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## *The Supreme Court and Criminal Justice Disputes: A Neo-Institutional Perspective\**

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This study conceptualizes the U.S. Supreme Court as a political institution whose decision-making behavior over time can be effectively explained and predicted. A four-variable model is constructed as a means of better understanding the Court's policy outputs in criminal justice disputes. This model represents Court decisions as a function of the institution's political composition, the generally stable attitudes of its members, its policymaking priorities, and the political environment. The results indicate that the model has substantial explanatory and predictive capacity when applied to Supreme Court criminal rights cases from 1946 to 1986.

Since the 1941 publication of C. Herman Pritchett's seminal work on the New Deal justices, students of the Supreme Court have focused significant attention on microlevel behavior at fixed points in time. The vast majority of these studies have revolved around the central orienting question, Why do justices vote the way they do? Although subject to certain limitations (see reviews by Gibson 1983; Pritchett 1968), the net result of these efforts has been the compilation of a wealth of systematic theoretical and substantive knowledge about the behavior of individual justices.

This microlevel approach was an abrupt departure from more traditional research efforts which, conceptualizing the Court as an institution and using the tools of legal and historical analysis, examined stability and change in constitutional doctrine. To its proponents the behavioral alternative produced more satisfying explanatory and predictive knowledge of the judiciary than did the more descriptive work of those interested in the Supreme Court and constitutional development. In the transition to a more empirically based enterprise, however, political scientists began to lose an appreciation for much of what the traditional scholars valued, including the importance of understanding the Court as an institution and tracing change over time.

The research presented here combines the traditional scholar's interest in institutional factors with the behavioralist's emphasis on systematic explanation and prediction. It attempts to understand the Supreme Court's behavior over time through the informed application of theoretical propositions generated primarily in the microlevel research literature. By working from such a neo-institutional

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and diachronic perspective, our goal is to develop a theoretically based, parsimonious model capable of explaining and predicting Supreme Court behavior. Our specific focus will be on the Court's resolution of criminal justice disputes for the 1946–86 terms.

### **Supreme Court Decision Making**

After publication of Pritchett's works (1941, 1948), but with particular force in the early 1960s, scholars began to address the perplexing subject of behavioral variation among individual judges. Pioneers in the behavioral analysis of judicial phenomena (most notably Glendon Schubert, S. Sidney Ulmer, and Harold Spaeth) explored a variety of potential answers to the question of why judges vote the way they do. Their theories, including social background (Ulmer 1970, 1973) and attitude models (Schubert 1965, Spaeth 1963) and later extensions such as role theory (Gibson 1978), have formed the heart of microlevel analyses of judicial behavior. By probing the judicial mind, the unit of attention became the individual judge rather than the Court as an institution. Scholarship was directed at describing and explaining variation among a set of judges responding to a common set of case stimuli arising within a relatively short period of time (e.g., Schubert 1962). As a result, we have developed relatively good models of individual judicial behavior, models capable of explaining and predicting how particular justices vote.

Without discounting the importance of probing the behavioral tendencies of its separate members, it is of equal significance to ask, Why does the *Court* vote the way it does? Certainly from the perspective of the nation's governmental and social systems, the decision of the Court is of greater practical consequence than is the particular voting array of the individual justices who produced that result. This reality suggests the importance of shifting scholarly attention from the individual (micro) to the institutional (macro) level. Just such a modification in focus has productively occurred in other areas of political science, including the presidency (Ostrom and Job 1986), the bureaucracy (Hammond and Miller 1985), Congress (Cooper and Brady 1981), and the electorate (Carmines and Stimson 1989; Erikson, Mackuen, and Stimson 1988). Indeed, several examples of judicial scholars treating the Court as an institutional actor have recently appeared (e.g., Barnum 1985; Segal 1984; Ulmer 1984), with some examining institutional variation over time (Caldeira and McCrone 1982; Pacelle 1986; Tate 1986; McLauchlan 1980, 1986; Walker, Epstein, and Dixon 1988). These research efforts, of course, differ significantly from the more traditional institutional studies that examine the evolutionary development of doctrines emanating from the Court. They are instead based on the assumption that just as individual decision making can be explained and predicted by various social, political, and legal factors, so too institutional behavior can be understood vis-à-vis a stable set of factors over an extended period of time.

