The Self-Correcting U.S. Supreme Court

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Abstract

In contrast to the standard conception of a U.S. Supreme Court striving to produce ideologically optimal *case* outcomes, I theorize that the Court uses cases to construct an ideologically optimal body of law. The Court aims to influence behavior of legal entities such as administrative agencies and lower courts. These actors *typically* take direction from a collection of cases and not single, isolated decisions, thus creating an incentive for the Supreme Court to target an ideologically ideal body of law rather than ideal cases. A Court directly concerned with the integrated collection of cases uses current decisions to correct the ideological bias of past terms – resulting in an inverse relationship between the ideological composition of past cases and the liberalism of the current term. Consistent with this implication, analysis of the 1953-2008 terms reveals an inverse relationship between the liberalism of past cases and that of the current term.

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"*And if every action has a reaction, today's Supreme Court, with two new Bush appointees and a distinctly conservative cast, is something of a reaction to the Warren Court. The modern conservative legal movement was born on campus as a reaction to the Warren era. Several of the court's current members were bred in the cauldron of that movement.*"

- Nina Totenberg (June 30, 2008)

1 The Supreme Court and the Law: A Novel Conception

What influence do past decisions rendered by the U.S. Supreme Court exert on its current behavior? Political scientists have provided answers to this question that fall into two general classes. First, many scholars who advocate purely ideological explanations of the Court's behavior contend that existing law places little to no constraint on the current decisions of the Court (Segal and Spaeth 1996, 2002*a*). Another group of scholars have found evidence for various forms of *stare decisis* – the tendency of the Court to follow precedent in its current decisions (Brenner and Stier 1996; Knight and Epstein 1996; Richards and Kritzer 2002). I consider a third possibility – that the current Court must over-compensate in its ideological decision-making in the direction and magnitude opposed to the balance of past doctrine in order to desirably locate the relevant line of legal reasoning.

The opening quote is exemplar of a common explanation among legal scholars for the recent conservatism of the Court. Many ideologically conservative decisions issued by the U.S. Supreme Court over the last three decades are understood as reactions to the liberal doctrine of the Warren Court (Fallon 2002; Feld 2002; Keck 2002; Lain 2004; Kennedy 2006; Cross, Smith and Tomarchio 2008; Devins 2008). Contrary to past conceptions which posit a zero or positive relationship, I theorize that the most prevalent relationship between the current and past work of the Court is one of negation. Current decisions compete with those

of the past to inform the regular activities of legal entities such as administrative agencies, private corporations and lower courts. This creates an incentive for the Court to counter the ideological bias of past decisions in order to move the relevant line of legal reasoning to its ideal point. The oft-cited conservative reaction to the Warren Court is simply an extreme example of the regular tendency of self-correction exhibited by the modern Supreme Court.

The tendency of the Court to move in opposition to the decisions of the past is demonstrated through empirical analyses of the term-level liberalism of the Court from the 1953-2008 terms. This finding has broad implications for the study of the Court. An implicit or explicit assumption underlying existing theories of decision-making on the Court is that cases are safely considered in isolation. This assumption is questionable. Future theoretical accounts of decision-making on the Court should focus on the ways in which the Court might use cases to achieve the end of an optimal body of legal policy.

2 Self-Correction on the U.S. Supreme Court

There are two previous findings on the creation and use of legal policy by the Supreme Court that underlie my argument that the Supreme Court is a self-correcting institution. First, the Supreme Court renders decisions with the objective of moving the implementation of legal policy toward its ideologically preferred position. Given that the Court strives to achieve optimal use of its work, I turn to the nature of said usage by other legal entities. A well-established finding in the literature on compliance with the Court is that subsequent users of law set by the Supreme Court are influenced by an accumulation, or body, of law, rather than critical individual cases.[1] At the end of this section I demonstrate that (1) if

[1]I'am certainly not arguing that landmark cases, which reconstitute legal rules, do not occur, they are simply the exception and not the norm.

the Court is concerned with influencing a legal entity and (2) that entity follows something closer to the average recent decision than the most recent decision in isolation, then the Court has a clear incentive to cancel out the ideological bias in past decisions.

