

Measuring Supreme Court Ideology[†]

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Introduction

Any investigation into the behavior of individuals within political institutions requires valid, reliable measures of those actors' policy preferences. In studies of political elites, such preferences are often organized around – and disciplined by – actors' political ideology. Ordinarily, we define political ideology as a latent construct organizing a person's personal political attitudes (e.g., Campbell et al. 1960; Hinich and Munger 1994). That latency, as well as the complex and often multidimensional character of ideology, make measuring the ideology of political actors one of the most vexing and persistent problems we face as political scientists.

As we discuss below, these issues are particularly difficult in the area of Supreme Court politics. Nonetheless, scholars have spent considerable effort on this endeavor, adopting a range of creative approaches to overcome the formidable challenges posed. But while these efforts have improved our understanding of Supreme Court politics immensely, it remains the case that existing measures leave a great deal to be desired, particularly in their performance as explanatory factors of Supreme Court behavior.

Our purpose in this paper, then, is to “build a better mousetrap” for the measurement of Supreme Court ideology, and in particular one which can be used in models of Supreme Court decision making. We therefore begin with an overview of the difficulties inherent in such a project, and with a brief discussion of existing measures. We focus in particular on the widely-used ideology measure developed by Segal and Cover (1989). Using that measure as a starting point, we develop a model that overcomes a number of potential problems with the existing scores, and estimate a new set of ideological indicators for 25 justices appointed by presidents Truman through George W. Bush. We then turn to a preliminary comparison of our new scores with the existing measures, using merits voting during the Warren, Burger, and Rehnquist Courts as our test bed. The paper concludes with suggestions regarding the impact of our findings for scholars studying the Supreme Court.

Measuring the Ideology of Supreme Court Justices

Deriving a measure of the ideology¹ of Supreme Court justices has been one of the stickiest problems facing students of judicial politics. The reasons for these difficulties are twofold. First, unlike many other political actors, the behavior-relevant policy preferences of the justices can be broadly characterized as *sincere* rather than *induced*. For nearly all other public officials – particularly those who achieve and hold office through election – ideology is directly shaped by the preferences of their constituencies. Thus, Congressional representatives interest in reelection typically induces them to hold preferences which are consistent with those of their districts or states, and their behavior often reflects those induced preferences. As a result, it is often possible to achieve highly accurate measures of such elites' ideologies using proxies related to constituency characteristics, campaign contributors, and other relevant political variables (e.g. Hill et al. 1997). By contrast, the mechanisms for selection and retention of Supreme Court justices work to ensure that they answer to no one but themselves (Segal and Spaeth 2002); as a result, indirect measures of the sort that are valuable for other elites are unavailable.

The lack of valid proxies for the justices' ideology would not be so problematic were it not for a second issue. Unlike members of the general population (for whom “sincere” preferences are also often the most relevant influence on political behavior), members of the Supreme Court are famously reticent to answer surveys, grant interviews, and otherwise make their preferences available to be measured directly. While such interviews are not unheard of (e.g., Grey 1967; Peppers 2006), they are relatively rare, and norms regarding judicial propriety limit the range of topics on which most justices are willing to speak. In addition, it is almost certainly the case that, even if such direct measurement were possible, the same institutional

¹Throughout this paper, we use “ideology” and “policy preferences” interchangeably, to refer to the “elaborate, close-woven, and far-ranging structure of attitudes” (Campbell et al. 1960, 192) which lie at the heart of “attitudinal” theories of Supreme Court behavior (e.g. Pritchett 1948; Segal and Spaeth 2002).

roles would likely color the justices' responses as well. As a result, their answers to questions regarding their personal political beliefs would most likely not be accurate representations of those beliefs.

Approaches to Measuring Supreme Court Justices' Political Ideology

Given our inability to gather data on the preferences of justices from direct personal interviews or questionnaires, scholars have adopted four broad approaches to building a measure of ideology. The first has been largely qualitative, focusing on specific cases in which ideology has been believed to have played a role in the justices' decisions. Some of these have been justice-focused; Danelski (1964; 1966), for example, offered one of the earliest attempts to derive a measure of ideology via a content analysis of two justices' speeches prior to their ascending to the high bench. Others have focused on specific cases; a recent paper by Bussiere, for example, attempted "to explain why the Warren Court decided against identifying welfare assistance as a constitutional right" (1999, 156). As a practical matter, such case studies are necessarily limited in their usefulness, both by their attenuated generalizability and by their inability to "travel" across multiple justices and over numerous cases and issues.

