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A Positive Political Model of Supreme Court Economic Decisions

Tony Caporale* and Harold Winter†

We develop a positive political model of the U.S. Supreme Court. Looking at the Court's economic cases for the period 1953–1993, we find a significant larger fraction of conservative decisions under Republican presidents and more conservative leadership of the House and Senate Judiciary Committees. Conservative decisions are also found to be positively correlated with the fraction of the Court appointed by Republican presidents and the rate of price inflation. We argue that our findings cast serious doubt on the common view of the Supreme Court as a completely independent, apolitical institution.

1. Introduction

A stark contrast exists between the widespread application of positive political economy models in the study of the executive and legislative branches of government and the relative dearth of such work on the judiciary. In particular, the U.S. Supreme Court is widely regarded as a totally independent body whose rulings are not influenced by political or other outside pressures. Indeed, the dominant political science model of Supreme Court decision making, the attitudinal model, argues that the rules and structures of the U.S. political system allow justices to vote sincerely without constraints from Congress and/or the president (Segal and Spaeth 1993).

In contrast to this dominant view, several authors have begun to analyze Supreme Court decisions guided by the positive models of bureaucratic behavior that exist in both the economics and the political science literature. Toma (1991) finds that Congress signals its opinion of the Court's direction through budgetary allocations, and that budget changes have a significant effect on Court decisions. Her more recent work (Toma 1996) focuses on the role of the chief justice as an agent of Congress who reacts to budgetary signals to bring Court decisions in line with congressional preferences. Spiller and Gely (1992) find strong evidence of congressional influence over Court decisions in industrial labor relations cases. Caporale and Winter (1998) find support for the existence of both executive and congressional influence over Supreme Court decisions in criminal procedure cases.

This paper investigates possible outside influences on Supreme Court decisions in economic cases. We find that Republican presidents and more conservative leadership of the Senate and House Judiciary Committees are significantly correlated with more conservative Supreme Court economic decisions. In addition, we find that conservative decisions are positively cor-

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related with the fraction of the Court appointed by Republican presidents. This provides strong support for a presidential “power of appointment” channel of judicial influence. Also, we find that the lagged inflation rate significantly influences the direction of the Court’s economic decisions. Finally, we demonstrate the robustness of our results using an alternative measure of congressional ideology.

2. Theories of Supreme Court Behavior

The Traditional Legal Model

Courts are the mere instruments of the law, and can will nothing. When they are said to exercise discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the Law.

—Chief Justice John Marshall, 1824¹

As recent legal analysts have noted, the vast bulk of legal scholarship and content of law school training largely rests on Justice Marshall’s contention.² Explicitly or implicitly, an assumption is made that court decisions are based centrally on reasoned arguments. This view, in which judges apply neutral principles and logical reasoning to the Constitution, prior precedents, or statutes in resolving cases is labeled the “traditional legal model.”

Perhaps the clearest proponent and strongest advocate of the traditional model was Christopher Columbus Langdell, the Harvard Law School’s first dean.³ For the Langdellian judge, judicial decisions are based on logical reasoning or reasoning by example. Primary importance is placed on textual interpretation and legal precedent. From this framework, decisions can be viewed as inevitable conclusions based on the analysis of earlier cases. Clearly, this model left no room for any expression of judicial individuality or personal ideology.

The Attitudinal Model

In contrast to the formalism of the traditional model, political scientists have developed an alternative theory of Supreme Court (and other judicial) decision making: the attitudinal model. The attitudinal model holds that judges decide disputes on the basis of their sincere ideological attitudes and values. The attitudinal model assumes that judges can maximize utility by rendering the decision that most pleases them ideologically, without regard to other institutions or considerations. Judges are viewed as making result-oriented decisions based on ideology as opposed to the law or legal precedent.

The foundation for the attitudinal theory was laid by the important work by Pritchett (1948) on the Roosevelt Supreme Court. Using simple statistics to analyze micro-level voting, he identified distinct liberal and conservative voting blocs. Although he did not present a model of the Court’s decision making, his work led to the development of behavioral models of the Supreme Court.

