. The evidence suggests (see Abraham, 1974; Scigliano, 1971) that presidents pay close attention to the values and role perceptions which their potential appointees are likely to bring to the bench. Scigliano (1971, pp. 125-48) concludes that they are much more often than not successful in appointing justices who will display presidentially desired values or role orientations on the Supreme Court. It seems likely, therefore, that the presence and importance of the appointing president measures in the models of Table 3 reflects the values and role perceptions of justices selected by self-conscious presidents. If this can be accepted, the attribute models studied here end up being very like the more theoretically appealing model depicted in Figure 1b, and far removed from the straightforward model of Figure 1a.

The preceding paragraphs have demonstrated that attribute models of judicial decision making need not be so simplistic or atheoretical as has often been assumed. Their explanatory potency may reflect their de facto theoretical appropriateness. There is another possible explanation for the statistical potency of the attribute models. It may be that attitudes reflecting values and role perceptions, the intervening variables ostensibly excluded from attribute models, are so closely linked in a causal sense to voting that one can serve as an operational indicator of the other. The discussion has already noted that judicial values have often been inferred from judicial voting, while the evidence indicates that role perceptions and values are ordinarily substantially correlated (see Howard, 1977; Gibson, 1978). If votes and attitudes are so closely linked that one may be inferred from the other, it would appear that for most analytical purposes they may be indistinguishable. A model which purported to explain votes would be just as good in explaining values. And since attributes are the proximate causes of values and role perceptions in Figure 1b, one might expect attribute models of values/votes to be quite successful predictively.⁶

⁶Analogous situations arise in the literature on mass voting behavior. For example, a recent attempt to develop a nonrecursive causal model of American presidential voting choice actually presented models of the causes of voter evaluations of the candidates, since the latter was such a powerful proximate cause of voting choice as to make separate analyses of vote superfluous

The substantial explanatory powers attached to the models in this study may reflect a close causal linkage between judicial values and judicial votes. If values could be independently measured and included in voting models, they might account for virtually all the variance in judicial voting, with the influence of attributes being almost totally channeled through values. Since they cannot be independently measured for inclusion in the models, the influence of attributes is transmitted directly and powerfully to judicial voting behavior.