A second approach looks to personal characteristics of the justices as determinants of, and thus proxies for, their political ideology (e.g., Tate 1981, Tate and Handberg 1991). Such "personal attribute models," which had their roots in earlier behavioral studies of judicial decision making, and rely on the existence of a close relationship between factors in a justice's background (for example, his or her place of birth, religion, age at appointment, previous judicial experience, and so forth) and his or her political values (see, e.g., Tate 1981, Figure 1). Unsurprisingly, concerns over the limited generalizability of such models (e.g., Ulmer 1986), as well as over the extent to which these characteristics map, or should map, to political ideology have limited the usefulness of this approach in practice.

Most common in the literature are ideology measures based on various functions of the justices' votes themselves (e.g., Schubert 1965; Rohde and Spaeth 1976; Martin and Quinn 2002; Tahk and Jessee 2006). Such measures have a number of salutary characteristics: Data on the justices' votes are widely and reliably available, and provide a large amount of information about the justices' positions on a range of important issues. To the extent that their behavior is largely "sincere," moreover, the reliability of vote-based measures as indicators of individual preferences is enhanced.

At the same time, vote-based scores also raise the specter of endogeneity when scholars use those measures in turn to explain the behavior of Supreme Court justices. The admonition that "(u)se of these (vote-based) scales to represent ... ideology in a model of their voting behavior turns out to be a tautology" (Jackson and Kingdon 1992, 808-9) applies with equal force to the votes of Supreme Court justices as it does to those cast in Congress. Or, as Segal and Cover (1989, 558) state it, "(O)ne cannot demonstrate that attitudes affect votes when the attitudes are operationalized from those same votes."

Segal-Cover Scores

To date, the sole measure of Supreme Court ideology that has overcome these issues are those first introduced by Segal and Cover (1989). It is no exaggeration to say that, since their introduction nearly two decades ago, Segal and Cover's measure has become the disciplinary standard for measuring the political ideology of Supreme Court justices. Their scores have been up- and back-dated (Segal et al. 1995), subjected to an extensive "methodological audit" (Epstein and Mershon 1996), and served as both outcomes of interest and explanatory factors in a host of work on Supreme Court politics.²

²A highly incomplete list includes Kearney and Sheehan (1992); Mishler and Sheehan (1993); Segal (1997); Segal et al. (1992); Sheehan et al. (1992); Wahlbeck (1997); Yates and Whitford (1998), and Moraski and Shipan (1999).

Segal and Cover (1989) offer a novel solution to the problem of exogeneity. That solution takes the form of a content analysis of newspaper editorials appearing in four major newspapers – the *New York Times*, the *Washington Post*, the *Chicago Tribune* and the *Los Angeles Times* – prior to the Senate’s confirmation of each justice appointed between 1953 and 1988. Each paragraph in each editorial was coded for its ideological content; specifically, for paragraph i in each editorial about justice j , the ideological content was coded as:

$$Y_{ij} = \begin{cases} -1 & \text{if the paragraph's content is conservative} \\ 0 & \text{if the paragraph's content is moderate} \\ 1 & \text{if the paragraph's content is liberal} \end{cases}$$

From these paragraph-level codes, Segal and Cover constructed a summary measure of ideology for each justice equal to:

$$SC_j = \frac{1}{N_j} \sum_{i=1}^{N_j} Y_{ij} \quad (1)$$

or, equivalently,

$$SC_j = \frac{N_{\text{Liberal}} - N_{\text{Conservative}}}{N_{\text{Liberal}} + N_{\text{Moderate}} + N_{\text{Conservative}}}$$

Scores thus range from -1.0 for the most conservative justice(s) to 1.0 for the most liberal. Segal and Cover note that their measure is relatively reliable ($\pi = 0.72$) and has substantial face validity: for example, Brennan, Fortas and Marshall all receive scores of 1.0; Scalia receives a score of -1.0; and moderates White and O’Connor scores of 0.0 and -0.17, respectively. Segal and Cover go on to show that their measure correlates with the aggregate voting of the Court in civil rights and liberties at .80 (1989, 562-3).