Rhode and Spaeth (1976) provide the classic formulation of the attitudinal model. They

¹ *Osborn v. Bank of United States*, 22 U.S. 738, 866 (1824).

² For example, see Cross (1997) and George (1998).

³ See Grey (1983) for a discussion of the genesis of Langdell’s theory of law.

argue that the primary goals of justices are policy goals, and voting is an attempt to move decision outcomes as closely as possible to those policy preferences. Justices are free to vote according to their sincere preferences since various institutional protections (e.g., life tenure and the fact that there is no higher appeal) insulate them from outside influences.

Positive Political Theory

Positive political theory (PPT) applied to the Supreme Court largely agrees with the attitudinalists that justices are making political, policy-oriented decisions. However, proponents of PPT argue that the Court is not insulated from political pressure and that the institutional protection of the Court is not complete. For example, Congress can readily overturn the Court's statutory decisions. Therefore, if the Court is concerned about ultimate policy outcomes, it must take the political climate into account when rendering decisions. Recent empirical work by Toma (1991, 1996), Spiller and Gely (1992), and Caporale and Winter (1998) all provide support for the PPT approach applied to the Supreme Court.

3. Supreme Court Data

Our data on Supreme Court economics cases are taken from Harold Spaeth's exhaustive U.S. Supreme Court Judicial Database, 1953–1993 term.⁴ Spaeth partitions the data into 13 different broad issue areas, including one on economic activity.⁵ Our sample includes all economic activity cases that were fully argued before the Court between 1953 and 1993 for which Spaeth assigns a direction to the decision. In the context of economic activity cases, Spaeth's direction variable is a binary variable assigned a value of 1 if the decision is "conservative" and a value of 0 if the decision is "liberal." In the description of his database, Spaeth describes "liberal" in the context of economic activity cases to refer to such situations as anti-business, anti-employer, pro-competition, pro-liability, pro-injured person, pro-indigent, pro-small business *vis-à-vis* large business, pro-debtor, pro-bankrupt, pro-environmental protection, pro-economic underdog, pro-consumer, and pro-accountability in governmental corruption.

In previous studies examining labor union cases and criminal procedure cases, the direction variable appears to be less ambiguous than in the current study. For example, in labor union cases, "liberal" refers to pro-union. In criminal procedure cases, "liberal" refers to pro-defendant. Because the meaning of "liberal" in economic activity cases may at times appear ambiguous, it is worth briefly examining a few individual cases to better understand Spaeth's definition of his direction variable.

Antitrust

In a 1988 "liberal" decision, a group of doctors who owned a clinic peer reviewed and barred another doctor (who owned a competing clinic) from using the only local hospital. The doctors' claim that physician peer review is exempt from federal antitrust laws was denied.⁶ In

⁴ Inter-University Consortium for Political and Social Research (ICPSR) database no. 9422.

⁵ The other broad issue areas are criminal procedure, civil rights, First Amendment, due process, privacy, attorneys, unions, judicial power, federalism, interstate relations, federal taxation, and miscellaneous.

⁶ *Patrick v. Burget*, 108 S.Ct. 1658 (1988).

another 1988 case, one retailer of calculators complained to the manufacturer about another local retailer's prices, and the manufacturer terminated its relationship with the second dealership. The terminated dealer's claim that the first dealer and the manufacturer were involved in a *per se* illegal vertical agreement was denied by the Court. The "conservative" decision was that for a vertical agreement to be *per se* illegal, there must be some agreement on prices, which did not occur in this case.⁷

Legal Remedies

In a 1998 case, an injured worker at a federally owned but privately operated nuclear plant appealed to a state regulator for additional benefits to be paid out by the plant. The "liberal" decision was a denial by the Court of the plant's request for federal shielding of state regulation.⁸ In a "conservative" 1988 decision, a former federal employee who was suspended because of misconduct was denied the right to receive back pay.⁹