2.1 The Supreme Court and the Objective of Influence

Countless studies have documented a strong positive association between objective measures of the liberal-conservative ideology of Court membership and the direction of decision-making (Segal and Cover 1989; Hagle and Spaeth 1991; Flemming and Wood 1997; Erikson, MacKuen and Stimson 2002; Grofman and Brazill 2002; Martin and Quinn 2002; Lens 2003; McGuire and Stimson 2004; Epstein, Martin, Segal and Westerland 2007). Though some scholars hold that justices simply want to vote with their preferences without regard for compliance with Court decisions (see e.g. Schubert (1962, 1965) and Segal and Spaeth (2002*b*)), but the results of many studies align with the observation of Wahlbeck (1998) that, "Court decisions derive significance from the impact of their rules on expected patterns of behavior and their sanctions for violations of those patterns."(pp. 614).

A growing body of work has demonstrated the Court's concern with Congress' compliance with its rulings. Eskridge (1991) provides empirical evidence that the Court modifies its behavior to optimize its influence on subsequent actions of Congress. Spiller and Gely (1992) find evidence of an ideological Congressional constraint on Supreme Court decision-making in labor policy cases. Hansford and Damore (2000) find that when Congress has overridden a statutory decision by the Court, the Court is sensitive to the ideological preferences of Congress in subsequent treatments of the relevant legal questions. And Bergara, Richman and Spiller (2003) show that the probability of a liberal decision increases with the liberalism, as measured by ADA scores, of members of Congress. These studies illustrate the Courts' attentiveness to the likelihood of favorable implementation of its decisions.

Enjoying stronger empirical support than the Court's responsiveness to Congress is the

influence of public opinion on the Court. Moreover, attentiveness to public opinion demonstrates the Court's concern with favorable treatment of its rulings. The logic is as follows; the Court's political influence – which it would like to maximize – is directly proportional to the degree to which its decisions are heeded by the elected branches. If its decisions are at odds with the preferences of the public, elected officials will have an incentive to disregard the decisions of the Court. Supreme Court Justices do not want to be ignored, so they take public opinion into account when issuing decisions (McGuire and Stimson 2004).There are a number of studies that examine the relationship between public liberalism and the liberalism of the Supreme Court. Mishler and Sheehan (1993) find evidence that the Supreme Court responded positively to public opinion between 1956 and 1981, at which point a negative relationship between public opinion and Supreme Court ideology emerged. Flemming and Wood (1997) find that public opinion is a positive determinant of the ideological behavior of individual justices. Erikson, MacKuen and Stimson (2002); McGuire and Stimson (2004) show that public mood - an annual measure of the aggregate liberalism of the U.S. public - is a positive determinant of aggregate annual Supreme Court liberalism. If the Court were not concerned with the favorable implementation of its rulings, it would have no incentive to bend with public opinion.

It has been firmly established that the U.S. Supreme Court acts to influence relevant legal entities. The Court prefers that subsequent users of its rulings behave in a manner consistent with an ideologically ideal legal policy. Before I can render a theoretical account of the Court's management of legal development over time, it will be helpful to consider the manner in which common legal entities respond to the Court. Then I can take up the task of explaining how the Court can optimize the response of subsequent users of its doctrine.

2.2 Response to Supreme Court Decisions

When the Court strikes down a law, at least when it does so in a high-profile case, it does much more than merely invalidate a particular statute. It sends a pulse into the lawmaking process that can have pervasive effects on a wide range of legislation, and it creates a rhetorical tool that can be used to great effect by ideologically motivated politicians and legislators.
- Larry Kramer (2000, p. 290)

Countless familiar legal entities make active use of the decisions rendered by the U.S. Supreme Court. These include lower courts (Johnson 1987; Songer 1987; Songer and Sheehan 1990; Songer, Segal and Cameron 1994; Benesh and Reddick 2002; Haire, Songer and Lindquist 2003; Hoekstra 2005), administrative agencies (Spriggs 1996, 1997), the U.S. Congress (Hausegger and Baum 1999), and private corporations (Caldeira and Wright 1990). Subsequent use of a particular case tends to be by and with rulings that concern a variety of legal issues that do not necessarily address the primary legal rule of concern in the case. It is relatively uncommon that any legal entity takes direction from a single Supreme Court decision in isolation. Thus, when deciding any given case, the Court may be speaking to any number of legal policy areas. By-and-large, through individual decisions, the Court contributes to a large body of relevant legal policy, rather than inform precedent on a single narrow area. Moreover, at the time a case is decided, it is not possible to perfectly predict the range of legal policy that that case will inform. This finding is critical to the strategy the Supreme Court must take in ascertaining adherence to its ideal legal policy. The Court will achieve optimal influence by assuring that the aggregate body of law points in its preferred direction.