Since their introduction, Segal and Cover’s scores have received wide use in studies of Supreme Court politics. A recent query reveals that the original article by Segal and Cover

(1989) has been cited 152 times since its publication.³ More recently, the scores have been updated and backdated: Segal et al. (1995) calculate Segal-Cover scores for the four Bush and Clinton appointees, as well as the seven justices appointed by Franklin Roosevelt and Harry Truman who sat on the Vinson and Warren Courts. For the former, they continue to use the four papers noted above; for the latter, they supplement the scores with editorials from two other papers (the *St. Louis Post-Dispatch* and the *Wall Street Journal*).

More recently, Epstein and Mershon (1996) conducted a “methodological audit” of the Segal-Cover scores. Concerned by what they view as the misuse of the scores (e.g., their application outside the realm of civil rights and liberties), Epstein and Mershon investigate the utility of the scores in a number of contexts: across issue areas, at varying levels of analysis, and over time. Their conclusions are informative: Segal-Cover scores, they find, are of limited utility in predicting Supreme Court voting outside the civil rights and liberties arena, or at the level of the full Court. Furthermore, the scores themselves are better predictors of aggregated individual-level voting during the Burger Court than for other Court eras, though why this is the case remains unexplored.

Issues With the Segal-Cover Measure

In the present context, we have ample reason to believe that Segal-Cover scores will suffer from many of the same deficiencies as interest group ratings (see Jackson and Kingdon 1992). Like interest group ratings, Segal-Cover scores are volitional; editorial writers at the major newspapers can (and, as we discuss below, do) select some nominees for greater or lesser coverage than others, in much the same way that interest groups select on votes. In addition, the bias accompanying this selection will (we suspect) be further attenuated by editorial writers simply choosing to say nothing; as we show below, a large number of the paragraphs coded by Segal and Cover contain no ideological content. To the extent, then,

³Data drawn from the *ISI Social Science Citation Index*; an alternative search on Google Scholar™ yields 111 citations.

that newspapers select on who to write about, how much to write, what to say, and when to say it, the bias Kingdon and Jackson (1992), Herron (2001) and others note for Congressional interest group scores should also be an issue for the Court.⁴

Beyond these concerns, the original method for calculating the Segal-Cover index carries a number of implicit (and, we would argue, largely untenable) assumptions. Chief among these is the bounded nature of the measure: any justice for whom only (say) liberal editorial comments were made necessarily receives a score at the boundary of the measurement instrument (here, at 1.0) irrespective of how liberal he or she actually is. This “bounds” effect leads to a number of justices being placed at the edge of the implicit ideological space; for example, it is effectively impossible for any justice to be more conservative than Justice Scalia on the Segal-Cover metric, or more liberal than justices Marshall, Brennan, and Fortas.

Relatedly, the Segal-Cover measure in Equation 1 imposes a strong form of exchangeability on the various editorials. In particular, editorial content from all four sources is treated as equivalent, in two specific ways. First, all four papers are implicitly regarded as having identical *positions* in the ideological space (and, therefore, of evaluating all nominees’ ideology according to the same metric). Such an assumption flies in the face of both popular and scholarly understandings of the positions of different U.S. media outlets (e.g., Ho and Quinn 2007). Relatedly, Segal and Cover’s measure essentially posits that all editorial statements are made with the same degree of *precision* as every other, irrespective of the degree of public information available on the nominee, the level of interest in and salience of the nomination, and other variation across both nominees and media outlets.

⁴In addition, recent work by the current authors (Zorn and Caldeira 2006) suggests that, while the scores’ predictive ability declines very little over time, it does vary significantly with the number of editorials on which they are based. That is, the ability of Segal-Cover scores accurately to account for career voting patterns increases as the number of editorials on which that score is based goes up. We return to this point below.

A Measurement Model of Supreme Court Ideology

To begin to address these issues requires that we reexamine the means by which the Segal-Cover scores were created. To this end, we obtained the original editorials on which the Segal-Cover scores were based.⁵ Following the initial Segal-Cover protocols (see Appendix A), we coded each paragraph of each editorial as either liberal (= 1), moderate (= 2), or conservative (= 3).⁶ Here, we offer a measurement model to derive alternative scores for the justices which accounts *a priori* for some of the concerns addressed above.

