

# When and Why Does the Supreme Court Overrule a Precedent?

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# Outline

1. Introduction
2. Variables and models
3. Results
4. Discussion
5. Conclusion
6. Reference



# INTRODUCTION

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# Background

1. The U.S. Supreme Court
2. The doctrine of *Stare Decisis*
3. Previous research: ideological disparity, legal provisions, treatment cases receive from subsequent courts (cited, limited, etc.)

# Hypotheses and Variables

1. Issue Area
2. Vote Split
3. Legal Provisions
4. Ideological Direction
5. Ideological Disparity

# Data and Methods

Supreme Court Database (SCDB) by Harold J. Spaeth, Lee Epstein, et al. Version 2018 Release 1. Washington University in St. Louis Law School.

N=8,893

Data manipulation, new N=354

Censoring: 169 exact, 185 censored

Dependent variable: survival time in days (0~26089)

# VARIABLES & MODELS

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# Variable 1: *issueArea*

Categorical, 12 values:

Criminal

Privacy

Judicial Power

Civil rights

Agofc

Federalism

First Amendment

Unions

Federal Taxation

Due process

Economic

Private Law



## Variable 2: *votesratio* and *cat\_votesratio*

Quantitative, range [0~1)

Minority vote / Majority vote, Minority vote + Majority vote = 9 (usually)

E.g. unanimous decision,  $votesratio = \text{Minority vote} / \text{Majority vote} = 0/9 = 0$

Cases that are more controversial yield higher *votesratio* values

*cat\_votesratio*:

- Group 1: [0-0.125) unanimous
- Group 2: [0.125-0.285) 1-8 vote split
- Group 3: [0.285-1) 2-7 vote split and above

## Variable 3: *lawSupp*

**Categorical, 2 values**

Constitutional or statutory

From SCDB *legalProvisions* variable (the Constitution, Constitutional Amendments, and the Civil Rights Act are constitutional, others statutory)

## Variable 4: *decisionDirection*

**Categorical, 2 values**

0 = liberal, 1 = conservative

Detailed definitions on what count as liberal or conservative is documented in the SCDB codebook.

E.g. pro-choice is liberal, pro-life is conservative

## Variable 5: *ideologydiff* and *cat\_ideologydiff*

**Quantitative, range [0~2.11]**

Martin-Quinn: Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999

Median court ideology score per year

Absolute value of the ideology score differences between when a precedent case was established and when it was overturned

*cat\_ideologydiff:*

4 quantiles

# Models

- Kaplan-Meier Curves on *issueArea*

&

- Cox PH models
  - Weibull models
  - Log-Normal models
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- Univariate Models
  - Multivariate Models
  - Interaction Models

# RESULTS

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# Results: Kaplan-Meier Curves

## I. Kaplan-Meier Curves

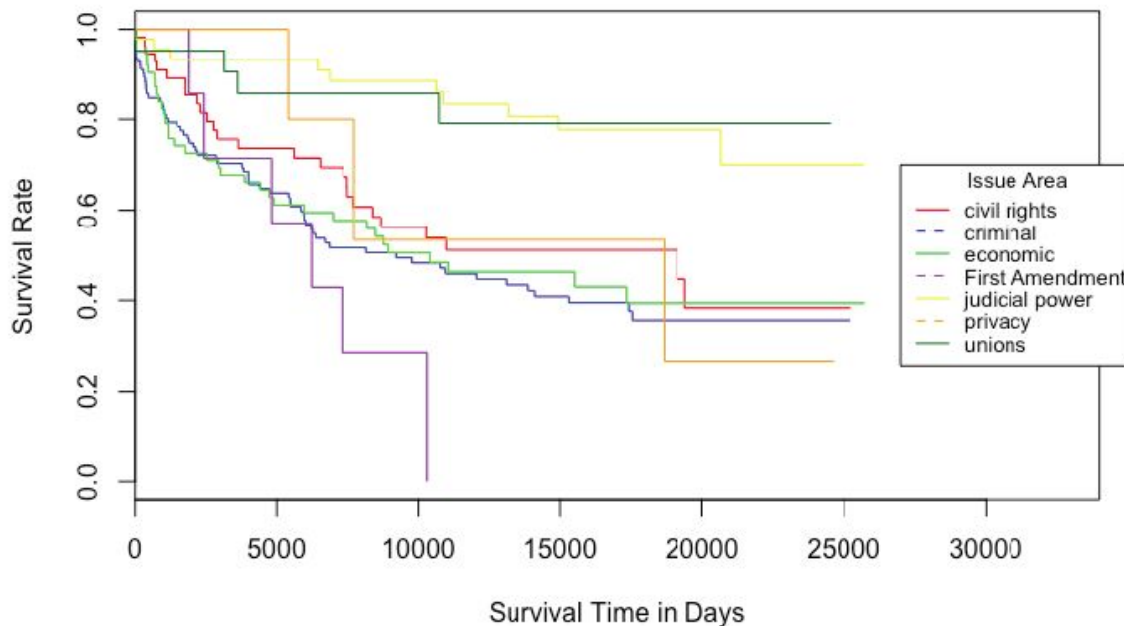


Figure 1: Kaplan-Meier curves by issue areas  
(For better visualization, only a few issue areas are included in this graph)

