Why do Policy-Motivated Justices Conform to Unfavorable Precedents? The Role of Social-Legal Backgrounds and Precedential Characteristics*

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Why do policy-motivated justices conform to unfavorable precedents? This article suggests that two theories, social-legal backgrounds and precedential characteristics, help explain why justices support unfavorable precedents. To test the explanatory power of these theories, the article uses data from the 1953-94 terms that ascertains whether justices cast precedential votes. The results, after testing multiple indictors of each theory, suggest that precedential voting is more likely when cases have older landmark precedents, cases have positive precedent vitality, and justices have a strong social-legal background. However, the likelihood of precedential voting decreases when justices have an elite legal pedigree and when justices confront a well-cited landmark precedent. This implies that future tests of legal decision making need to sort out the ambivalent effects of precedent and social-legal backgrounds.

In the days leading up to Justice Sonia Sotomayor's confirmation, controversy swirled around her choice of words from a 2001 speech. In a special address delivered at the University of California, Berkeley, School of Law, Sotomayor spoke of the importance of her past experiences and of having a Latina voice on the bench. In particular, the controversy reverberated over media outlets and fixated on this sentence from the speech, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life" (Sotomayor, 2001). Critics questioned her impartiality and suggested she did not ground her decisions in the law, but rather her background and experiences. For some citizens, this violated the principle of stare decisis, which Segal and Spaeth (1996a) note "is the fundamental principle on which judicial decision making is supposed to rest" (p. 971). Critics also pointed to the fact that the "wise Latina" sentence came almost immediately after she referenced something former Justice Sandra Day O'Connor often said, "a wise old man and wise old woman will reach the same conclusion in deciding cases" (Sotomayor, 2001). The additional contrast between Sotomayor and O'Connor not only suggests it is unacceptable for a justice's background and experiences to play a role in decision making, but also implies that this type of "influence" is relatively uncommon.

The discussion of Sotomayor's speech raises an interesting question for scholars: Do justices' experiences and social backgrounds influence their decision-making process, or are they largely irrelevant compared to other factors? Stated differently, because the principle of stare decisis is so critical to the U.S. legal system (Segal and Spaeth, 1996a), do justices with certain backgrounds have a higher likelihood of upholding precedent or do attitudinal factors subsume any sort of background influence? The literature on Supreme Court decision making tends to emphasize a justice's personal policy preferences, which I use synonymously with attitudes. For example, proponents of both the attitudinal and strategic models view justices as primarily concerned with enacting their preferred policy into law (Epstein and Knight, 1998; Maltzman, Spriggs, and Wahlbeck, 2000; Segal and Spaeth, 2002). To achieve policy goals at the final vote on the merits, justices presumably vote for a preferred outcome rather than a nonpreferred outcome that requires upholding an unfavorable precedent. However, scholars have also argued that precedent constrains the justices' decisions (e.g., Knight and Epstein, 1996; Wahlbeck, 1997). This raises a more general question: Why do Supreme Court justices, who face few constraints and whose primary motivation is making legal policy, vote to support an unfavorable precedent at the final vote on the merits?[1]

To answer this question I use the precedent-progeny framework established by Spaeth and Segal (1999; Segal and Spaeth, 1996a) to investigate whether two different theories (e.g. social-background experiences and characteristics of precedent) can explain a justice's decision to adhere to an unfavorable precedent. First, the article draws upon social-background models (e.g., Ulmer, 1973; Tate, 1981) to propose novel theories of legal socialization based upon the background characteristics of justices by accounting for parental socialization and early career experiences, to suggest that early socialization and pre-Court experiences can result in conflicting demands. Additionally, the article investigates whether three different characteristics of precedent constrain the justices as their theorists suggest: the age of a precedent (Bueno de Mesquita and Stephenson, 2002), the strength of the controlling landmark precedent based on its citation patterns (Fowler and Jeon, 2008), and a precedent's positive and negative vitality (Hansford and Spriggs, 2006).