The Model

The problem of deriving Supreme Court preferences from pre-confirmation editorial scores is not unlike that faced in the field of educational testing. There, a latent trait (intelligence) is measured via a series of indicators (test items) Y_j , each of which has one correct ($Y_j = 1$) and one or more incorrect ($Y_j = 0$) answers. If the N test respondents are indexed by $i \in \{1, 2, \dots, N\}$, and the J test items by $j \in \{1, 2, \dots, J\}$, then we can write the log odds that respondent i will correctly answer item j as:

$$\mu_{ij} \equiv \ln \left[\frac{\Pr(Y_{ij} = 1)}{1 - \Pr(Y_{ij} = 1)} \right] = \beta_j + \theta_i$$

where $-\beta_j$ (sometimes referred to as the “bias” or “difficulty” parameter) represents the “difficulty” of the question and θ_i represents the (latent) intelligence of subject i . This

⁵We thank Professor Jeffrey Segal for providing us with hard copies of these editorials, and with the original coding protocols. Unfortunately, the completeness of these editorials is itself attenuated; for example, we received no editorials on justice Clarence Thomas, and a significantly smaller number of editorials than was indicated in Segal et al. (1995) for justices Souter, Ginsburg and Breyer, as well as no editorials for justice Sherman Minton, nor for any of the Roosevelt appointees. As a result, we base our comparisons on scores for the 23 justices for which we have comparable data. We intend to up- and back-date these scores as time and data availability permit.

⁶Note that, in the analysis presented here, we treat paragraphs without ideological content as “moderate;” future work, using more complete data, will relax this treatment.

formulation is known as a *one-parameter item response* (or *Rasch*) model; the intuition is that certain test items may have (e.g.) high difficulty, but relatively low ability to distinguish among students of differing abilities. To the extent that θ_i is a latent variable, it is typically treated as a random unit-level effect. Moreover, standard formulations assume that $\text{Var}(\theta_i) = \sigma^2$ across all N subjects.

In the current context, we may think of each Supreme Court nominee j as a “test item,” and each editorial paragraph i as a potential “test subject” charged with assessing each justice’s liberalism or conservatism. In light of our discussion above, we generalize the model in (2) in three important ways. First, we consider the case where the outcome variable Y_{ij} is (three-category) ordinal, using the standard latent variable formulation for such responses. Define the continuous latent variable $Y_{ij}^* = \mu_{ij} + \epsilon_{ij}$, with an ordinal realization conforming to:

$$Y_{ij} = \begin{cases} 1 & \text{if } Y_{ij}^* \leq \tau_1 \\ 2 & \text{if } \tau_1 < Y_{ij}^* \leq \tau_2 \\ 3 & \text{if } \tau_2 < Y_{ij}^* \end{cases} \quad (2)$$

Assuming that $\epsilon_{ij} \sim \text{i.i.d. } N(0, 1)$ we then have:

$$\begin{aligned} \Pr(Y_{ij} \leq Y_s) &= \Phi(\tau_s - \mu_{ij}) \\ &= \Phi[\tau_s - (\beta_j + \theta_i)] \end{aligned} \quad (3)$$

where Φ denotes the cumulative distribution function of the standard Normal. Such ordinal-response models have been a standard part of item response theory for more than four decades (e.g., Nunnally 1967).

Second, must address the possibility that each of the various sources may have different criteria for determining whether to characterize a nominee as liberal, moderate, or conservative. Formally, this requires that we relax the implicit restriction that the model’s threshold parameters are the same across sources; that is, that:

$$\tau_{sij} \neq \tau_{skl} \forall i \neq k, j \neq l. \quad (4)$$

In light of our concerns regarding different newspapers' standards, we can accomplish this by permitting each of the "cut points" τ to vary across each of the four sources.⁷

$$\tau_{sij} = \delta_{s0} + \delta_{s1}(WP_{ij}) + \delta_{s2}(CT_{ij}) + \delta_{s3}(LAT_{ij}) \quad (5)$$

The six δ parameters thus denote how each newspaper "scales" relative to the *New York Times*; higher values of δ denote higher-valued "cut points" (and thus correspondingly more conservative sources), while lower values indicate a more liberal source.