# Results: Log-Rank Tests

Table 3: Mantel-Cox Log-Rank Test Results

	test-statistic	p-value	hazard ratio
Area: First Amendment/judial power	29.82	$1.693 \times 10^{-3}$	6.522
Votesratio: 2-7split+/unanimous	22.15	$1.867 \times 10^{-4}$	5.331
LawSupp: constitutional/statutory	26.43	$2.733 \times 10^{-7}$	2.179
Decision direction: liberal/conservative	10.52	$1.181 \times 10^{-3}$	1.670
ideologicaliff: 1stQ/4thQ	13.95	$2.977 \times 10^{-3}$	2.109



# Results: Univariate Models & Multivariate Models

Table 1: Univariate models

	<i>Dependent variable:</i>		
	Time	Time + 0.01	
	<i>Cox PH</i>	<i>Weibull</i>	<i>Log-Normal</i>
agofc	2.2216	0.2009	0.2445
civil rights	3.1148	0.0993	0.1309
criminal	4.1463**	0.0556**	0.0363*
due process	3.1118	0.0911	0.0458
economic	3.7460*	0.0666*	0.0647**
federal taxation	1.9625	0.2323	0.3936
federalism	3.3454*	0.0834*	0.0698
First Amendment	7.2162**	0.0200**	0.0269
judicial power	1.0692	0.8331	1.4459
privacy	2.9818	0.1096	0.2552
min/maj vote ratio	12.1605***	0.0083**	0.0045*
lawSupp: statutory	0.4512***	4.7841***	9.0776***
decision direction: conservative	0.6001**	2.8428**	2.5748
ideological disparity	0.6720*	2.3439*	8.5998**
Observations	354	354	354

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Table 2: Multivariate models

	<i>Dependent variable:</i>		
	Time	Time + 0.01	
	<i>Cox PH</i>	<i>Weibull</i>	<i>Log-Normal</i>
agofc	1.6191	0.4137	0.4401
civil rights	2.5062*	0.1658	0.1625
criminal	3.1210**	0.1117**	0.0494**
due process	2.2407	0.1862	0.0931
economic	4.1946***	0.0651**	0.0525**
federal taxation	2.9544	0.1170	0.1114
federalism	2.0792	0.2252	0.1410
First Amendment	4.0060**	0.0699**	0.0372
judicial power	0.9727	0.9739	1.0037
privacy	1.6215	0.3974	0.6455
min/maj vote ratio	3.2012	0.1252	0.2893
lawSupp: statutory	0.5009***	3.4606***	4.7295***
decision direction: conservative	0.6317***	2.2967**	1.3707
ideological disparity	0.6447**	2.3127**	9.0156***
Observations	354	354	354
Log Likelihood	-877.496	-1,742.308	-1,781.958
Wald Test	63.410***		
LR Test	71.998***		
Score (Logrank) Test	69.136***		

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

# Key Findings

- All covariates show some significance
- Most findings confirm the hypotheses
- *votesratio* loses significance in the multivariate model
- *Ideologydiff* shows reverse relationship to time as expected

# Interaction Model 1: What makes *votesratio* lose significance in the multivariate model?

+ *issueArea* (p=0.02919)

+ *lawSupp* (p=0.0424)

+ *issueArea* & *lawSupp* (p=0.256)

*Votesratio* loses significance at the presence of the issue area and legal provision upon which the decision is established

## Interaction Model 2: does *decisionDirection* behave differently when *issueArea=judicialPower* ?

+ New variable: *issueArea=judicialPower*, TRUE (n=46) or FALSE (n=308)

The interaction term between *decisionDirection* and *judicialPower* has  $p=0.4249$ .  
*DecisionDirection* loses significance.

# DISCUSSION


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## 2 main topics



Judges are political

Their behaviors in court reflect their policy preferences.



Judges are  
constrained policy  
makers

Their decisions are limited by legal norms and institutions.