If we consider the Court as a political institution, whose decision making is worthy of explanation, we can begin to theorize about its behavior by asking, What makes a political institution behave the way it does? What factors account for stability and change in institutional decision patterns over time? Based upon an examination of the literature on both individual and institutional behavior, we developed a four-variable model designed to aid in our explanation and prediction of Supreme Court decision making.

### *The Political Composition of the Court*

The most frequently tested theory of microlevel judicial decision making has been the social background or personal attribute model (Ulmer 1970, 1973, 1986). Although it has received significant criticism, its core remains intuitively viable—an individual's past experiences and personal attributes affect his or her basic life outlook and decisional propensities. The most empirically verified characteristic within the general political science literature has been party affiliation. Research on the presidency, voting behavior, and the legislative process has confirmed that differences in political philosophies and policy preferences exist between Democrats and Republicans. Studies of the judiciary, while certainly not unanimous in their conclusions, have produced evidence that political party affiliation can have a significant relationship with a judge's behavior (Tate 1981; Carp and Rowland 1983). Democrats, be they voters, elected officials, or even justices of the Supreme Court, tend to be more liberal on important political questions than their Republican counterparts.

Principles developed at the individual level can be readily transformed to apply to the macrolevel. The Supreme Court is a decision-making body that settles issues riddled with political significance. Thus, it is reasonable to hypothesize that if the majority of justices are affiliated with the Democratic party, the Court's decisions will be systematically different than if the institution is dominated by Republican majorities. This relationship is clearly seen in legislative and executive politics. As the partisan majority of the House or Senate shifts, or party control of the White House changes, the nature of the public policies adopted by these institutions are altered in a generally predictable direction. Certainly, a case can be made that the Supreme Court is more politically insulated than is Congress or the presidency, and that party discipline does not exist in the judiciary in the same manner as it does in the legislative and executive branches. Nonetheless, at its heart the Court remains a political institution, controlled by individuals with strongly held political beliefs, exercising authority to resolve politically based disputes. From George Washington's exclusively Federalist nominations and John Adams's midnight appointments through Franklin Roosevelt's Court-packing strategies and Ronald Reagan's partisan choices, chief executives have always used their selection powers to obtain or maintain party control of the judiciary. Given the inherent political role of the Court, it is ironic

that scholars have yet to examine systematically the impact of party control of that institution. In the research presented here, we shall test the proposition that policy outputs of the Court will be significantly influenced by which political party commands the allegiance of a majority of its justices. In the context of criminal justice decisions, upon which our research focuses, we would hypothesize that when the Supreme Court is controlled by Democratic majorities its policy outputs will be more favorable to the interests of criminal defendants than when Republican justices dominate.

### *Attitude Stability*

Over the past quarter century, attitude theory has been perhaps the most dominant approach to understanding the decision making of individual judges. Research has consistently found that judges on collegial courts respond to case stimuli according to well-formed attitudinal positions. Consequently, the value a judge places on principles such as freedom, equality, and economic liberalism largely determines his or her vote on disputes involving such issues (Spaeth 1979). Furthermore, judges' responses to cases in defined policy areas are neither random nor erratic. In fact, research has demonstrated that judges' attitudes are extremely stable and that as a result their behavior is quite consistent. While the attitudinal theorists have been criticized for the inherent circularity in their arguments, they have clearly established that the behavior of individual judges is quite stable and that changes tend to occur gradually rather than precipitously. Consequently, the best predictor of a particular judge's response to case stimuli in a given policy area is that judge's immediate past behavior in similar disputes.

The finding of microlevel attitude consistency can be readily applied to the institutional level. Since the Supreme Court is a continuing body with membership turnover occurring at a relatively slow rate, we would not anticipate widely fluctuating policy outputs. The attitudinal stability of the Court's individual members (to say nothing of its formal endorsement of the principle of *stare decisis*) leads us to expect relatively consistent institutional behavior. All things being equal therefore, the best predictor of the Court's position on a certain policy questions at time  $t$  will be the Court's behavior on similar issues at time  $t - 1$ .