The article makes several contributions. First, while some of the results are intuitive (e.g., older precedents make adherence to precedent more likely), some results are counterintuitive (e.g., well-cited precedents decrease the likelihood of adherence to precedent), suggesting the need to rethink theories of legal influence and whether the law *always* constrains judicial decision making. In fact, the empirical results suggest that the effects of "the law," or legally based factors, are ambivalent and multifaceted, sometimes pulling justices in opposite directions. For example, I find that an elite

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[1] McGuire asks a similar question, "the justices occasionally do exactly what Segal and Spaeth say they must do if they are affected by the law: they show strong respect for precedent. Justices in dissent in original decisions later acquiesce and acknowledge, sometimes explicitly, that they are bound by the authority of precedent. *Why?*" (McGuire, 2000:934, italics added).

legal pedigree and a landmark-controlling case that is in a well-grounded citation pattern decrease the likelihood of a precedential vote. This is consistent with recent work by Hansford and Spriggs (2006), who find precedent is both a constraint and an opportunity, and Black and Owens (2009), who find that at the intersection of legal and policy goals, law was both a constraint on and an opportunity for justices to pursue policy goals. Furthermore, the article offers supporting evidence that a justice's socialization and legal background are nontrivial explanations of a justice's likelihood to vote to uphold precedent. This furthers efforts at disentangling the effect of the law and justices' values on decision making and suggests the need to account for potential legal ambivalence inside the judicial mind.

DOES PRECEDENT INFLUENCE JUSTICES' DECISION MAKING?

In the debate of whether precedent was a driving force behind Supreme Court decision making, Segal and Spaeth (1996a; also Spaeth and Segal, 1999) systematically analyzed whether stare decisis (i.e, precedent) influenced justices. To determine this, Segal and Spaeth (1996a) devised a test, examining whether dissenting justices in landmark cases support that precedent in progeny cases (subsequent cases growing out of the landmark case).[2] Segal and Spaeth (1996a; Spaeth and Segal, 1999) found that justices overwhelmingly voted against precedent, which provided support consistent with the Attitudinal Model. To be sure, others have found Segal and Spaeth's measurement of precedential conformance controversial and unsatisfying, which I detail more in the measurement section below.[3] Still, others have also used the same framework and found evidence of higher levels of restraint than Segal and Spaeth's analysis suggests, yet the studies still affirmed that a justice's preferences are a strong influence on voting behavior (Brenner and Stier, 1996; Songer and Lindquist, 1996).[4] Hurwitz and Stefko (2004) further investigated the likelihood of preferential and precedential voting and found that "newcomer" justices are more likely to support unfavorable precedents, but this effect decreases substantially after the first five terms on the bench.

One fundamentally important question from that debate, however, remains unanswered. What increases the likelihood of *precedential* voting? To answer this question, the next two sections propose theoretical explanations of precedential voting grounded in social-background models and the characteristics of precedent.

[2] The terms "precedent" and "progeny" are defined by Spaeth and Segal (1999) as "landmark decisions" and "cases that grow out of landmark decisions," respectively.

[3] I opt for Segal and Spaeth's approach to precedential conformance, rather than Richards and Kritzer's (2002) jurisprudential regime approach for one primary reason. While Richards and Kritzer's approach works well in ascertaining precedential conformance within a particular area of law, I want to examine whether certain factors influence precedential conformance in cases across different areas of the law.

[4] Some of the differences in findings stem from disagreement on whether moderate justices are likely to display more restraint than ideologues, and whether to treat memo and per curiam opinions as full-fledged decisions. I am agnostic with respect to these points and choose the cases selected and coded by Spaeth and Segal (1999), which used a stringent definition of precedential voting that presents a difficult test for any decision-making model.

REVISITING SOCIAL-LEGAL BACKGROUND MODELS

While social-background models received a fair amount of attention several decades ago, contemporary scholars still find it a productive framework to study judges (e.g., George, 2007; McGuire, 2008). Moreover, older accounts did not incorporate legalistic factors that gauged how much a legal background environment influences the justices' jurisprudence and decision-making process through early childhood and career socialization. Instead, early conceptions of judicial-background models drew upon such factors as the judge's party identification, the appointing president, prestige of education, and prosecutorial experience (e.g., Nagel, 1961; Tate, 1981; Tate and Handberg, 1991; Ulmer, 1973) and found they explained a large portion of justices' decision-making behavior. However, use of social-background models to explain judicial behavior became passé due to a confluence of influences. Some scholars argued there was an absence of clear-cut linkages between background factors and behavior (for a review of this literature, see Tate, 1981:355). Additionally, the advancement of direct measures of the justices' preferences (Segal and Cover, 1989) and research on attitudinal factors and strategic considerations surged during the late 1980s and into the 1990s (e.g., Segal and Spaeth, 1993; Epstein and Knight, 1998; for a review of this, see Epstein and Knight, 2000). Finally, some argued that background models may be "time-bound" (Ulmer, 1986).