# Evidences: Judges are political

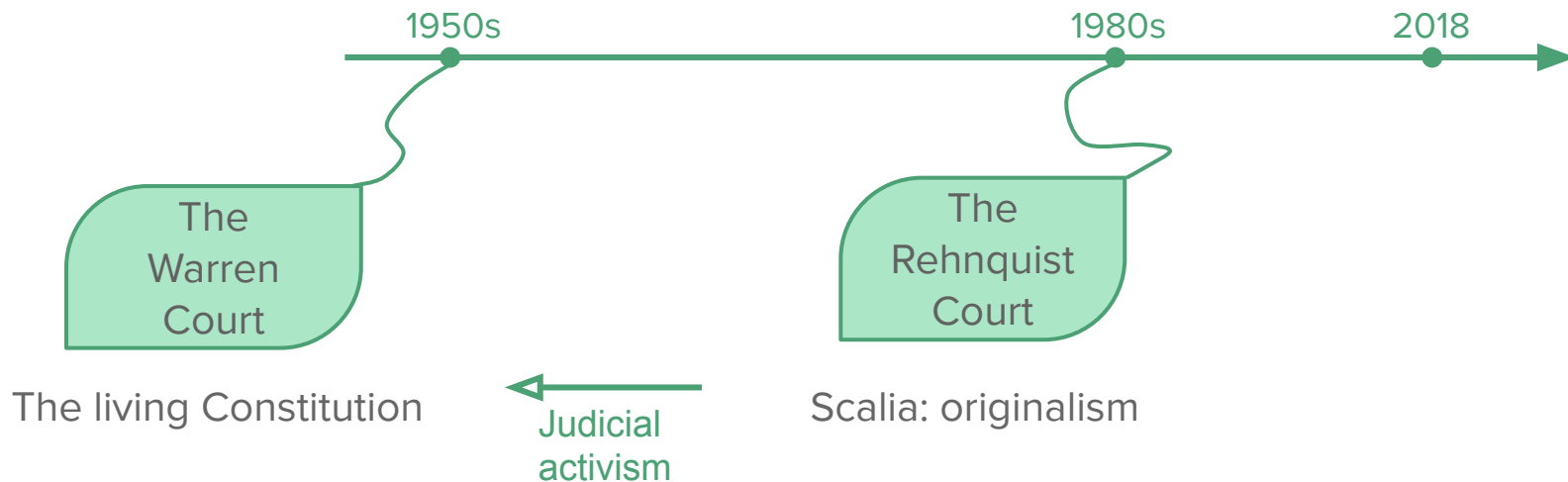
- *Ideologydiff* is significant in all models
- Liberal decisions are about twice as at risk as conservative decisions
- *DecisionDirection* loses significance on judicial power cases
  - Maybe: when it comes to issues that concerns the judicial power of the Court, justices can put their policy preferences aside
- Unexpected finding in *ideologydiff*.
  - Maybe: the Court selects cases that are less controversial and leave the political hot potatoes on hold, so that they will be able to produce more unanimous decisions, and maintain the image as an apolitical institution.

# Evidences: Judges behave with judicial restraint

- Unanimous decisions last longer
  - Maybe: stronger one-sided voices give cases higher legitimacy.
- Precedents established upon constitutional interpretations are twice at risk than those upon statutory interpretations.
  - Maybe:
    - “[T]he difficulty of amending the Constitution makes the Court the only effective resort for changing obsolete constitutional doctrine.”
    - “Courts reason that once they construe a statute, their interpretation becomes part of the statute itself, so that ‘overruling the earlier opinion is almost like repealing and rewriting the statute, which is something that only the legislature is supposed to do.’”



# Story presented by the results



“[t]he Constitution that I interpret and apply is not living but dead, or as I prefer to call it, enduring. It means today not what current society, much less the court, thinks it ought to mean, but what it meant when it was adopted.” -- Justice Anthony Scalia

# CONCLUSION

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# Answer to the Research Question

## When and why does the Supreme Court overrule its precedents?

The supreme court overrules precedents when the violation of *stare decisis* aligns with the Court's ideology preference. However, the Court also limits such violations as a means to maintain its legitimacy. Most overrules we examined can potentially be explained by the change of Court composition since the 1950s.

# Advantages Compared to Previous Literature

- Newest data
- All families of survival models
- Dynamic ideology score by year

# Limitation and future effort

- 70-year period ideology shift, can't predict future direction
- Reality more complex than 5 variables
- Interactions between covariates, stratify controlled groups
- *Votesratio* loses significance at the presence of issue area and legal provisions?

THANK YOU

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# References

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