Much work has demonstrated that it is incomplete to characterize the lower courts as responding to single decisions of the Court. Instead, lower courts tend to follow significant trends in the law. Songer (1987) shows that a statistically significant change in the *aggregate*

liberalism of Supreme Court anti-trust policy is a direct cause of a corresponding change in the anti-trust liberalism of the appellate courts, but that the relationship between the legal policy set by the Supreme Court and the appellate courts is missed if the focus is on the impact of individual decisions. Canon (1973) describes the impact of the Supreme Court on the legal policy of the lower courts as being through the consistent build-up of a large body of precedents. In another explication of the gravitational force of prior decisions rendered by the Court, H. (1974) observes that, "The majority of lower court disavowals [of established lines of precedent] have followed an implicit but substantial modification of a precedent by the Supreme Court."(pp. 516). In other words, the Court must deviate considerably from an established legal rule in order to move lower courts away from the use of that precedent. The implication of this work is that the Court must build a robust body of supporting law if the objective is to motivate lower courts to follow suit.

Government administrators also recognize and respond to the accumulation of relevant Court decisions rather than individual cases independently. Wahlbeck (1998) explains that individual cases do not make or break legal rules regarding environmental regulation – rather legal rules adapt incrementally through the contributions of new cases. Cooper (1986) explains how government information policy is formed by the body of Freedom of Information Act cases, First Amendment rulings, and the interrelatedness between those two bodies of law. Jaegal and Cayer (1991) review the marked effects that five Supreme Court cases in the latter half of the 20^{th} century have had on the practice of federal public personnel administration. Lens (2001) explains how, through a series of decisions, the Court is entering a "New Era" in its treatment of civil rights and social welfare laws, thus limiting the scope of progressive legislation. These are all clear examples of the influence of the accumulation of legal policy.

Two of the most prevalent targets of Supreme Court rulings – lower courts and administrative agencies – respond not to individual cases but to the summary rule embedded in a line of relevant decisions. A Court that wishes to affect the behavior of legal entities such

as these 6must do so through the construction of an aggregate of legal policy located at its ideological ideal. In order to derive a precise empirical prediction regarding the behavior of a self-correcting Court, in the next section I use a simple formal account of the process by which the Court would target an optimal body of law through time.

3 The Process of Self-Correction

In this section I posit a simple formal model that captures the process of self-correction undertaken by a Supreme Court concerned with influencing subsequent actors that respond to the average legal rule in a relevant body of law. The Court sets the liberalism of the current term at a point on a unidimensional conservative-liberal continuum, and the subsequent legal entity implements a policy along the same dimension - taking into consideration the liberalism of existing law, including that of the current term. The Court prefers that the subsequent legal entity set policy as close as possible to the Court's ideal point. I will arrive at the expected behavior of the Court through the method of backwards induction. First I describe the policy choice (P) of the subsequent legal entity given the average liberalism of previous decisions (L_0) and the liberalism of the current term (L_t). Next I give the utility the Court derives from setting the current liberalism at L_t given L_0, the Court's ideal policy (C) and the resulting behavior of the subsequent actor. Once the Court's utility is specified, I derive its optimal choice for current liberalism – that which sets $P = C$ (i.e. that which motivates the relevant legal entity to set policy at the Court's ideal point).

Following the findings described in section 2.2, it is assumed that the subsequent actor implements a legal policy that represents a combination of past and current decisions. As an abstraction of this process I specify the implemented legal policy P as a weighted average of the past an current liberalism of the Supreme Court. Let $\alpha_0 \in [0, 1]$ be the weight applied to past liberalism, then the expected legal policy is

$$P = \underbrace{\alpha L_0}_{Past\ Terms} + \underbrace{(1-\alpha)L_t}_{Current\ Term}. \tag{1}$$

The utility of the Court is given by the negative of the absolute difference between its ideal point and the policy implemented by the legal entity

$$U_C = -|C - P|.$$

Substituting the right-hand-side of equation 1 into the Court's utility function gives

$$U_C = -|C - [\alpha L_0 + (1-\alpha)L_t]|.$$

The Court chooses the current liberalism that maximizes its utility. Since the Court's utility is the negative of an absolute value, it is maximized when the term in the absolute value is equal to zero such that

$$C - [\alpha L_0 + (1-\alpha)L_t] = 0.$$

Solving for L_t shows that the optimal level of liberalism in the current time point is

$$L_t^* = \frac{1}{1-\alpha}\left[\underbrace{C}_{Court\ Ideology} - \underbrace{\alpha L_0}_{Self\text{-}Correction}\right]. \tag{2}$$