The complete abandonment of background models is somewhat surprising, however, given two factors. First, in his article Ulmer (1986) states, "[n]one of our findings establishes necessarily that social background models in general are time-bound" (p. 965). Second, Tate and Handberg (1991) provide evidence that background/personal-attribute models were robust in explaining judicial behavior for forty-six justices serving from 1916 through 1988. In other words, social-background models are not time-bound. McGuire (2008) highlights the implication of prematurely abandoning social-background models, suggesting it comes at a cost of painting an "incomplete causal picture" of the justices' behavior (p. 4).

What is also somewhat surprising is that previous social-background models overlooked other background factors that have strong links to judicial decision making. For example, few studies in the judicial field examined parental influence through the transmission of legal values. Ulmer (1986) and Tate and Handberg (1991), two of the exceptions, found some support for their measure of whether the father worked for the federal government. The lack of further exploration for these types of linkages is surprising because the study of the transmission of values from parents to offspring found success in other areas of political science (e.g., Tedin, 1974, 1980; Percheron and Jennings, 1981). For example, one successful area of research has shown that parents transmit their partisan affiliations to their offspring (e.g., Beck and Jennings,

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[5] The literature on successful transmission of attitudes from parent to child shows that much is contingent upon the child's perceptual accuracy of the parent (Tedin, 1974). As a separate note, examining voting patterns for

1991; Niemi and Jennings, 1991).[5] Yet, research in the judicial subfield has yet to explore fully whether there are other specific influences generated from parents and childhood that affect judicial decision making (but see McGuire, 2008).

EXPLORING NEW SOCIAL-LEGAL BACKGROUND FACTORS

One unexplored area regarding the parents of a justice is whether a parent was a lawyer. To provide a parallel, research on the transmission of partisan affiliation by Beck and Jennings (1991) found parents who were more attentive and aware of political matters were consistently successful in socializing offspring. Thus, it stands to reason that lawyers, given they have obtained an advanced level of education, are, on average, likely to be more politically aware than the average citizen. Yet it is the values that lawyers hold that get transmitted that are likely to matter. Lawyers are, on average, likely to value the study of the law and also value more the importance of the rule of law for providing stability in everyday life compared to nonlawyers. For example, Braman (2009) notes that much of the early training and socialization of lawyers starts in law school not as a "professionalization" but as a "resocialization" where the goal is

> to change the way students think about disputes between adverse parties. Students come to understand that the substance of legal argument is fundamentally different from other types of argumentation. It never involves a naked plea to a judge's sympathy or ideology; instead legal argument references relevant facts and controlling authority. Students learn the appropriate sources of legal decision making (p. 26).

This suggests that lawyers are likely to have a deeper respect for the law because of this "resocialization" and that their livelihood depends on it.[6] Given this, if a justice has a parent who is a lawyer who exercises legal principles like stare decisis, it would expose a child to a legalistic environment. Thus, I expect they are more likely to uphold precedent, on average, than justices who did not have those parental influences.

Why is it likely that parents will transmit positive values about precedent rather than negative values? In other words, how will this transmission be likely if attorneys are simply using "the law" as a means to an end, or if lawyers are too cynical or unhappy with the legal process? Even if self-interest primarily motivates attorneys, the transmission of values from parents to offspring is still likely because the profession is built

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evidence of parental effects does not entirely preclude the possibility that some orientations may be genetically transmitted to offspring, but there is an ongoing dispute whether transmission is driven by socialization or genetics (Beckwith and Morris, 2008; Alford, Funk, and Hibbing, 2008), where evidence supports each side.