State Tax

In a 1988 case, a taxpayer challenged the state of Louisiana's authority to tax a catalog that was produced outside the state but distributed within the state. The Court's "liberal" decision was to uphold Louisiana's right to tax the catalog.¹⁰ In a 1989 case, a taxpayer challenged the state of West Virginia's authority to assess a recently sold property higher than comparable (but not recently sold) property. The Court's "conservative" decision was that West Virginia's discriminatory taxing policy violated the 14th Amendment's equal protection clause.¹¹

Although these cases represent only a portion of the type of cases included in Spaeth's category of economic activity cases, they provide an indication of the meaning of the direction variable.¹² While a criterion such as "pro-competition" may be ambiguous to an economist, such as in the case of a merger potentially being pro-competitive or anti-competitive, to Spaeth a merger that is upheld by the Court would always be an example of a "conservative" decision. This is not a criticism of Spaeth's definition since he is not categorizing his decisions as economically efficient or inefficient. Indeed, the important point is that his definitions of "liberal" and "conservative" fit well with what congressmen and senators (and their constituents) believe the terms to mean.

Over the 41-year sample period, there are 9743 decisions in the economics cases category. As there are enough decisions in any single year (a minimum of 117 in 1954 and a maximum of 403 in 1986), we can compute a variable that measures the percentage of conservative decisions in each year. In contrast to Spiller and Gely, for example, our dependent variable is a continuous, as opposed to a binary, measure of Supreme Court voting behavior. While their measure allows them to use a data set with 249 observations, ours allows for a sample with

⁷ *Business Electronics v. Sharp Electronics*, 108 S.Ct. 1515 (1988).

⁸ *Goodyear Atomic v. Miller*, 108 S.Ct. 1704 (1988).

⁹ *U.S. v. Fausto*, 108 S.Ct. 668 (1988).

¹⁰ *D. H. Holmes v. McNamara*, 108 S.Ct. 1619 (1988).

¹¹ *Allegheny Pittsburgh Coal v. County Commission of Webster County*, 109 S.Ct. 633 (1989).

¹² Some of the other issues included in the economic activity category are state regulation of business, environmental protection of natural resources, zoning, federal consumer protection, patents and copyrights, federal transportation regulation, bankruptcy, liability (nongovernmental), federal regulation of securities, and federal public utilities regulation.