### *Policymaking Priorities*

The issues to which a political institution devotes its attention tell us a great deal about the public policies that will emerge. In most political bodies, the membership is relatively free to decide what questions will be placed on the decision-making agenda. The executive and legislative branches, for example, are constantly involved in the process of determining the areas of public policy that are most in need of attention. While the Supreme Court is dependent upon others to bring cases to it for resolution, the justices are not completely passive

or reactive. They have their own preferences as to what questions deserve full analysis and how those questions should generally be answered. These preferences are reflected not only in the decisions rendered but also in how the Court allocates its decision-making resources. Each year litigants bring to Washington thousands of disputes, presenting a wide array of legal questions, for final resolution. From among these petitions the justices must select the fewer than 200 that merit plenary treatment.

The issues that are chosen for attention reflect the Court's policymaking priorities. The justices can effectively ignore an issue by refusing to allocate decision-making resources to its resolution. On the other hand, an issue area that frequently receives favorable certiorari treatment clearly involves questions that the justices wish to answer authoritatively. The proportion of scarce slots on the Supreme Court's plenary docket that is given to a particular area of legal policy, then, provides some indication of how the institution will treat that issue.

### *The Political Environment*

Although the justices are often portrayed as deliberating in relative isolation, the Supreme Court nonetheless operates as a part of the general political system. As such, it is subject to all of the pressures and demands exerted by the political environment. Macrolevel political factors, therefore, can have a substantial impact on the policymaking function of the Court. Many of these influences are reflected in or channeled through the executive branch.

Often the political pressure directed at the Supreme Court originates in the White House. As Baum (1985) has outlined, "Presidents have multifaceted relationships with the Supreme Court and these relationships provide several sources of political influence" (134). Baum bases his position on two diverse bodies of literature. One explores direct linkages that exist between presidents and the Court. These include the president's power to nominate justices and, thereby, his ability to shape the Court (Abraham 1985; Danelski 1964; Simon 1973); the fact that many presidents have enjoyed special relationships with sitting justices, including Richard Nixon's with Warren Burger, Franklin Roosevelt's with James Byrnes, and Lyndon Johnson's with Abe Fortas; and the notion that the president, having been elected within the previous four years, may carry a popular mandate, reflecting the preferences of the people, which would affect the political environment under which the Court operates (see Barnum 1985). In short, the president possesses a great many tools for influencing members of the Court and the institution *per se*.

Yet, as a second body of literature suggests, it is not just the president who can influence the Court but also the executive branch operating under his command. The bureaucracy, for one, "can aid the Court in obtaining implementation of its policies or refuse to help (Baum 1985, 134), a fact of which the justices are well aware. As a judicial body, the Supreme Court cannot implement or

execute its own decisions. Without such authority the Court often must depend on the executive branch to give its decisions legitimacy through action (see Johnson and Canon 1984).

But perhaps more important is the role that the solicitor general, a presidential appointee, and his office play in two aspects of Supreme Court decision making. First, the Court relies on the Office of the Solicitor General to act as a preconference screening device, filtering out insignificant petitions. To the extent that the solicitor general helps the Court set its agenda, he is able to ensure that the justices consider the administration's political goals and priorities (Provine 1980). Second, through written briefs (including *amicus curiae*) and oral argument, the justices expect that the solicitor general will lend his considerable expertise to them, thereby placing himself in the position of being the Court's "tenth justice" (Caplan 1987). Indeed, numerous analyses have indicated that the solicitor general is a most successful player in Supreme Court litigation, regardless of the particular individual holding that post (see generally, Puro 1981; Scigliano 1971; Segal 1984; Werdegar 1967).

For these reasons the president and the executive branch under his political control are in a position to affect Supreme Court decision making. Indeed, this influence can be far-reaching. Consequently, in any diachronic analysis of the Supreme Court's decision making, the impact of the executive administration should be taken into account. During periods in which the Democrats control the White House, we would expect the influence of the executive branch as well as the general political climate to be more supportive of the due process rights of the criminally accused than when a Republican occupies the presidency.