[6] Braman also notes another motivating concept, "sunk costs," likely plays a role. For example, the time and effort spent in law school and practicing law "causes them to believe that legal norms actually matter in how judges reach and render decisions" (Braman, 2009:28).

on stare decisis. Moreover, as Silverstein (2009) argues, a profusion and overgrowth of rules, laws, and statutes are increasingly controlling the United States. To advance one's own self-interest through this overgrowth, lawyers recognize that legal arguments are won and lost on the ability to find and emphasize supportive precedent and explain why unfavorable precedent is not controlling. And, as Randazzo (2008) shows, precedent handed down by higher courts constrains the decision making of lower-court judges, the place where most attorneys practice law. Given this, cynical, unhappy, or self-interested attorneys are likely to emphasize to their offspring the importance of making decisions based upon "good law."

Parental influence also extends to justices if their childhood homes had a tradition of judicial service. A parent that partakes in judicial service is sacrificing time and potentially financial self-gain. To that extent, judicial service is altruistic. Observing parents who set aside personal, professional, and financial gains for public service socializes children to appreciate the concept that setting aside personal preferences can have rewards, and that prior legal decisions come at a great expense and sacrifice where decisions to overrule should not come lightly. However, if an attorney were more Machiavellian, then I expect judicial service to be consistent with preferential behavior, and if the judicial service were extremely minimal, then it should have no effect at all.

In addition to parental influence through occupation and service, other background factors include an awareness of the rule of law in other countries. Knowing how the law shapes society abroad can lead to key insights about the importance of law at home, regardless of whether one directly incorporates foreign decisions into domestic opinions. Obtaining a new cultural perspective can fundamentally change how individuals construct their understanding and interpretation of political and legal events. Gaining exposure to the rule of law and fidelity to precedent abroad is akin to what psychologists refer to as the "mere exposure effect" (e.g., Zajonc, 1968). This well-documented effect says that the more exposure one has to a stimulus, the more one likes it. This, in turn, suggests that the beliefs and attitudes of justices who have explored an internationalist world, which exposes them to how other legal systems value precedent and the law, will likely foster more respect for adhering to precedent.

While previous research has focused on experience as a judge, another social-legal background factor is prior work experience as a legal educator. The idea is that the experience and values individuals hold while teaching at a law school would carry over into their decision-making process as justices. Part of these values include the fundamental, bedrock principles taught in law school—the importance of the rule of law and stare decisis for society. For example, Rhode (2001) notes that law professors have played an important role in institutionalizing America's commitments to the rule of law, civil liberties, and democratic governance. During the course of teaching legal concepts and theories to students, one gains a broader understanding of the strengths and weaknesses of ignoring stare decisis and an enhanced awareness of the political and legal implications whenever Court decisions spur legal and social change.

Moreover, as Cramton (1977) notes, law schools have a distinct value system that permeates every corner, where one of the principles is the emphasis on "hard" facts and "cold" logic, and the goal is to achieve a detached, analytical perspective.

Teaching places individuals in situations where they must reconcile legal discrepancies to satisfy an attentive audience of curious law students, rather than satisfying themselves or a client. In other words, the situation calls for more than simply fashioning an argument for one side, but rather a careful consideration of the relevant precedent. Moreover, law schools and law-review publishing foster an environment that encourages thinking about the law in ways that aid in establishing connections between controlling and existing precedents that is not present for lower-court judges, who face constraints to write opinions about the legal issue at hand. Further, the experience gained as a legal educator is distinct from experience gained as a judge because the goals of the positions are different. For example, legal educators strive to train better lawyers, whereas judges do not. This does not mean to suggest that law professors do not have their own views on what precedent is applicable or what is "good" and "bad" law. On the contrary, many law professors publish law review articles commenting on decisions and offer their own interpretations. What this approach assumes is that even though there is precedent out there that law professors disagree with, they still teach precedent as operational because it is still "good law." Moreover, few law professors openly advocate the absolute disregard for precedent. To do so is a tacit admission that principled legal decision making is a sham. Rather, as Spaeth and Segal (1999:chap. 1) note, legal scholars support ideas such as mechanical jurisprudence and precedent as a legitimacy-enhancing norm. Thus, the hypothesized influence of these legal background and socialization factors is: *A strong judicial-legal background will increase the likelihood of precedential voting in progeny cases.*

LEGAL PEDIGREE

A justice's legal pedigree represents a distinctive social-legal background influence apart from family socialization or teaching experience. A legal pedigree ascertains whether a justice has a particular set of values and credentials generally perceived to be important by attentive members of the U.S. Senate to occupy a seat on the nation's highest court. Legal pedigree represents the type of legal training a justice receives and the experience of judging, and two prime indicators of these are whether a justice went to an elite law school and whether a justice had prior experience as a lower-court judge.