The under-bracketed terms in equation 2 represent the two essential processes undertaken by a Court that targets an optimal body of law through time. The first term (*Court Ideology*) represents the adjustment of current liberalism for current factors determining the Court's preferred policy. This is the Court's ideal equilibrium (i.e. time-invariant) level of liberalism for the body of law. The second term (*Self-Correction*) is the correction for any ideological bias from the past. The expected change in current liberalism due to a one unit increase in past liberalism is given by the first partial derivative of L_t^* with respect to L_0 and is equal

to

$$\frac{dL_t^*}{dL_0} = \frac{-\alpha}{1-\alpha}. \tag{3}$$

At first glance, it is counter-intuitive that the expected change in current liberalism due to an increase in past liberalism does not depend on the Court's ideology. Conceptualizing adjustment of the body of law as a two-step process motivates the intuition behind this result. The first adjustment step is to negate any past bias in the liberalism of the law – effectively zeroing it out. The next step is to move the liberalism of the law from zero to the Court's preferred position of C. This is not actually a sequential process – it occurs with a single decision, but the two-step metaphor helps to decompose the current behavior of the Court into (1) its reaction to the past and (2) its pursuit of current objectives.

The sign of the reaction to an increase in past liberalism – given in equation 3 – is always negative, because $\alpha \in [0, 1]$ and as a result $\frac{\alpha}{1-\alpha}$ is strictly positive. Current Courts will always react in the opposite direction of ideological biases of the past. The conservatism of recent Supreme Courts can be understood through the conservative values of the justices sitting on the Court (i.e. C) and a negative reaction to the extreme liberalism of the Warren Court. The supposed reaction to Warren is sufficient as a motivating example, but does not constitute robust empirical evidence of a self-correcting Court. In the next section I show that the Court has behaved as if it were targeting an optimal body of law from the 1953 to 2008 terms.

4 A Self Correcting Supreme Court? The Empirical Test

4.1 Dependent Variables

The objective in this empirical analysis is to test whether the liberalism of past decisions rendered by the U.S. Supreme Court has a negative effect on the current liberalism of the Court, which is the expected relationship under a Court that targets an optimal body of law rather than independent cases. I analyze the term-level liberalism of the Supreme Court from the 1953-2008 terms. The dependent variable in each analysis is the within-term proportion of cases decided in favor of the the more liberal side. The ideological coding of decisions comes from *The Supreme Court Database* (Spaeth, Epstein, Ruger, Whittington, Segal and Martin 2010).

There are two common approaches to the analysis of Supreme Court decisions – consideration of term-aggregated liberalism as a time-series (Baum 1988, 1992; Mishler and Sheehan 1993; Grofman and Brazill 2002; McGuire and Stimson 2004) and pooling decisions over terms, treating them as independent conditional on the covariates (Richards and Kritzer 2002; Johnson, Wahlbeck and Spriggs 2006; Wohlfarth 2009). There are two main reasons why I analyze term-level liberalism. First and most importantly, the test for self-correction requires knowledge of the sequence of decisions. The hypothesis is that the liberalism of past cases has a negative impact on that of current decisions. Within a term, two critical dates are the oral argument date and the date the decision is announced. There is often a non-trivial interval of time between argument and decision, and it is common that cases will be argued and decided between the argument and decision dates of other cases (Hoekstra and Johnson 2003). These unequal intervals eschew the sequence of events. Averaging over a term eliminates uncertainty about the sequence of events. All cases from one term are both argued and decided before those of the next term. The second justification lies in the diffi-

culty of identifying the relevant legal policy nieghborhood of an individual case. The theory states that current liberalism will be negatively related to the liberalism of the existing body of law. It is reasonable to posit that the average case within a term - in which numerous topics are considered - will respond to the average cases from previous terms, but it is less reasonable to consider each individual case responsive to all other cases. Averaging over terms washes out legal-policy idiosyncrasies - an example of aggregation gain (MacKuen, Erikson and Stimson 1989).

I analyze four different variants of term-level liberalism. The choice of dependent variables is intended to balance aggregation gain and the intra-series relevance of cases. First, I examine the time series including all cases, which offers the greatest gain from aggregation – washing out noise from idiosyncratic legal and political factors that are not included in the model. This constitutes the most general test of self-correcting dynamics on the Court. The one drawback of considering all cases is that the series is derived from combining possibly unrelated cases from different legal areas. Following McGuire and Stimson (2004), I also consider separately term-level liberalism in the legal issue areas Criminal Procedure, Civil Rights and Liberties, and Economic Activity – delineating according to the *Issue Area* coding in the *Supreme Court Database*. There are obviously fewer cases within each issue area than all the cases in a term, but cases in these series are more likely to be topically related – and we would thus be more likely to observe active targeting of an optimal body of relevant law. Next I describe the measurement of the key independent variable - the liberalism of the body of law - and the other control variables.[2]

[2]McGuire and Stimson (2004) suggest using only reversals of lower court decisions to compute aggregate measures of Court liberalism. They argue that reversals provide a more sincere ideological signal. In the spirit of robustness, I estimated all of the models with reversals only. The key result of this study – the negative relationship between the liberal balance of the body of law and current liberalism – holds up if only reversals are included.