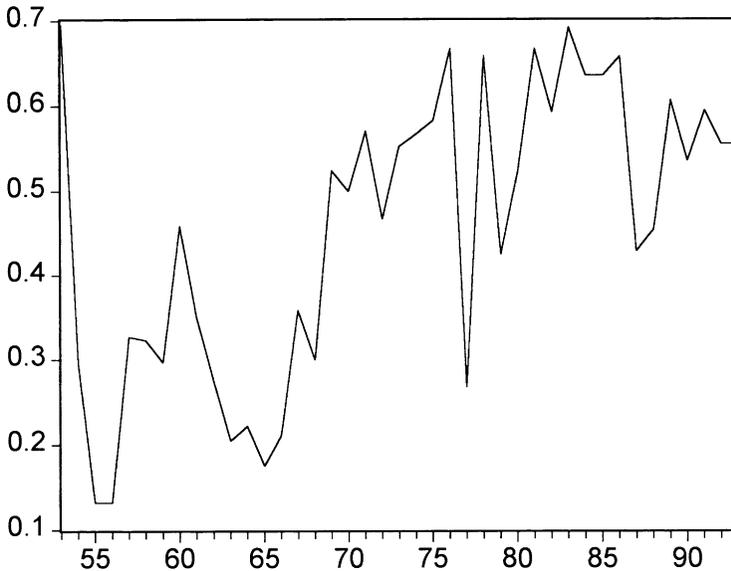


Figure 1. Percentage of Conservative Supreme Court Economic Decisions

only 41 observations. However, because all their (and our) explanatory variables have no cross-sectional variation, any variation in the dependent variable in either form can be due only to yearly variations in the explanatory variables.¹³ One advantage of our measure is that it allows us to use a large number of Supreme Court cases. For Spiller and Gely's interest in labor union cases, our measure would not be as informative because their data set consists of, on average, only six decisions per year. Coincidentally, the Spaeth data set we employ does not include labor union cases in the economics cases category, so we are presenting evidence of political influence over the Supreme Court with a previously unused data set. Figure 1 is a plot of our dependent variable over the sample period. Dickey-Fuller and augmented Dickey-Fuller tests strongly reject the presence of a unit root in our dependent variable. The mean of our dependent variable is .455 (standard deviation = .17) and ranges between .695 and .132.

4. Hypotheses and Empirical Results

Prior to searching for outside influences on Supreme Court voting, we must deal with the problem of selection bias in our data. This bias arises because the Court can uphold a decision simply by refusing to hear a case. Therefore, we expect to find an inverse relationship between the average direction of the lower court ruling and that of the Supreme Court. To correct for this bias, we include a variable that measures the average direction of the lower-court decisions for the cases in our sample.¹⁴

The first hypothesis that we test concerns the role of the president in influencing the Court. We argue that Republican presidents prefer more conservative economic decisions than do

¹³ We would like to thank an anonymous referee for suggesting that we emphasize this difference between our data set and Spiller and Gely's.

¹⁴ Spiller and Gely (1992, p. 479) provide a clear discussion of this point.

Table 1. Political Influence over Supreme Court Economic Case Decisions, 1953–1993

Variable	Eqn. 1	Eqn. 2	Eqn. 3	Eqn. 4
Constant	0.67 (6.45)	0.91 (11.64)	1.38 (7.71)	0.76 (6.72)
Lower court, % conservative decisions	-0.33 (1.84)	-0.23 (1.70)	-0.22 (1.62)	-0.13 (0.92)
Supreme Court, % Democratic appointments	-0.003 (2.29)	-0.004 (5.53)	-0.005 (5.88)	-0.003 (4.50)
Republican presidential dummy	0.14 (3.29)	0.16 (5.26)	0.13 (3.78)	0.16 (5.41)
Judiciary Committee chair ADA (Senate)	—	-0.002 (5.79)	-0.002 (6.85)	-0.001 (3.78)
Judiciary Committee chair ADA (house)	—	-0.003 (4.31)	-0.003 (4.35)	-0.003 (4.76)
% Republican Senate	—	—	-0.0003 (0.12)	—
% Republican House	—	—	-0.007 (1.88)	—
Lagged inflation	—	—	—	0.012 (2.59)
Lagged output growth	—	—	—	0.002 (0.67)
R^2	0.48	0.70	0.76	0.76

Absolute value of HAC t -statistics are in parentheses. Dependent variable is the annual percentage of conservative Supreme Court economic case decisions.

Democratic presidents. A direct way to capture the possible effect of these preferences is to incorporate a dummy variable for presidential party. An additional source of executive influence on the Court, pointed out by Dahl (1957), arises because presidents select justices subject to Senate confirmation.¹⁵ Since presidential nominees to the Court are likely not to differ significantly in ideology from their nominating executive, we anticipate that the larger the fraction of the Court nominated by Republicans (Democrats), the larger, on average, the fraction of conservative (liberal) decisions.¹⁶

Equation 1 of Table 1 confirms these hypotheses. Our Republican presidential dummy variable is positively and significantly correlated with the annual percentage of conservative Supreme Court economic decisions. Quantitatively, we find that on average there are 14% more economic case decisions decided in a conservative direction under Republican administrations than there are under Democratic ones. We also find a significant inverse relationship between the fraction of justices appointed by Democratic presidents and conservative decisions. The standardized coefficient on this variable reveals that a one-standard-deviation increase leads to a .37-standard-deviation decline in the fraction of conservative decisions (roughly 6% fewer). This supports an additional power of appointment executive influence.¹⁷

In Equation 2 (Table 1), we test for congressional influence over the Court. Spiller and

¹⁵ Recent work by Sutter (1997) stresses the interrelationship between political agents and the Supreme Court.