Finally, there is the issue of precision. Variation among sources in the reliability with which they evaluate nominees' ideologies, if present, gives rise to a particular form of non-constant error variance, one that can have biasing effects on the parameter estimates of interest. To address this issue, we must at a minimum relaxing the usual implicit assumption that $\sigma_{ij}^2 = 1 \forall i, j$. More specifically, we can generalize the model to allow the variability in the residuals to depend systematically on characteristics of the data – in this case, the identity of the media outlet responsible for each editorial evaluation:

$$\sigma_{ij} = \exp[\gamma_0 + \gamma_1(WP_{ij}) + \gamma_2(CT_{ij}) + \gamma_3(LAT_{ij})]. \quad (6)$$

The resulting model is:

$$\Pr(Y_{ij} \leq Y_s) = \Phi \left[\frac{\tau_{sij} - \beta_j - \theta_i}{\sigma_{ij}} \right] \quad (7)$$

with τ_{sij} and σ_{ij} defined as in (5) and (6), respectively. We estimate separate fixed effects $\hat{\beta}_j$ s for each justice in our data,⁸ while treating the latent parameters θ_i as Gaussian ran-

⁷Those are the *Washington Post* (WP), the *Chicago Tribune* (CT), the *Los Angeles Times* (LAT), and the *New York Times* (NYT); we omit the last of these for identifiability.

⁸For identification, we restrict Justice White's estimate of $\hat{\beta}$ to zero; implicitly, this means that the positions of the other justices are thus estimated relative to his ideological position.

dom effects.⁹ This model is similar in many respects to a number of recent applications of measurement models used in estimating legislative and judicial ideal points (e.g., Gow 1979; Bailey 2001, 2007; Clinton et al. 2003; Londregan 2000; Martin and Quinn 2002).

Data

As we note above, our primary data consist of paragraphs from editorials written in four major U.S. newspapers on the nomination and confirmation of 23 Supreme Court justices from Warren to Alito.¹⁰ There were 294 such editorials written (1,822 paragraphs), for an average of 12.8 editorials (79.2 paragraphs) per justice. But while each of the four newspapers contributed roughly similar numbers of paragraphs to the analysis, the averages mask significant variation across justices, from a low of eight paragraphs (for Justice White) to a high of 266 (for Justice Fortas).

Analysis and Results

Our estimates of the 23 justices' ideologies, along with their estimated standard errors and other quantities of interest, are presented in Table 1; a chronological dotplot of the estimates, along with their 95 percent confidence intervals, is given in Figure 1. Recall that higher values for $\hat{\beta}_j$ denote greater conservatism relative to Justice White. The estimates demonstrate a high level of face validity, with the justices of the Warren Court era – particularly Justices Marshall, Warren, and Brennan – classified as among the most liberal justices, and Justices Roberts and Alito (and, to a lesser extent, Scalia and Rehnquist) among the most conservative.

We choose to omit him in part because his original Segal-Cover score was zero, reflecting a “moderate” position in the ideological space.

⁹That is, we assume that $\theta_j \sim N(0, \sigma_\theta^2)$, and estimate $\hat{\sigma}_\theta^2$ along with the other parameters.

¹⁰At this writing (February 2008), we have not completed coding data for justice Clarence Thomas; we therefore omit him from our analysis. Of course, we plan to include Justice Thomas in future analyses.

Our estimates also provide an indication of the confidence with which we can make statements about the justices' ideological positions, and these, too, tend to reflect the conventional wisdom. Justice Breyer, for example, while being rated as quite liberal, also shows a large confidence interval around that rating, a characteristic consistent with the general lack of information about his ideological leanings available at the time of his appointment. By contrast, the bounds on justices Ginsburg (a moderate-liberal) and Burger (a relative conservative) are relatively narrow, reflecting the widespread common understanding of their respective positions at the time of each's ascension to the Court.

Finally, note that our estimates show both similarities to and differences from Segal and Cover's original measures. Figure 2 plots the two measures against each other for the 23 justices in our analysis,¹¹ along with the 95 percent confidence intervals for our measure. The correlation between the two measures is a robust -0.81, and with few exceptions (Justices Breyer, Alito, and Roberts being the most extreme) the justices "line up" similarly on both measures.