4.2 The Liberalism of the Body of Law

In order to test whether the U.S. Supreme Court self-corrects and thus reacts in opposition to the ideological balance of the existing law, I must measure the liberalism of the law. I use two alternative measures. Since, in deriving the dependent variable for the analysis, I have already measured the term-level liberalism of the Court's output, I use term liberalism as the basic building block of the first measure of the overall liberalism of the law. The liberal balance of the law (*Cumulative Liberalism*) is measured as the sum of the proportion of liberal decisions in past terms less 0.5, which is given as

$$CL_t = \sum_{i=1952}^{t-1} \pi_i^{(L)} - 0.5,$$

where $\pi_i^{(L)}$ is the proportion of liberal decisions in the i^{th} term. The constant 0.5 is subtracted for each term so that a term that is more conservative than liberal decreases *Cumulative Liberalism* and vice versa. This variable is expected to have a negative effect on term-level liberalism.

One possible critique of the *Cumulative Liberalism* measure as an operationalization for the current liberalism in the law is that it treats the contribution of the last term and a term from thirty years back as contributing equally to the ideological balance of existing law. Fowler and Jeon (2008), through an analysis of citation patterns between U.S. Supreme Court cases, find that the importance of a case is not constant over time. Cases generally see an initial upward trend, then decline in importance through time. Fowler and Jeon (2008) derive a measure of the authority of every case ever decided by the Court, which varies from term to term. The measure of authority for case a is proportional to both the number of cases that cite it and the *hub* score of those cases, where the *hub* of case b is a measure of how many important cases are cited by b. The authority scores are estimated by solving a set of equations defined on the entire citation network that express the authority of case a

as a sum of the *hub* scores of the cases that cite it.[3] Because the authority of every case is measured repeatedly through time, this measure can be used to adjust the measure of the liberalism of the law for the importance life-cycle of a decision. The second measure of the liberalism of the law (*Liberal Authority*) is the proportion of total authority of past cases – the sum of authority scores at time t over past liberal and conservative decisions – that belong to liberal decisions giving

$$LA_t = \frac{\sum_{\forall i \in \boldsymbol{L}_t} \alpha_{it}}{\sum_{\forall i \in \boldsymbol{L}_t} \alpha_{it} + \sum_{\forall i \in \boldsymbol{C}_t} \alpha_{it}},$$

where α_{it} is the authority of the i^{th} case at time t, $\boldsymbol{L}_t$ and $\boldsymbol{C}_t$ are the sets of past liberal and conservative decisions at time t respectively. *Liberal Authority* is expected to have a negative effect on term liberalism. A time-series presentation of the measures of term and body-of-law liberalism variables is rendered in figure 1.[4]

[Insert Figure 1 here]

4.3 Control Variables and Estimation Strategy

Three control variables are considered. First, a lagged dependent variable is included in most models to account for any autocorrelation in *Term Liberalism*.[5] The second control

[3] See (Fowler and Jeon 2008, pp. 20) for more details on the authority measure.

[4] Since the authority scores are only available through 2002, models including *Liberal Authority* only include the 1953-2002 terms.

[5] The dynamic specification in these models is notably simple – a lagged dependent variable at most. Though simple, it seems quite adequate. The Ljung-Box test (Ljung and Box 1978) does not reject the null hypothesis that the residuals are white noise for any of the models

variable (*Public Opinion*) is an annual measure of the liberalism of the American Public, the measure of public policy mood presented by **?**, which McGuire and Stimson (2004) find has a positive effect on the term-level liberalism of the Court. I include *Public Opinion* in all analyses. The last control (*Court Ideology*) is a measure of the ideological preference of the Court and is given as the average Segal-Cover score (Segal and Cover 1989) of the justices on the Court.*Court Ideology* is included in every model.