The four basic factors outlined above combine to form our simple additive model of the Court's institutional behavior. To summarize, this model represents Court decisions as a function of the institution's political composition, generally stable attitudes, policymaking priorities, and the political environment represented through the executive branch. While we continue to view the model as a general description of Court decision-making processes, the empirical evaluation to follow focuses more narrowly on decisions in criminal rights disputes.<sup>1</sup>

### **Evaluating the Model**

Because we believe our model to carry modest predictive ability in addition to its explanatory value, we employ a two-tiered evaluation strategy that considers the model's forecasting performance along with the usual criteria of parameter estimation. For this evaluation we use a measure of Court decision-making behavior consisting of the proportion of criminal rights decisions favoring the

<sup>1</sup>Our decision to use criminal cases to test our propositions was not based on any compelling theoretical reasons. Our notions of the factors that affect Court decisions are not issue specific and consequently could be applied to other issue areas as well. Criminal rights questions were selected because of data availability and the importance of these issues throughout the period examined.

interests of the accused for each year of the Vinson, Warren, Burger Courts (1946–85 terms) and the first term of the Rehnquist Court (1986). Data for the 1946 through 1968 terms were drawn from Schubert (1965) while parallel data for the remaining 18 terms were collected by the authors.<sup>2</sup> This measure varies considerably, ranging from a low of .15 in 1983 to a high of .89 in 1967. The mean value for all terms is .46, and the standard deviation is .18.

The four independent variables composing our model are operationalized in a similarly straightforward fashion. We represent the Court's generally stable attitudes by simply lagging the dependent variable one year. Thus, if the Court supported the criminal rights position in .45 of its cases during term  $t$ , this value carries over to term  $t + 1$  as an indicator of the Court's incrementalism. We operationalize the Court's political composition with a dummy variable indicating the political party affiliation of the majority of the justices for each term.<sup>3</sup> Because the party of the sitting president can be indicative of public opinion on policy issues and because it is through the executive branch that much political influence is exerted on the Court, we gauge political environment in a similar fashion with a dummy variable reflecting the party of the president. Both dummy variables are coded to represent the Democratic party—usually considered more supportive of criminal rights—as a 1 and 0 otherwise. Finally, we operationalize policymaking priorities by determining the proportion of the plenary docket that the Court allocates each year to criminal justice issues. This figure expresses the priority the Court places on the criminal justice policy area. Furthermore, since the Court has a tendency to accept for review cases that it intends to reverse (Baum 1985, 97) and because historically most criminal appeals are filed by the

<sup>2</sup>Schubert's data were obtained from the Inter-University Consortium for Political and Social Research. Neither the Consortium nor Schubert can be held accountable for our use and interpretation of these data. In selecting cases for the 1969–86 terms, we attempted to replicate Schubert's (1965) fair procedure (FP) subscale. To ascertain the "reliability" of our replication, we randomly selected four terms contained in the Schubert data set (1949, 1952, 1957, and 1966) and recoded all cases decided during these terms on two measures: whether or not the case raised a "fair procedure" issue and the decisional outcome. Overall, we attained an intercoder reliability score of .91 on case inclusion and 1.00 on decisional outcome. A list of cases included in the 1969–86 terms is available from the authors.

<sup>3</sup>We could have operationalized the Court's political composition as a proportion of those justices affiliated with the Democratic party. On the one hand, this would be a preferable measure, as it would employ the "full range of the data." On the other hand, it is less suited to our interest in understanding institutional decision making. That is, the use of proportions would return us to an emphasis on microlevel characteristics rather than those of the Court. In addition, the use of proportions assumes a greater precision in the measure and hypothesized relationship than can be theoretically justified based on previous studies of the party affiliation variable. The dummy variable, in contrast, corresponds more closely to a macrolevel approach because it treats the Court as an institution with an easily identifiable party affiliation. To determine partisan control of the Court, the party affiliation of each of the justices was taken from standard biographical sources. Justice Frankfurter, officially independent although clearly identified as a supporter of the Democratic party, is classified as a Democrat for the purposes of this analysis.



accused, we have reason to hypothesize that the proportion of the calendar devoted to criminal cases will be positively associated with the dependent variable.

### *Estimation Results*

For estimation purposes our simple additive model can be expressed in the following linear autoregressive form:

$$Y_t = b_0 + b_1Y_{t-1} + b_2X_1 + b_3X_2 + b_4X_3 + e \quad (1)$$

In this formulation  $Y$  refers to the previously described measure of criminal rights decisions observed at successive terms  $t$  and  $t - 1$ ;  $X_1$  and  $X_2$  are dichotomies coded 1 when Democrats control the Court and the presidency, respectively;  $X_3$  stands for the proportion of the plenary docket devoted to criminal cases; and  $e$  is an error term specified under standard assumptions. Parameters  $b_1$  through  $b_4$  are expected to be positively signed in accordance with the hypothesized effects of the model components.