Our estimates thus reflect, we think, a facially valid yet improved measure of Supreme Court ideology relative to the Segal-Cover scores. At the same time, it is important to note a number of important limitations to our measure. First, like the Segal-Cover scores themselves, our measure is a *static* indicator of the justices' ideology. Recent work by a number of authors (e.g., Martin and Quinn 2007; Epstein et al. 2007) suggests that the justices may change their ideological positions over time; should such shifts occur, our measure would not capture them.¹² Second, the fact that our estimates of $\hat{\beta}_j$ are just that – estimates – suggests a need to be cognizant of their use as both response variables and (perhaps more importantly) as covariates (see e.g. Lewis and Linzer 2005).

¹¹Note that we rescale the Segal-Cover measure to range from zero (most conservative) to one (most liberal); the original measure ranged from -1 to 1.

¹²At the same time, it bears mentioning that it is unlikely *any* measure of Supreme Court ideology could be both dynamic and exogenous to the votes of the justices.

Preliminary Analysis: Voting on the Merits

As an initial investigation into the usefulness of our measure, we conduct a simple analysis of “attitudinal” voting in the U.S. Supreme Court. The purpose of this analysis is not to fully specify and evaluate a model of judicial decision making, but rather to assess the extent to which our measure conforms with – or differs from – that of Segal and Cover.

We thus consider a simple model of Supreme Court voting, of the form

$$\Pr(V_{ij} = 1) = \Lambda[\alpha_i + \beta(\text{Ideology}_j) + u_{ij}].$$

Here, V_{ij} denotes whether justice j 's vote in case i was liberal (=1) or conservative (=0), and Λ denotes the cumulative logistic function. Beyond our single covariate – *Ideology*, measured as either our measure or that of Segal and Cover – we include a separate case-level unit effect α_i , which we treat as a Gaussian random effect (i.e., $\alpha_i \sim N(0, \sigma_\alpha^2)$). This latter effect allows each decision to be characterized by some case-specific baseline propensity toward a liberal outcome.

Our data are drawn from Spaeth's Supreme Court Database (2007); we consider the votes of each of the justices in all orally-argued “full opinion” cases¹³ decided during the 1953 to 2005 Terms of the Court.¹⁴ Following standard practice, we conduct separate analyses for all cases and nonunanimous decisions.

Figure 3 provides an aggregate look at the pattern of the relationship between voting and our new measure. Higher values on our measure correlate strongly and negatively with career liberalism, measured as the total percentage of liberal votes cast by each justice during their time on the Court. Interestingly, the regression line divides the justices rather neatly

¹³Specifically, we restrict our analysis to those cases with `ANALU = 0 or 1` and `DECTYPE = 1`.

¹⁴Because of the relative paucity of voting data for justices Roberts and Alito, we omit them from the current analysis. We plan on including them in future work as additional data become available.

into two groups: those who, in general, were perceived as having voted more liberally than their appointing president would have predicted (e.g., justices Warren, Souter, Stevens, and Blackmun) and those who were generally as or more conservative than expected (for example, justices Harlan, White, and Whittaker).

The results of our voting analyses are presented in Table 2. Unsurprisingly, both the Segal-Cover measure and our new measure are highly correlated with voting; given the difference in scales,¹⁵ the two measures estimate roughly the same level of influence for ideology on the justices' votes. Likewise, in both sets of models, the estimated case-specific variances were nearly identical (though in both cases were slightly smaller for our measure), suggesting that both measures perform roughly equally in accounting for variation in voting patterns.

Conclusion

Here we offer an initial attempt to create an item-response model for estimating Supreme Court preferences from editorial data. Our measurement model addresses issues relating to the ordinal nature of the original Segal-Cover coding scheme, as well as to the effect of inherent variability across rating newspapers. While these findings are preliminary, we believe they suggest a new and potentially important direction for the measurement and assessment of Supreme Court ideology, one with broad potential applicability. In particular, we believe our measure would be of substantial interest in areas where Segal-Cover scores have been used extensively, including the politics of Supreme Court nominations (e.g., Moraski and Shipan 1999), confirmation dynamics (Epstein et al. 2006), judicial decision making (Richards and Kritzer 2002), and empirical models of the separation of powers system (Segal 1997).

¹⁵Note that, for this analysis, we used the same rescaled Segal-Cover measure which ranged from zero to one.

