

Scholars have paid considerable interest to understanding the ideology of various political actors in American politics, from understanding public mood in the U.S. (Stimson 2018; MacKuen, Erikson, and Stimson 1989) to U.S. congressional ideology (Poole and Rosenthal 2001; Bafumi et al. 2005; Clinton, Jackman, and Rivers 2004). These estimates are often further broken down geographically (Erikson et al. 2006) and by policy (Baumgartner, Jones, and Wilkerson 2002; Atkinson et al. 2011). These estimates provide opportunities for our understanding of representation that have allowed scholars to contribute to our understanding of the link between institutions and the public (Stimson, MacKuen, and Erikson 1995; Griffin and Newman 2005; Soroka and Wlezien 2010; Wolak and Parinandi 2022).

Judicial scholars have also made significant progress to our understanding of estimations of both case and judge ideology, beginning with the preferences of Justices of the U.S. Supreme Court. Segal and Cover used media coverage to generate an estimation of ideological preferences of the justices before they were confirmed. Spaeth generated painstakingly careful conceptualizations of liberal and conservative that ultimately generated highly reliable estimates of whether a case was liberal or conservative.

This was the beginning of some incredible innovations in measurements. The Dynamic Ideal Points, created by Martin and Quinn allow us to measure opinion change through their tenure.

cite segal and cover, segal and spaeth, and Martin Quinn

but also lower courts including circuit courts and federal U.S district trial courts and state supreme courts

Because of the demand for comparability of these scores to other institutions, Hettinger and Peppar's intuition was extended into what is now called the "Judicial Common Space" scores - cite Epstein et al and bailey, and bonica and his various coauthors including bonica and sen.

As we improve the ideal point estimates of Justices, judicial scholars have been able to get increasing traction on the ideology of a case from these scores – one that goes beyond the

dichotomy of liberal versus conservative Baird (2007) Jacobi and Sag carruba et al 2010. This is important for many reasons, but one potentially underappreciated benefit is that the aggregation of those more precise outcomes will better reflect the actual ideological placement of the Court as a whole. These estimates allow us, for instance, to say that in 1989, the Court was very conservative in privacy, but it was quite liberal in economic regulation. This is because the specific questions that happened to be asked of the Court in privacy were more liberal than the median(s) of the Court was willing to be. In other words, a liberal decision would have been further to the left on the ideological spectrum than the median Justice's preferences would have allowed. It also just so happened that litigants in economic cases predicted a more conservative Court than the median was willing to let the Court be.

McGuire, et al. (2009) used this intuition to come up with an empirically and intuitively pleasing solution to this problem. They claimed, correctly, that using a rough "percent liberal" outcomes variable does not indicate Supreme Court liberalism over time because the aggregate outcome is a function of litigants and lower courts' guesses about what the Supreme Court would do with a specific question. Their argument was that outcomes are driven by the middle Justices and that, plainly speaking, they would be more likely to have their ideology reflected by reversals.

explain what they did here

Explain how they used ideology and measured it at the aggregate level.

Now, say that we have much better measures of sup court medians and medians of circuit courts

then, we ought to – as much as we can- replicate their results using our measures

show that reversals still work better than affirmances

but then say, we have better measures of a case's ideological outcome than we did in 2009 and the way we aggregate should be improved.

The plain way of thinking about this is this: a 5-4 conservative decision's outcome alienates the liberal wing because it is too conservative. This makes it a very conservative outcome. So, the median of the majority coalition correctly places that case in a more conservative place on a two-dimensional spectrum. The median Justice considers the ideological outcome of both of her options and then likely decides which one she prefers. She has little control over what cases are presented to her (though, see Baird 2007: 166-171, for an alternative view). Therefore, she may be choosing from two disagreeable options, which may be far from one another in two-dimensional space. Unlike legislative chamber medians, who can negotiate openly with committee chairs about which question to put on the floor, she is simply choosing which option is better for her ideologically.

True, the variability here is not what is necessarily preferred by the Justices. But it is the outcome nevertheless.

As one example, Baird (2007) created scores for the *mean of the majority coalition* to show that inferences that use aggregation of the percent liberal versus conservative outcomes vary substantially over policy area within in a single year. This showed that making an inference – as one example – of 75% conservative outcomes is not analogous to being meaningfully conservative. This is because the agenda setters' (in this case, the litigants') decisions about where in ideological space to place the question leads to differing likelihoods of a liberal decision.

Litigants are likely mindful of the median justice as they make decisions about how to frame litigation. Policy minded litigants must be mindful about which litigants to choose from as they pursue legal change. If their mistaken predictions are balanced, then the outcome of the cases will approximate the median justice's preferences. But their mistakes are not likely balanced. Probabilistically, it may be that litigants – as a whole – predict that the median Justice (or sets of medians) will be more conservative or liberal than the median Justice turns out to be. It may even be that the litigants and lawyers themselves are not thinking ideologically, but

they are thinking about the likely outcome of the case itself. We as political scientists have translated outcomes as being liberal or conservative, so it does not matter how they think about this – when they are predicting a potentially narrow win in one direction, we can interpret their thinking in ideological terms.

Justices' conservatism but might also be a function of litigant choices that may have overshoot how liberal the Supreme Court was, leading to the happenstance of a higher number of conservative outcomes. She notes that:

The high standard deviation within years is noteworthy, as it suggests that at times one ideological coalition is dominating certain policy areas while another dominates others, even within the same year. For example, in 1989, there were four privacy cases that resulted in a mean of the majority coalitions of 1.1, because the majorities in those four decisions tended to be composed of more conservative justices. However, in the same year, there were seventeen economic regulation cases handed down with an average of -0.39 . This means that for this year, the liberal justices tended to be in the majority for economic regulation cases (2007: 116-17).

It would not be reasonable to assume that the Court had a very liberal way of thinking about economic regulation but were entirely conservative in privacy. Instead, as with the example of 1989, litigants who happened to present their questions to the Court may have asked the Court to be very conservative, which led to a liberal outcome. True, outcomes of specific cases are a function of the preferences of the Justices, but when measuring the overall ideological placement of the policy by year (or by policy area per year) are also a function of the question asked of them. Some questions are too conservative for Scalia and others are too liberal for Stevens. If a larger proportion of decisions make the liberal wing vote conservatively or vice versa, then the outcome, measured at the aggregate level will partially be a

For this reason, scholars cannot distinguish what portion of liberalness or conservativeness is a function of the strategic ideological placement of litigants' questions. The

point is that we cannot assume that the ideological distribution of the placement of the question are equally distributed in their ideological placement of the questions presented to the Court.

For this reason, the median of the majority coalition is a handy way to use whether the rationale or doctrinal space of the outcome alienates Justices on one ideological spectrum or another. Moreover, as Carruba et al. 2010 and Jacobi 2009 and Jacobi and Sag 2010 argue, the rationale is likely to be a function of what the median Justice in the coalition says it is. Thus, this measure helps us understand the placement of the rationale in two dimensional space

And it happened to be the case that the litigants in the area of privacy were presenting questions to the Court that happened to be the kinds of questions that would bring the Justices (mostly the median Justices) on the Court in that year to decide in a conservative outcome.

Other scholars later agreed with this intuition and confirmed the median of the majority coalition both theoretically and empirically .

[Competing Models of Judicial Coalition Formation and Case Outcome Determination](#)

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Jacobi and Sag, , and empirically (Carruba, etc.).