¹⁶ Chappell, Havrilesky, and McGregor (1993) show a significant effect of this presidential power of appointment in the context of monetary policy.

¹⁷ Each regression in this paper is estimated using Newey and West's covariance matrix estimator (HAC) that is consistent in the presence of both heteroskedasticity and autocorrelation of an unknown form.

Gely argue that this influence stems from the ability of Congress to overturn decisions via legislation. Although such actions are rare, Weingast and Moran (1983) show that overt action does not necessarily indicate the lack of effective congressional monitoring. In this case, the threat of possible reversals via legislation will limit the Court's ability to deviate too far from congressional preferences.¹⁸ We measure congressional preference by using the Americans for Democratic Action (ADA) scores of the chairs of the Senate and House Judiciary Committees. The Judiciary Committees are used since they are directly responsible for overseeing the Supreme Court.¹⁹ ADA scores range between 100 (a perfect liberal voting record) and 0.

We expect a negative relationship between the ADA scores and our dependent variable. The mean value of the ADA scores of the Senate Judiciary Committee chair is 25.83 (standard deviation = 35). The average score for the House chair is 79.31 (standard deviation = 26). The results in Equation 2 strongly support our hypothesis of an inverse relationship between conservative Court decisions and our congressional variables. Both coefficients for the congressional variables are significant at better than the .01 level. Quantitatively, we find that a 35-point increase in the ADA score of the Senate Judiciary Committee chair leads to an approximately 7% decline in the fraction of conservative economic decisions. A similar-size result is found for our House chair variable—a one-standard-deviation rise in the ADA score leads to about a 7% decline in the fraction of conservative Court decisions. In addition, our congressional variables do not weaken the influence of our executive measures, which both remain strongly significant with similar magnitudes.

In Equation 3 (Table 1), we take a closer look at the effect of Congress on the Court. Although our committee leadership variable works well, it could be picking up the effect of Congress as a whole. We test for this possibility by including the annual percentage of Republicans in both the House and the Senate as regressors. The results show that our full congressional body measures are insignificant both individually and as a group. However, both the Judiciary Committee leadership ADA measures and the executive variables remain strongly significant. This result reinforces our view that committee leadership provides the best measure of congressional influence.

Lastly, we test whether macroeconomic conditions influence Supreme Court rulings in regard to economic cases. We include the lagged values of inflation and output growth in our empirical model. In looking for an output effect on the Court, we borrow from Peltzman's (1976) theory of regulation, which suggests that regulation should be more pro-business during economic downturns and more pro-consumer during expansions. Shughart and Tollison (1985) provide empirical support for this contention. In our setting, we expect that the conservative fraction of the Court's economic decisions should be counter-cyclical. Using a similar line of reasoning, we expect a positive relationship between inflation and the fraction of conservative economic decisions. Many of the liberal categories (e.g., pro-liability, pro-environment, and pro-regulation) involve, in general, case decisions that would tend to raise prices. We would then expect, *ceteris paribus*, fewer of those decisions in times of rising prices. The results in Equation 4 (Table 1) show that a higher value of lagged inflation is associated with more conservative Supreme Court economic decisions. Quantitatively, we find that a one-standard-deviation

¹⁸ Toma (1991) suggests a more direct signaling game between the Court and Congress via budgetary allocations.

¹⁹ Here we are assuming disproportionate committee power. Shepsle and Weingast (1987) provide a classic discussion. We also assume that committee chairs have more influence than rank-and-file committee members. Grier (1991, 1996) provides empirical support for this assumption with regard to monetary policy.