Appendix: Coding Protocols

The original coding protocol of Segal and Cover, regarding the ideology of Supreme Court nominees, specifies that:

“Each paragraph will be coded to determine if the nominee in question is liberal, conservative, moderate, or if the paragraph does not deal with ideology (not applicable). The easiest cases are paragraphs that explicitly state that a nominee is liberal, conservative or moderate. Also simple are paragraphs that have nothing to do with the nominee’s ideology. However, there will be many paragraphs that do not explicitly mention ideology that can nevertheless be coded as liberal or conservative.”

The rules go on to outline the following coding criteria:

Liberal. Nominees can be coded as liberal if they support:

1. *The New Deal.*
2. *“One world organizations”*.
3. *The rights of criminal defendants*, including (but not limited to) support for the exclusionary rule, Miranda warnings, the right to counsel, and opposition to the death penalty.
4. *Freedom of speech.* This includes free speech rights for subversives and protesters, and opposition to libel laws, government regulation of the press, and obscenity laws.
5. *Racial equality*, including support for desegregation, busing, affirmative action, the Civil Rights Act, the Voting Rights Act, as well as support for equality of women, gays or other minorities.
6. *Government regulation of the economy.* This includes the power to regulate the economy, and support for labor unions.
7. *The right to privacy*, including contraception, abortion and homosexuality.
8. *Incorporation of the Bill of Rights.*
9. *Opposition to “strict constructionism,”* or to following the “intent of the framers.
10. *The authority of Congress vis-à-vis the president* in foreign affairs and domestic protests.
11. Support by *liberals or liberal groups* (that is groups which support the above liberal positions; e.g., the ACLU, the NAACP, etc.) will also lead to a coding of liberal.

Conservative nominees/statements are the opposites of the liberal categorizations, including support by conservative groups.

Moderate paragraphs will be those that:

1. *Explicitly state* that the nominee is moderate, or
2. state and then refute the claim (e.g., of others) that the candidate is liberal or conservative, or
3. state both liberal and conservative things about the candidate. If, however, there is a preponderance of liberal or conservative statements, accompanied by a conclusion that the candidate is liberal or conservative, then that paragraph will be coded as liberal or conservative, respectively.

Not applicable will be recorded for a paragraph if the paragraph cannot be coded along ideological lines.

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Table 1: An Ordinal-Heteroscedastic Item-Response Model of Supreme Court Ideology

Justice	$\hat{\beta}_j$	Robust S.E.	Justice	$\hat{\beta}_j$	Robust S.E.
Warren	-0.696	0.383	Rehnquist (AJ)	1.234	0.184
Harlan II	-0.876	0.325	Stevens	0.534	0.202
Brennan	-0.499	0.247	O'Connor	0.277	0.120
Whittaker	-0.316	0.368	Rehnquist (CJ)	1.427	0.234
Stewart	-0.337	0.267	Scalia	1.415	0.272
Goldberg	-0.422	0.256	Kennedy	0.400	0.248
Fortas	-0.346	0.160	Souter	0.262	0.203
Marshall	-1.126	0.178	Ginsburg	0.044	0.099
Burger	1.248	0.178	Breyer	-1.056	0.298
Blackmun	1.149	0.215	Roberts	2.511	0.370
Powell	0.596	0.134	Alito	3.272	0.362

	$\hat{\delta}_1$	Robust S.E.	$\hat{\delta}_2$	Robust S.E.	
(Constant)	-1.627	0.133	(Constant)	1.627	0.133
<i>Washington Post</i>	-0.379	0.468	<i>Washington Post</i>	0.731	0.338
<i>Chicago Tribune</i>	-0.277	0.411	<i>Chicago Tribune</i>	0.422	0.238
<i>Los Angeles Times</i>	-0.136	0.362	<i>Los Angeles Times</i>	0.277	0.199

	$\hat{\gamma}$	Robust S.E.
<i>Washington Post</i>	0.262	0.274
<i>Chicago Tribune</i>	0.113	0.198
<i>Los Angeles Times</i>	0.162	0.191

	NT = 1822
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Table 2: Attitudinal Influences on Merits Voting, 1953-2005

	All Cases		Non-Unanimous Cases	
	Ideal Points	Segal-Cover	Ideal Points	Segal-Cover
(Constant)	0.424 (0.039)	-1.051 (0.046)	0.076 (0.022)	-1.273 (0.034)
Ideology	-1.047 (0.021)	2.674 (0.049)	-0.973 (0.020)	2.432 (0.049)
$\hat{\sigma}_\alpha^2$	2.70 (0.04)	2.74 (0.04)	1.04 (0.02)	1.10 (0.03)
N	6240		3918	
\bar{T}	7.2		7.2	
NT	45000		28181	