Ordinary least squares (OLS) is used to estimate the model with all cases included. If the error term in the models contain factors that determine the general liberalism of the Court, there may be correlation between the residuals in the models separated by policy area. More efficient estimates, relative to those produced with OLS, are provided if I account for this correlation using seemingly unrelated regression (SUR) (Conniffe 1982). The parameters of the Criminal Procedure, Civil Rights and Liberties, and Economic Activity models are estimated as a three-equation system with SUR.[6]

4.4 Results

The regression results are presented in tables 1-4. For each dependent variable, I present five models. The first model (I) serves as a baseline for comparison and does not include

estimated.

[6]The authority scores are available at James Fowler's website http://jhfowler.ucsd.edu/. The updated time series of *Public Opinion* is available at James Stimson's website http://www.unc.edu/~jstimson/. Segal-Cover scores are available at Jeffrey Segal's website http://www.stonybrook.edu/polsci/jsegal/. The statistical software R is used for all computations (R Development Core Team 2009). The add-on package `systemfit` is used for the SUR (Henningsen and Hamann 2007). An intercept is estimated in each model, but not reported.

either of the measures of the liberalism of the body of law. The second (II) and fourth (IV) – representing purely theoretical specifications – omit the lagged-dependent variable and include *Cumulative Liberalism* and *Liberal Authority* respectively. The third (III) and fifth (V) models – referred to as the *full* models – include lagged liberalism and that of the body of law.[7]

[Insert Table 1 here]

The results for the models including all cases in the dependent variable, presented in table 1, strongly support my claim that the Court is a self-correcting institution. The estimates of the coefficients on *Cumulative Liberalism* and *Liberal Authority* are negative and statistically significant at the 0.05 level (one-tailed). A term in which 60% of the cases are decided in a liberal direction contributes 0.10 to *Cumulative Liberalism*, causing an approximate 0.0035 decrease in the following term's liberalism, a (0.10-0.0035)0.35 = 0.0338 decrease in the liberalism of the term after the next and so forth. A liberal (conservative) term sets the Court on a conservative (liberal) trajectory. In terms of the control variables, the effect of *Public Opinion* is positive in all of the models and statistically significantly so in three of the models – indicating that the Court follows the ideology of the public. Lastly, the effect of *Court Ideology* is as expected and strongly significant in every equation. It is seen that the typical control for dynamics, the lagged dependent variable, exerts little effect. It is not statistically significant in any of the models, and reduces the Adjusted R^2 from model II to III.

When it comes to the individual legal policy areas, the results – presented in tables 2-5 – are largely indicative of a Court that targets an optimal body of law. Every coefficient estimate is negative for both *Cumulative Liberalism* and *Liberal Authority* across policy areas. Moreover, the effects are all statistically significant in the areas of criminal procedure

[7] *Cumulative Liberalism* and *Liberal Authority* are not included in the same model due to the fact that they are alternative measures of the same concept – rendering the *ceteris-paribus* interpretation of the coefficients non-sensical – and they are highly correlated.

and economic activity, but not in civil rights and liberties cases. In terms of the control variables, the results herein diverge from those of McGuire and Stimson (2004). I find that *Public Opinion* has a statistically significant positive effect in economic activity but not in civil rights and liberties cases, whereas McGuire and Stimson (2004) find the opposite.

[Insert Table 2 here]

[Insert Table 3 here]

[Insert Table 4 here]

The empirical results are consistent with a Court that targets an ideologically optimal body of law by canceling out ideological imbalances from the past. The statistical power gained from combining the policy areas appears to outweigh any loss from combining unrelated cases into a single measure. In the models including all cases, the effects of *Cumulative Liberalism* and *Liberal Authority* are statistically significantly negative and larger in magnitude than in any of the individual legal domains. This is further evidence of a strong tendency to correct general ideological imbalances of its past.

5 Conclusion

Many scholars claim that the conservative jurisprudence of recent Supreme Courts can be understood as a reaction to the liberal doctrine of the Warren Court. In other words, the body of law has taken a rightward turn *because* of a prolonged leftward trajectory. This phenomenon, that the Court moves in the opposing direction of the ideological balance of its past doctrine, has never been considered in the context of a general theoretical or empirical model. It is well-established that (1) the Court is concerned with subsequent preferable treatment of its decisions and (2) future users of its decisions tend to respond to a rich build-up of law rather than individual cases in isolation. I show that these two facts

combine to create an incentive for the Court to target an ideologically optimal body of law, correcting (i.e. negatively reacting to) ideological imbalances of its past. Empirical analysis of the ideological content of the Supreme Court's decisions on the merits from the 1953-2008 terms provides strong support for the theoretical model. The modern Court's reaction to the Warren years is not an isolated instance. In general, the Court strives for an ideologically optimal body of law, and in so doing acts to cancel out ideological biases of the past.