While the possibility of higher courts reviewing lower-court judges' decisions creates an incentive to uphold precedent, constraint is not consistent across all issue areas (Randazzo, 2008). Moreover, ideology is still an important factor that influences decision making in lower-court judges (Songer, 1982). In fact, judges know the probability of review for any one decision is small, and that gives ample opportunity to insert their personal policy preferences into the law. Thus, I theorize that experience as

a lower-court judge gives a justice expertise on how to better inject his or her own personal policy preferences into the law. When a lower-court judge becomes a U.S. Supreme Court justice, the ability to inject his or her policy preferences becomes less constrained because there is no threat of reversal by a higher court.[7]

In addition to having the experience of being a lower-court judge, previous studies associate an elite legal education with becoming a more credible source of information (McGuire, 1993a). I theorize an elite-law-school education to encompass not only a credible source of information, but also to capture the ability to make a more persuasive legal argument in a particular ideological direction. The key to this is the ideological sorting in the types of students attending elite law schools. For example, observers generally agree the law school student body at the University of Chicago is generally conservative, while the law-school student body at Cal-Berkeley is generally liberal.[8] Thus, not only do elite law schools better train their students to be more credible sources of information and provide higher-quality legal arguments (e.g., McGuire, 1993a; Johnson, Wahlbeck, and Spriggs, 2006), elite law schools also, to a certain degree, better equip students to make the ideological arguments of their choice.

This does not suggest that attending an elite law school leads to being more disrespectful of precedent. Nor does it suggest that non-elite graduates cannot make persuasive arguments. This argument builds on previous research that suggests those from elite law schools are more credible sources of information for the justices (McGuire, 1993a) and suggests that this credibility advantage spills over into an advantage for elite-law-school graduates when citing supportive precedent and discrediting harmful precedent. There is indirect empirical support for the credibility advantage. For example, graduates from distinguished law schools comprise the largest percentage of the Supreme Court Bar and the largest percentage of the experienced members of the bar (McGuire, 1993b:40, 133-34), and elite-law-school graduates also get the vast majority of Supreme Court clerkships (Peppers, 2006:26-28).

But why do students who attend these elite law schools tend to make more credible conservative and liberal arguments? There are two possible explanations that are not mutually exclusive. First, students self-select into ideologically agreeable law schools when choosing which law school to attend. Second, when like-minded students surround one another at law school, socialization and training tends to converge. As part of this, a group-conformity phenomenon takes place where individuals often feel pressured to conform to their peers. This conformity is a form of groupthink (e.g., Janis, 1982) where individuals operating in a group setting will not adequately consider alternatives and may suppress open disagreement. Moreover, Sunstein (2007) notes that when individuals are in a deliberative setting, "people are likely to move

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[7] However, this does not mean that lower-court judges flout legal precedent. Precedent is still an important factor in the decision calculus of a lower-court judge, but it is those situations when precedent does not provide a clear guiding answer that enables lower-court judges to insert their preferences into the law.

[8] See *Princeton Review* (www.princetonreview.com). Rankings for Chicago leaning conservatively and Berkeley leaning liberally are based on rankings as recent as August 2008.

toward a more extreme point in the ideological direction to which the group's members were originally inclined" (p. 274), something he terms *ideological amplification*. Additionally, as Suhay (2008) notes, conformity occurs when individuals feel pride when conforming to peers' beliefs and behavior, and shame when deviating from it. There is also a social-comparison mechanism, where individuals want other group members to perceive them favorably, and once they hear what others believe, often adjust their positions (Sunstein, 2007). Suhay (2008) documented group conformity among Catholics, and Sunstein (2007) notes that ideological amplification extends to the legal field with judges. Hence, it can be plausibly extended to students at law school. The theorized influence of these educational and judicial experiences suggests justices with an elite legal pedigree are better equipped to insert their policy preferences into the law. Thus, I hypothesize: *An elite judicial pedigree decreases the likelihood of precedential voting in progeny cases.*[9]