Before turning to our estimation results, two technical issues deserve brief attention. First, because our observations are collected in time serial fashion, we face the usual threat of autocorrelated disturbances, which is further complicated by the presence of a lagged dependent variable. In this case Durbin's  $h$  is the conventional test for first-order autoregressive errors while correlograms of the autocorrelation and partial autocorrelation functions can expose alternative error structures. Neither procedure produced evidence of autocorrelation when applied to preliminary OLS estimates. Second,  $R^2$ , the usual measure of fit for regression models has been shown to be ill-behaved and difficult to interpret for estimated equations containing lagged values of the dependent variable (Schrodt and Ward 1981). For this reason we place greater reliance on the root mean square error (RMSE) to measure goodness of fit in the unstandardized metric of the dependent variable. The RMSE is also commonly employed as a measure of forecasting error and therefore is used to good advantage in both parts of our empirical assessment.

In the absence of autocorrelated disturbances ( $h = -.28$ ), we applied standard OLS procedures to equation (1) and retrieved the following estimates:

$$Y_t = -.038 + .271Y_{t-1} + .179X_1 + .153X_2 + .870X_3 \quad (2)$$

(-.4)            (2.2)            (3.8)            (3.9)            (2.4)

The values in parentheses are  $t$ -ratios indicating that all four elements of our model achieve statistical significance as their magnitudes are well in excess of their standard errors, and all are in the hypothesized direction. The model  $F$ -ratio is 15.3, the RMSE is .12, and  $R^2$  is .64, all very encouraging.<sup>4</sup> Also

<sup>4</sup>The term  $R^2$  can be misleading in the autoregressive case because it will take on different values in algebraically equivalent specifications, depending only on whether the raw value or first difference form of the dependent variable has the greater variance. In our example the two variances

encouraging is an intercept that is very close to zero and that fails even to exceed the value of its own standard error. Because our model is stochastic and therefore does not account for all of the variation in the Court's decisions, we know that other contributory factors exist, some having a negative effect and others positive. The absence of an intercept term means that these other forces in combination approach zero, leaving the Court with no long-term residual propensity to support criminal defendants. Thus, our model does a good job in specifying those explanatory factors that systematically operate in resolving criminal appeals.

The unstandardized estimates of equation (2) cannot directly establish the relative importance of the four variables comprising our model. Nevertheless, it will be of value to isolate the net contribution, on average, of each independent variable in determining the levels of Court support for criminal rights observed during the period under study. This contribution, termed "level importance" by Achen (1982), is obtained by taking the product of the mean for each independent variable and its corresponding coefficient. This procedure delineates the average impact of each variable in the metric of the dependent variable and thereby enables us to reconstruct the support measure from its predictors in a particularly revealing way. In equation (3) we substitute variable means for symbols and then carry through the indicated calculations:

$$\begin{aligned}
 Y_t &= -.038 & + & .271(.47) & + & .179(.70) & + & .153(.43) & & (3) \\
 & & + & .870(.22) \\
 .471 &= -.038 & + & .127 & & + & .125 & & + & .066 \\
 & & + & .191
 \end{aligned}$$