The primary implication of the finding in the current analysis is that scholarship on the U.S. Supreme Court should proceed with the assumption that the Court is striving to produce an ideologically optimal body of law rather than individual cases. This represents a foundational change to the common theoretical approach of treating the individual case as the independent unit of analysis. Reconsideration of many relationships – from the impact of public opinion to the strategic considerations in opinion assignment – in the context of a Court striving for an ideologically ideal line of decisions may lead to theoretical innovations in the explanation of Court decision-making. For instance, a theoretical perspective – that the Court responds to precedent – has long eluded strong empirical support. A simple reading of the theory of *stare decisis* would predict that liberal precedents would lead to liberal decisions. A self-correcting Court would react in the opposite way, turning in a conservative direction in response to liberally biased preceding decisions. The negative reaction to previous law is subtle, a few percentage points at most. It is possible that (1) the tendency for self-correction has muddled the effect of precedent in past studies and/or (2) a constraining impact of precedent tempers the tendency for self correction in the current study. Future studies should consider the ways in which precedent would effect a self-correcting Court.

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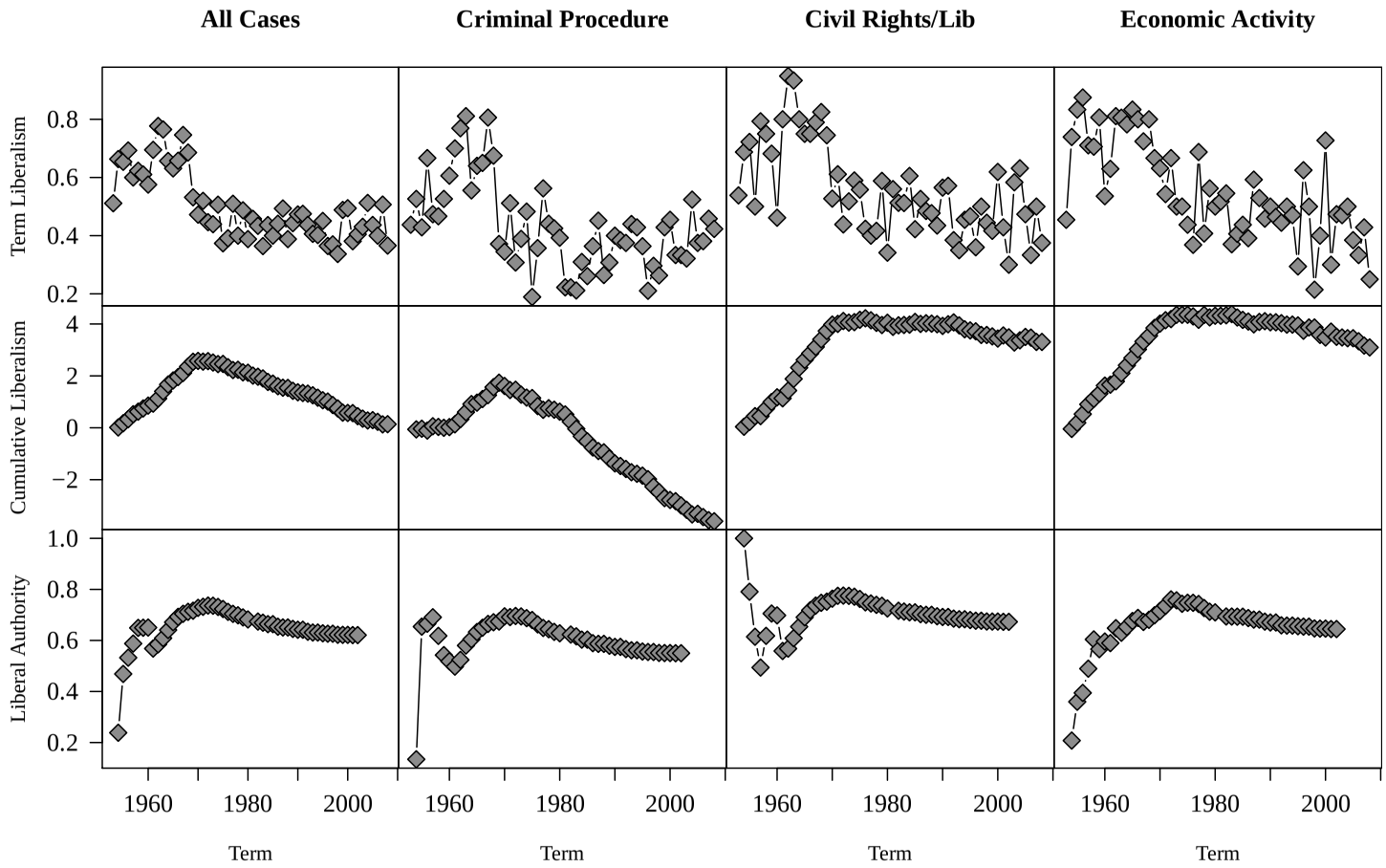

