

PLSC 476: Empirical Legal Studies

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March 23, 2021

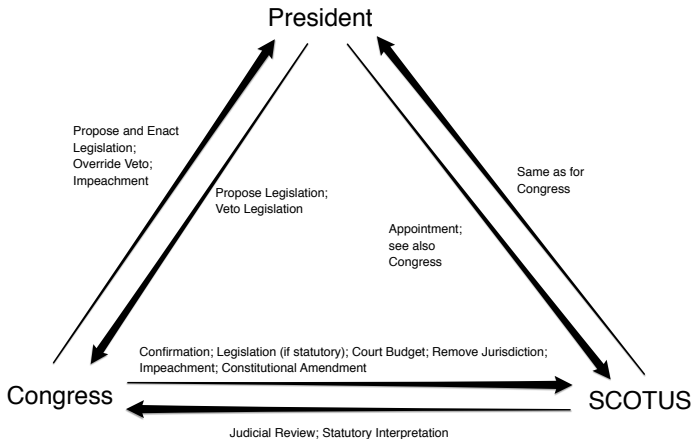
Robert Dahl (1958): “Decision Making in a Democracy: The Supreme Court as a National Policy-Maker.”

- Central tension: Representative Democracy vs. Judicial Review
- Noted by many; most famously Alexander Bickel
- Dahl: In reality, this is a non-problem...
 - Presidents get to appoint justices (on average) every two years
 - Justices' views reflect those of the current majority (president + Senate)
 - Justices act on those views
- Conclusion relies on sincere “attitudinal” voting by the justices

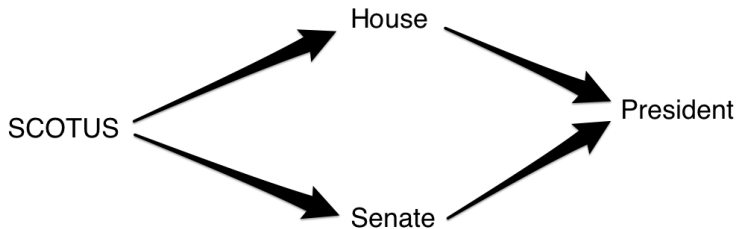
Their theory:

- SCOTUS stays “in line” because of constraints by other branches
- Justices are “strategic” (“sophisticated”)
- This is particularly true in statutory cases

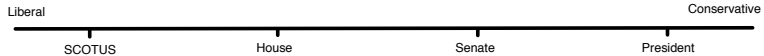
Separation of Powers



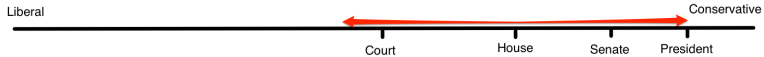
Statutory Construction



SOP Examples



If $HP \geq HC$, then Court is free to rule at its "ideal point"



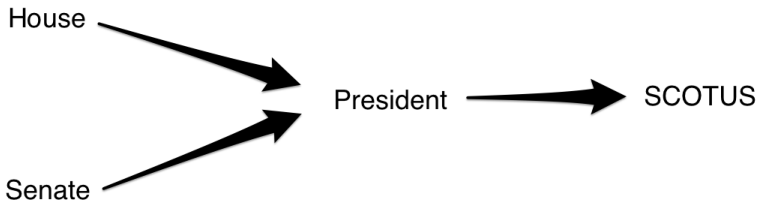
If $HP > HC$, then Court is NOT free to rule at its "ideal point"



Epstein et al. Implications

- When SCOTUS is “near” the ruling coalition, they can behave “sincerely” (and vote their preferences).
- When SCOTUS is “far” from the ruling coalition, they will necessarily shift their decisions in the direction of that coalition.
- Conversely: Dahl predicts “sincere” behavior irrespective of the location of the ruling coalition, once the position of the Court is established.

Judicial Review



Epstein et al. (2001), continued

Q: Does this also work in constitutional cases?

- No: Threat of amendment is low; cost of an unsuccessful attack is slight
- Yes; Constitutional decisions are “stickier” + prescriptive (= more valuable); successful attacks on those decisions are more damaging

Epstein et al.: Analysis

- Examine all constitutional civil rights cases, 1953-1992
- Outcome: Justices' votes (liberal or conservative)
- Predictors:
 - Justice's ideology (Segal-Cover scores)
 - Presidential regime
 - Presidential and Congressional (Senate) Ideology
- Findings:
 - Two selected justices (Black and White) were responsive
 - Moderates' behavior shifted (slightly) with presidential / Senate ideology