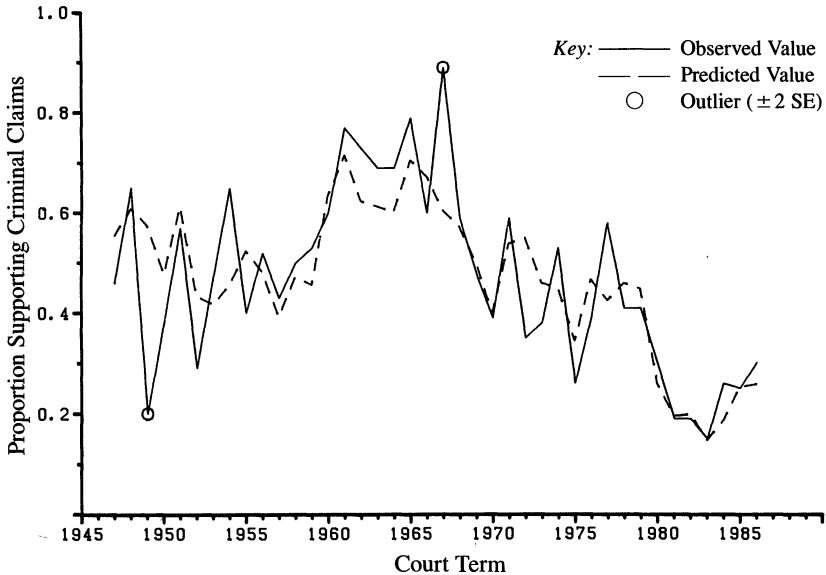
The value on the left side of the equation representing the sum of these product terms and the intercept also happens to be the mean of the dependent variable. From this analysis we learn that the Court's policy priorities ( $X_3$ ) exert a net influence that is roughly three times that of the general political environment ( $X_2$ ); whereas, the Court's past levels of support ( $Y_{t-1}$ ) and its political composition ( $X_1$ ) fall about halfway between these two. From our institutional perspective, this is a rather pleasing result, since the variables are arrayed in importance in order of their proximity to the decision-making process.

Another perspective on the model's performance is obtained from Figure 1 which plots the Court's actual support for criminal defendants alongside the predicted support scores calculated from our model. As the figure suggests, all but two of the fitted values fall within plus or minus two standard errors of the observed support score. These two outlying cases occur during the 1949 and

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are extremely close as are the  $R^2$  values (.63 as compared to .60 for the first difference formulation). Note that the RMSE is the same for both representations, which is why we prefer it. For more on this curious phenomenon, see Schrödt and Ward (1981).

FIGURE 1  
Observed and Predicted Values of Supreme Court Support for Criminal Defendants



1967 terms. Our model predicted that the Court would support the liberal (pro defendant) position in 57% of the cases in 1949. The actual value was 20%. For the 1967 term, the Court supported the criminal defendant in 89% of the cases, when the model predicted that the figure would be 61%. Both of these outlying terms represent years when the Court acted in a particularly extreme fashion. The 20% support figure in 1949 was a radical departure from previous years and was the lowest level of support for criminal defendants from 1946 through 1981. On the other hand, the 89% support level in 1967, also a rather abrupt change from the previously exhibited norm, was by far the highest support level of the entire period under analysis.

Given the overall performance of the model, we were concerned about the two outlier terms. After considering several alternatives, we discovered a commonality between the two: Justice Tom Clark. In 1949 Clark replaced Democrat Frank Murphy. According to data provided by Baum (1988), of all the justices who served during the 1946–85 terms, Justice Murphy was the second most liberal member on civil liberties issues, whereas Clark was rated as only the seventeenth most liberal. When the conservative Clark retired in 1967, he was replaced by fellow Democrat Thurgood Marshall, whom Baum rates as the justice third most supportive of civil liberties claims during the Vinson, Warren,

and Burger Courts.<sup>5</sup> Our model assumes that Democrats exert a liberal influence on the Court. It does not take into account the nuances of Democratic party affiliation. Consequently, when a conservative Democrat replaces or is replaced by a member of his party who more accurately reflects its mainstream, the model's predictive ability is reduced. Ideally, we would devise a more perfect measure of ideology (since party is in part acting as a surrogate for that amorphous concept). Yet, such a measure inevitably would be post hoc and neutralize our model as a forecasting device.

Although Clark's ideology apparently causes two outlying cases, the model does an excellent job of rebounding. Figure 1 not only vividly illustrates the disturbance associated with Clark's joining and leaving the Court, but it also demonstrates that the model immediately compensates for his presence and later his absence. The fact that it quickly stabilizes after two major shocks is additional evidence of the model's validity.

### *Prediction Results*

In addition to its explanatory power, we believe the model may also have some potential value as a forecasting device. We will demonstrate this forecasting ability in two ways, first through an ex post forecasting exercise that predicts into a "future" already known with certainty, and then with an ex ante forecast into a future we do not yet know. Because an ex post forecast generates predictions that can be checked against actual observations, it is particularly useful for evaluating the accuracy of a forecasting model. An ex ante forecast, on the other hand, produces values that are conditional on one or more hypothetical combinations of predictor variables projected into the unknown future. This type of forecast is thus more helpful for judging a model's plausibility and consistency under a wide range of possible future scenarios.