Figure 1: Term-Level Measures of the Liberalism of the U.S. Supreme Court's Past and Present Output

	I	II	III	IV	V
Liberalism$_{t-1}$	0.174	–	0.065	–	0.159
	(0.141)	–	(0.132)	–	(0.128)
Cumulative Liberalism	–	-0.036*	-0.0348*	–	–
	–	(0.00969)	(0.0101)	–	–
Liberal Authority	–	–	–	-0.423*	-0.41*
	–	–	–	(0.0978)	(0.0978)
Public Opinion	0.0041*	0.0035	0.00321	0.00723*	0.00657*
	(0.00245)	(0.00214)	(0.00224)	(0.00223)	(0.00228)
Court Ideology	0.367*	0.491*	0.461*	0.411*	0.337*
	(0.079)	(0.0467)	(0.0767)	(0.0489)	(0.0765)
Adjusted-R^2	0.733	0.784	0.781	0.819	0.822
N	54	54	54	47	47

Table 1: Analysis with all cases included. OLS coefficients are reported with standard errors in parentheses. Significant at the 0.05 level (one-tailed).

	I	II	III	IV	V
$Liberalism_{t-1}$	0.227*	–	0.194*	–	0.236*
	(0.127)	–	(0.126)	–	(0.132)
Cumulative Liberalism	–	-0.0298*	-0.0263*	–	–
	–	(0.013)	(0.0129)	–	–
Liberal Authority	–	–	–	-0.301*	-0.309*
	–	–	–	(0.171)	(0.167)
Public Opinion	0.0101*	0.00768*	0.00684	0.00953*	0.00831*
	(0.00398)	(0.00424)	(0.00419)	(0.00437)	(0.00427)
Court Ideology	0.289*	0.612*	0.498*	0.459*	0.338*
	(0.101)	(0.127)	(0.144)	(0.0956)	(0.114)
Adjusted R^2	0.558	0.559	0.578	0.56	0.59
N	54	54	54	47	47

Table 2: Analysis with criminal procedure cases included. OLS coefficients are reported with standard errors in parentheses. Significant at the 0.05 level (one-tailed).

	I	II	III	IV	V
Liberalism$_{t-1}$	0.0121	–	0.0221	–	0.0303
	(0.133)	–	(0.134)	–	(0.147)
Cumulative Liberalism	–	-0.0152	-0.0152	–	–
	–	(0.0148)	(0.0151)	–	–
Liberal Authority	–	–	–	-0.273	-0.288
	–	–	–	(0.22)	(0.223)
Public Opinion	0.00581	0.00591	0.00576	0.00414	0.00383
	(0.004)	(0.00386)	(0.00401)	(0.00464)	(0.00475)
Court Ideology	0.54*	0.486*	0.475*	0.59*	0.576*
	(0.107)	(0.101)	(0.126)	(0.0933)	(0.123)
Adjusted R^2	0.591	0.597	0.59	0.644	0.637
N	54	54	54	47	47

Table 3: Analysis with civil rights and liberties cases included. OLS coefficients are reported with standard errors in parentheses. Significant at the 0.05 level (one-tailed).

	I	II	III	IV	V
$Liberalism_{t-1}$	-0.0841	–	-0.076	–	-0.1
	(0.134)	–	(0.132)	–	(0.139)
Cumulative Liberalism	–	-0.0282*	-0.0276*	–	–
	–	(0.0148)	(0.015)	–	–
Liberal Authority	–	–	–	-0.315*	-0.303*
	–	–	–	(0.161)	(0.164)
Public Opinion	-0.00102	-0.00132	-0.00119	0.00321	0.00335
	(0.00406)	(0.00396)	(0.00398)	(0.00456)	(0.00458)
Court Ideology	0.734*	0.58*	0.629*	0.55*	0.614*
	(0.12)	(0.0998)	(0.131)	(0.106)	(0.137)
Adjusted R^2	0.607	0.626	0.623	0.605	0.604
N	54	54	54	47	47

Table 4: Analysis with economic activity cases included. OLS coefficients are reported with standard errors in parentheses. Significant at the 0.05 level (one-tailed).