Figure 1: Estimated Supreme Court Ideology

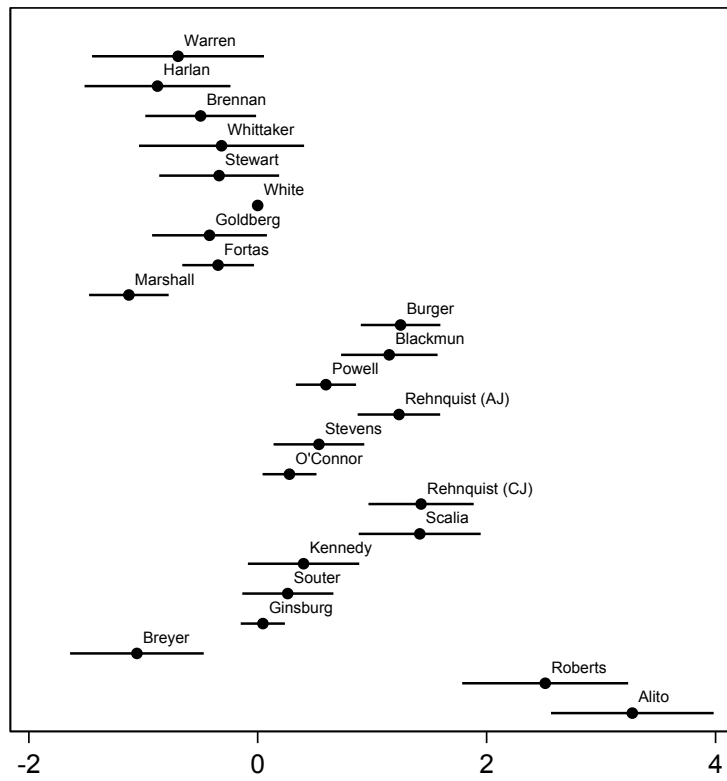


Figure 2: Estimated Ideal Points and Segal-Cover Scores

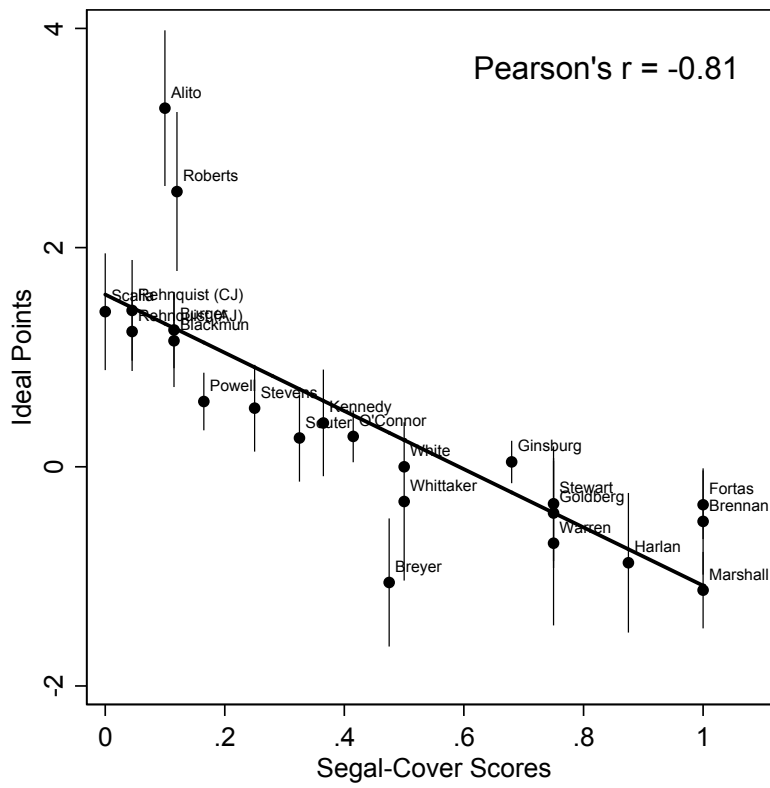


Figure 3: Estimated Ideal Points and Career Liberal Voting Percentages