To construct an ex post forecast, it is necessary to split the original series into two subsets, one for the reestimation of model parameters and the other to serve as a forecasting "future." We divided our series after the 1977 term, leaving the last nine years aside for evaluation purposes.<sup>6</sup> When the model is reestimated without an intercept term over these first 31 observations, we obtain forecasting coefficients that are very close to the estimates of equation (2) above:

<sup>5</sup>Exacerbating the conservative jolt of the Clark appointment in 1949, Sherman Minton assumed the position previously held by Wiley Rutledge, an equally abrupt ideological shift while maintaining Democratic control of the seat. The personnel changes that occurred in our two outlier years involved three of the four largest intraparty ideological shifts associated with judicial replacements during the years studied. The other was the replacement of Minton by Justice Brennan midway through the 1956 term.

<sup>6</sup>The division at 1977-78 was an arbitrary decision. We also examined ex post forecasts based on division each year from 1975 through 1980, all with results generally comparable to what we report.

$$Y_t = .268Y_{t-1} + .163X_1 + .159X_2 + .754X_3 \quad (4)$$

(2.1)            (2.3)            (3.4)            (3.0)

As before, *t*-ratios displayed in parentheses show all the parameter estimates to be quite stable. The forecast values generated from equation (4) are listed in Table 1 alongside the actual criminal support scores and forecast errors. Both the RMSE and the simple correlation between predicted and observed values reveal a striking degree of accuracy for these ex post forecasts. The model correctly predicts general stability in policy outputs in the absence of significant changes in theoretically important variables (e.g., the Court remained under continuous Republican control during the years tested). Impressively, however, the model accurately anticipates the change in Court posture following the Republican victory in the 1980 presidential campaign.

The forecasts presented above were calculated rather straightforwardly from known values of the predictor variables; the ex ante forecasts to which we now turn lack even that small advantage. For this exercise we shall employ a forecast period beginning in 1987 and running for four consecutive terms through 1990. Quite obviously, the key task in any ex ante forecast lies in obtaining values on predictor variables that have not yet occurred, or at least that have not yet been observed. Obtaining lagged values of the criminal support score is easy enough; we begin with the 1986 observed value lagged to 1987, and then each term's predicted score simply carries over to the following year to serve as a lagged value. The two indicator variables signifying party influence on the Court and the White House must be handled somewhat differently. In the first place, we make use of the fact that the scores for the 1987 term are already known to be

TABLE 1  
Ex Post Forecast of Support for Criminal Defendants, 1978–86

Term	Actual Support	Forecast Value	Forecast Error
1978	.41	.48	-.07
1979	.41	.47	-.06
1980	.30	.28	.02
1981	.19	.22	-.03
1982	.19	.22	-.03
1983	.15	.17	-.02
1984	.26	.21	.05
1985	.25	.27	-.02
1986	.30	.26	.04

RMSE = .04.

*r* = .93.

TABLE 2  
Ex Ante Forecasts of Support for Criminal Defendants, 1987–90

	1987	1988	1989	1990
<i>When the percentage of criminal cases on the plenary docket = 10, proportion of support =</i>				
Republican Court/Republican President	.15	.11	.10	.10
Republican Court/Democratic President		.26	.29	.30
Democratic Court/Republican President		.29	.32	.33
Democratic Court/Democratic President		.44	.51	.53
<i>When the percentage of criminal cases on the plenary docket = 20, proportion of support =</i>				
Republican Court/Republican President	.23	.21	.20	.20
Republican Court/Democratic President		.36	.39	.40
Democratic Court/Republican President		.38	.42	.43
Democratic Court/Democratic President		.54	.61	.63
<i>When the percentage of criminal cases on the plenary docket = 30, proportion of support =</i>				
Republican Court/Republican President	.30	.30	.30	.30
Republican Court/Democratic President		.45	.49	.50
Democratic Court/Republican President		.48	.52	.53
Democratic Court/Democratic President		.63	.71	.73
<i>When the percentage of criminal cases on the plenary docket = 40, proportion of support =</i>				
Republican Court/Republican President	.38	.40	.40	.40
Republican Court/Democratic President		.55	.59	.60
Democratic Court/Republican President		.57	.62	.63
Democratic Court/Democratic President		.72	.81	.83

