

## Courts II

I intuitively agree with Segal and Spaeth's conclusion that Supreme Court justices are guided in their decision-making by their personal beliefs and attitudes. For one thing, if jurists ideological beliefs were not important, the party of the president who nominated a justice would not matter, which seems clearly at odds with the facts. I also acknowledge the difficulties the authors face in attempting to empirically prove their assertion that judges act on attitudes rather than precedent. As difficult as identifying congressional ideal points was, I see that determining a judicial ideal point is exponentially more complicated. However, given both these points, I was not convinced by the evidence presented by Segal and Spaeth as to whether judges are restrained by precedent in their decisions.

The authors consider the behavior of dissenting judges in the "progeny" of (a sample of and subsequently all) landmark cases as well as in a sample of "ordinary" cases. Their argument is that the original case is decided based on true judicial preference, while if dissenting judges subsequently support the majority this shows deference to precedent. This feels circular to me—to determine whether judges vote based on their preferences, they start by assuming judges vote based on their preferences. These landmark cases likely had precedents of some sort, meaning that you cannot simply assume that rulings are entirely preferential. Additionally, as Segal and Spaeth point out, (1) precedent applies on both sides of any given case, (2) judges have wide latitude to interpret the issue at hand in a case (e.g., their example of the Christian newspaper in Virginia), and (3) the facts of any particular progeny case may be closely or only vaguely related to the relevant parent case. Given these complications, their argument seems to rely heavily on coding decisions—is a particular justice's switching behavior based on a deference to precedent or because the case facts differ? Is a particular case a progeny of a landmark ruling or simply citing the case in passing? While it may be that all judicial experts would agree on Segal and Spaeth's codings, without that knowledge, it feels a little like hand waving to me.

A few other random thoughts on the readings: First, I wish we had read the chapters on certiorari, an issue that seems critical to understanding how the courts work. It's particularly relevant to Segal and Spaeth's argument, since the only cases the Court is likely to hear are ones where the precedent is somewhat ambiguous. If a case is clear on the issues, it is first and foremost unlikely to be litigated at all, given the costs of litigation, nevermind rise to the level of the Supreme Court. Second, Segal and Spaeth argue that judges are motivated by policy goals. I find it hard to believe that judges are so publicly-minded when we assume no actors in other branches are. Other than policy, are there other goals that might plausibly motivate justices (e.g., legacy, as with presidents)? If so, how do these varying goals impact the model put forward by Segal and Spaeth?

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17.202 Graduate Seminar in American Politics II  
Spring 2010

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