Table 2. Political Model with Alternative Congressional Preference Variables, 1953–1993

Variable	Eqn. 1	Eqn. 2	Eqn. 3
Constant	0.94 (7.62)	0.47 (1.31)	0.71 (5.26)
Lower court, % conservative decisions	-0.29 (1.86)	-0.28 (1.88)	-0.14 (0.83)
Supreme Court, % Democratic appointments	-0.005 (5.08)	-0.003 (1.73)	-0.004 (4.46)
Republican presidential dummy	0.15 (3.98)	0.19 (4.50)	0.15 (4.84)
Deflated Judiciary Committee chair ADA (Senate)	-0.002 (4.87)	-0.002 (5.31)	-0.001 (3.60)
Deflated Judiciary Committee chair ADA (House)	-0.003 (3.43)	-0.003 (3.42)	-0.002 (4.08)
Deflated average ADA scores (Senate)	—	0.009 (1.48)	—
Deflated average ADA scores (House)	—	0.001 (0.13)	—
Lagged inflation	—	—	0.019 (3.03)
Lagged output growth	—	—	0.003 (1.00)
R^2	0.67	0.70	0.73

Absolute value of HAC t -statistics are in parentheses. Dependent variable is the annual percentage of conservative Supreme Court economic case decisions.

(3.02%) increase in lagged inflation, *ceteris paribus*, leads to a 3.5% increase in the fraction of conservative economic decisions. However, no significant relationship was found between the Court's economic decisions and economic growth.

5. Additional Measures of Congressional Change

In Table 2, we take another look at the effect of congressional change on Supreme Court economic case decisions. Although our preferred variable uses the annual ADA score of the House and Senate Judiciary Committee chair to measure congressional preferences, such measures do have certain problems. Groseclose, Levitt, and Snyder (1999) argue that ADA scores are difficult to compare over time since interest groups use different sets of votes each year to calculate scores. A similar problem arises when comparing members across chambers since different sets of votes are used for the House and Senate. Fortunately, Groseclose, Levitt, and Snyder have managed to construct an index that allows researchers to convert “nominal” ADA scores into “real” scores, which can be used to make intertemporal and interchamber comparisons.²⁰

Equation 1 in Table 2 replaces the nominal ADA score of the House and Senate Judiciary Committee chair with deflated measures based on the GLS index. The average of our adjusted ADA measure is 20.22 for the Senate (standard deviation = 32) and 74.36 for the House

²⁰ Groseclose, Levitt, and Snyder (1999) demonstrate that their inflation-adjusted ADA scores matter by showing that the conclusions of a previous study by Levitt (1996) dramatically change once the adjusted scores are used.

(standard deviation = 26). We find that the deflated measures of congressional preference are both negative and significant at the .01 level. The standardized coefficients reveal that a one-standard-deviation increase in the Senate (House) score leads to a 6.5% (7.7%) decrease in the fraction of conservative economic decisions. The inclusion of these alternative measures does not substantively affect the statistical or quantitative significance of our two presidential variables. Thus, the results presented in Table 1 are robust to these index number changes.

Groseclose, Levitt, and Snyder (1999) also allow us to compute the annual deflated ADA scores of the full Senate and House. These measures are added in Equation 2 (Table 2) to once again check whether the committee leadership variable is really picking up changes in the full congressional body. Although our previous congressional and executive variables remain significant, an *F*-test failed to reject the null hypothesis that the full chamber deflated average scores were jointly insignificant. We argue that this provides the strongest evidence to date regarding the relative importance of committee chairs in exerting congressional influence.

Lastly, Equation 3 (Table 2) adds our macroeconomic variables to the political model. Once again, we find that lagged inflation is positive and significant, while lagged output growth is insignificant. Overall, the results in Table 2 show the robustness of our specifications and major results.

6. Concluding Comment

Although most legal scholars view the Supreme Court as a completely insulated, independent, and apolitical institution, social scientists have recently started to subject it to the same scrutiny they have applied in other settings. Analyzing Supreme Court voting on economic cases for the period 1953–1993, we uncover strong evidence of executive, legislative, and macroeconomic influence on Court behavior. These results are robust to various specification changes in our models and measurement changes in our variables. They support the small (but growing) view that the Supreme Court is influenced by political forces and should not be viewed as an autonomous decision-making unit.

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