NOTE: For the 1987 term, the political party in control of the Court and the presidency is known, and therefore only one forecast is made. For the 1988–90 terms, forecasts are made for both Democratic and Republican control of the Court and the White House in order to show the model's estimation of the impact of the 1988 elections and subsequent Court appointments. For the 1987 term, the actual proportion of support for criminal defendants from the previous term is known. For all other terms, the previous year's degree of support is based on the forecasted level.

zero (Republican) on both variables. For the 1988–90 terms, we supply predicted values on the dependent variable for both Democratic and Republican control of the presidency and the Court. By providing forecast values for all four combinations of Court and presidency control, we demonstrate the model's estimation of the impact of the 1988 presidential election and subsequent judicial appointments on the Supreme Court's future decisions on criminal rights.

The final predictor—proportion of criminal cases—is measured as a continuous variable and therefore cannot be used to generate an exhaustive set of

forecasts as with the two indicator variables. Still, we can follow an analogous procedure by selecting a few plausible values of this variable to serve as the basis for alternative forecasts. We shall want to select values that capture the full observed range of this measure (.12–.34) in order to provide forecasts that cover the most likely contingencies. Accordingly, our forecasts cover four separate levels of criminal caseloads ranging from 10% to 40% of the plenary docket. Combined with the four possible outcomes of partisan control already mentioned above, this produces 16 distinct sets of conditions for the calculation of *ex ante* forecasts.

One final set of parameter estimates is needed to produce a forecasting model that takes account of all of the information available to us. The following equation is estimated without an intercept term (which we assume to be zero) over the full 40-year time period:

$$Y_t = .250Y_{t-1} + .176X_1 + .151X_2 + .756X_3 \quad (5)$$

(2.3)            (3.8)            (3.9)            (4.4)

The values in equation (5) were then used to produce the *ex ante* forecasts displayed in Table 2. We find these forecasts to be particularly revealing of the extent to which our variables may affect the Court's decisions in criminal cases. The model forecasts that Democratic control of the Court and the White House, coupled with a high proportion of the Court's docket devoted to criminal issues, results in significantly higher support levels for criminal defendants than under the condition of the Republicans occupying the presidency and a majority of Supreme Court seats with a relatively low priority placed on criminal justice appeals. Students of the judiciary often speculate on the extent to which a presidential election and the subsequent judicial appointments of the incoming chief executive might affect Supreme Court policymaking. Table 2 provides informed estimates, based on our model, of the significance to the Supreme Court of George Bush's electoral victory over Michael Dukakis. In the area of criminal justice policy, the predicted differences are substantial.

### **Conclusions**

For the past 40 years, students of the judicial process have devoted considerable resources to understanding the voting behavior of individual justices. Although this focus has significantly increased our microlevel understanding of legal decision making, it has introduced an unfortunate reluctance to study courts as institutions. In recent years, however, students of the legal system have begun to follow the lead of scholars in other political science subfields by refocusing attention on institutional behavior.

The purpose of this paper has been to explore the correlates of institutional behavior in one area of Supreme Court decision making. Our goal was to develop a parsimonious model that would help us both understand and predict patterns in

Supreme Court activity over time. Toward that end we constructed a straightforward four-variable model to help explain the Court's record in deciding criminal appeals. The model was based on the theoretical proposition that the Supreme Court's policy output is largely determined by its political composition, the attitudinal stability of its members, its policymaking priorities, and the political environment. The model appears to be successful both in explaining a large portion of the variance in Court decisions over time and in predicting the Court's behavior. Furthermore, the results offer promise that the principles incorporated into the model may well be useful in improving our understanding of the Supreme Court's policies in noncriminal issue areas. Applying the model to other areas of the law would only require a theoretical determination of direction of influence for each independent variable appropriate for the policy area under study and a collection of the relevant data.

Our findings provide additional support for the position that the diachronic examination of institutional behavior can be a profitable method of studying political phenomena. Recent efforts to explore important institutional dimensions, such as the Supreme Court's agenda, caseload, and public support, have already yielded intriguing outcomes. Future endeavors that deal with institutional change over time hold considerable promise for providing a richer understanding of our government's third branch.

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