References

- Abraham, Henry J. (1974). *Justices and Presidents*. New York: Oxford University Press.
- (1975). *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France*, 3rd ed. New York: Oxford University Press.
- Becker, Theodore L. (1970). *Comparative Judicial Politics: The Political Functioning of Courts*. Chicago: Rand McNally.
- Bowen, Don R. (1965). "The Explanation of Judicial Voting from Sociological Characteristics of Judges." Ph.D. Dissertation, Yale University.
- Danelski, David J. (1966). "Values as Variables in Judicial Decision-Making: Notes Toward a Theory." *Vanderbilt Law Review* 19: 721-40.
- Gibson, James L. (1978). "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model." *American Political Science Review* 71: 911-24.
- Goldman, Sheldon (1966). "Voting Behavior on the United States Courts of Appeals, 1961-1964." *American Political Science Review* 60: 374-83.
- (1975). "Voting Behavior on the United States Courts of Appeals Revisited." *American Political Science Review* 69: 491-506.
- , and Austin Sarat, eds. (1978). *American Court Systems: Readings in Judicial Process and Behavior*. San Francisco: W.H. Freeman.
- Grossman, Joel B. (1966). "Social Backgrounds and Judicial Decision-Making." *Harvard Law Review* 79: 1551-64.
- Holt, Robert T., and John Turner, eds. (1970). *The Methodology of Comparative Research*. New York: Free Press.
- Howard, J. Woodford (1977). "Role Perceptions and Behavior in Three U.S. Courts of Appeals." *Journal of Politics* 39: 916-38.
- Johnston, Richard E. (1976). "Supreme Court Voting Behavior: A Comparison of the Warren and Burger Courts." In Robert L. Peabody (ed.), *Cases in American Politics*. New York: Praeger, pp. 71-110.
- (Page et al., 1979). Similarly, studies of continental European voters usually find a close causal linkage between party identifications and voting choices which makes a good analysis of one a good analysis of the other (Tate, 1980).
- Krislov, Samuel (1972). *Judicial Process and Constitutional Law: A Laboratory Manual*. Boston: Little, Brown.
- Lamb, Charles M. (1976). "Exploring the Conservatism of Federal Appeals Court Judges." *Indiana Law Journal* 51: 257-79.
- Lindstrom, Eugene Emil (1968). "Attributes Affecting the Voting Behavior of Supreme Court Justices: 1889-1959." Ph.D. Dissertation, Stanford University.
- Murphy, Walter F., and Joseph Tanenhaus (1972). *The Study of Public Law*. New York: Random House.
- Nagel, Stuart S. (1961). "Political Party Affiliations and Judges' Decisions." *American Political Science Review* 55: 843-50.
- (1974). "Multiple Correlation of Judicial Backgrounds and Decisions." *Florida State University Law Review* 2: 258-80.
- Page, Benjamin I., and Calvin C. Jones (1979). "Reciprocal Effects of Policy Preferences, Party Loyalties and the Vote." *American Political Science Review* 73: 1071-89.
- Przeworski, Adam, and Henry Teune (1970). *The Logic of Comparative Social Inquiry*. New York: Wiley-Interscience.
- Rowland, Claude K., and Robert A. Carp (1978). "The Influence of Background Characteristics on the Voting Behavior of Federal District Judges." Presented at the annual Meeting of the American Political Science Association, New York.
- Ryan, John Paul, and C. Neal Tate (1975). *The Supreme Court in American Politics: Policy Through Law*. Washington, D.C.: American Political Science Association.
- (1980). *The Supreme Court in American Politics: Policy Through Law*, 2nd ed. Washington, D.C.: American Political Science Association.
- Schmidhauser, John R. (1959). "The Justices of the Supreme Court: A Collective Portrait." *Midwest Journal of Political Science* 3: 1-50.
- Scigliano, Robert (1971). *The Supreme Court and the Presidency*. New York: Free Press.
- Schubert, Glendon (1959). *Quantitative Analysis of Judicial Behavior*. Glencoe, Ill.: Free Press.
- , ed. (1964). *Judicial Behavior: A Reader in Theory and Research*. Chicago: Rand McNally.
- (1965). *The Judicial Mind: Attitudes and Ideologies of Supreme Court Justices, 1946-1963*. Evanston, Ill.: Northwestern University Press.
- (1974). *The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology*. New York: Oxford University Press.
- Spaeth, Harold J. (1979). *Supreme Court Policy Making: Explanation and Prediction*. San Francisco: W. H. Freeman.
- Tate, C. Neal (1980). "The Centrality of Party in Voting Choice." In Peter H. Merkl (ed.), *Western European Party Systems: Trends and Prospects*. New York: Free Press, pp. 367-401.
- Ulmer, S. Sidney (1962). "The Political Party Variable in the Michigan Supreme Court." *Journal of Public Law* 11: 352.
- (1973a). "The Longitudinal Behavior of Hugo Lafayette Black: Parabolic Support for Civil Liber-

- ties, 1937-1971." *Florida State University Law Review* 1: 131-53.
- _____. (1973b). "Social Background as an Indicator to the Votes of Supreme Court Justices in Criminal Cases: 1947-1956 Terms." *American Journal of Political Science* 17: 622-30.
- _____. (1979). "Parameters of Change in the Behavior of Supreme Court Justices: 1903-1973." Presented at the annual meeting of the Southwestern Political Science Association, Fort Worth.
- Vines, Kenneth N. (1964). "Federal District Judges and Race Relations Cases in the South." *Journal of Politics* 26: 338-57.
- _____. (1969). "The Judicial Role in the American States: An Exploration." In Joel B. Grossman and Joseph Tanenhaus (eds.), *Frontiers of Judicial Research*. New York: John Wiley, pp. 461-85.
- Warwick, Donald P. and Samuel Osherson, eds. (1973). *Comparative Research Methods*. Englewood Cliffs, N.J.: Prentice-Hall.