CHARACTERISTICS OF PRECEDENT: AGE OF PRECEDENT, CITATION STRENGTH, AND PRECEDENT VITALITY

Certain characteristics about the controlling landmark precedent are also important when justices assess whether to uphold an unfavorable precedent. Some precedents, because of the passage of time, become ingrained in the fabric of society, provide more information, and bring clarity to the law (Bueno de Mesquita and Stephenson, 2002), and become "settled law." For example, during the confirmation hearings of Chief Justice John Roberts, Senator Arlen Specter asked Roberts to clarify testimony he made during his circuit court confirmation hearings about *Roe v. Wade* being "the settled law of the land." Roberts replied "it's settled as a precedent of the Court, entitled to respect under principles of *stare decisis*" (Roberts, 2005). In this instance, the degree of how "settled" a precedent is akin to the age of a precedent. The longer a central holding in a precedent exists, the more it becomes "settled law."

This idea is consistent with Bueno de Mesquita and Stephenson (2002), who found that the passage of time improves a precedent's accuracy of communicating a legal rule to the lower court, and when the amount of time passes a certain threshold, the informational benefits of precedent outweigh any benefit from deviating from the legal precedent. The importance of the age of precedent is also consistent with the arguments made by Brenner and Stier (1996), who argue the increasing temporal distance between the progeny and controlling landmark precedent suggests the actual

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[9] The influence of an elite legal education as a student runs counter to the earlier theorized influence of being a law professor. This is similar to the cross-pressures that many Americans feel on policy issues. For example, being a professor and a student are fundamentally different experiences, with different audiences (i.e., Baum 2006) and responsibilities and pressures that are going to result in different influences on how a judge views cases and precedent. Professors, for example, often are responsible for presenting alternative viewpoints (e.g., playing devil's advocate) rather than adopting a singular view of the law. To further complicate matters, some individuals even experience substantial political change as a result of their background experiences. For example, Justice Felix Frankfurter contributed to many liberal/Democratic causes during his early years, but during his later years espoused a more conservative, judicial worldview.

importance of the questions and controversies generally become narrower in scope and smaller in magnitude. In other words, after a great deal of time justices are likely to make only minor refinements to an area of law, not major changes. Moreover, empirical evidence in the literature supports the idea of some controlling precedents becoming "settled law." For example, Hansford and Spriggs (2006:84) find the likelihood of overruling a precedent is less for older precedents. Given this, I theorize the age of a precedent contributes to the difficulty that justices will encounter when trying to form a majority coalition that overturns an old and established precedent several years later. Hence, I hypothesize: *older precedents will increase the likelihood of precedential voting in progeny cases.*[10]

For a second legal characteristic of a case, judges deem some controlling landmark precedents as more authoritative than others.   This is consistent with the idea that the citation of precedent is a norm followed by the justices in their opinion writing (Knight and Epstein, 1996). As such, justices cite some cases in opinions more often than others. In substantive terms, each case citation within an opinion is "a latent judgment by the justice . . . about which cases are most important for resolving questions that face the Court" (Fowler and Jeon, 2008: 20). If the extent to which other opinions cite a particular precedent symbolizes how important a precedent is, a well-cited and well-connected precedent should cause justices to take heed when assessing subsequent cases, thus making it more difficult to ignore a controlling landmark precedent. I hypothesize: *more important cited precedents will increase the likelihood of precedential voting in progeny cases.*

A third characteristic of the controlling precedent that influences precedential voting is precedent vitality (Hansford and Spriggs, 2006). Precedent vitality is the concept that "precedents vary in . . . the extent to which they maintain legal authority . . . [where] some precedents are more legally authoritative than others and thus have an enhanced ability to justify and legitimize the justices' policy choices" (Hansford and Spriggs, 2006:23). Further, it is important to distinguish between positive precedent vitality, negative precedent vitality, and neutral vitality because each one suggests different effects on judicial voting at the individual level. For example, Hansford and Spriggs (2006) find precedent vitality has opposing effects on the positive and negative interpretation of a precedent. Moreover, a controlling landmark precedent with positive vitality indicates favorable treatment by past courts and suggests justices are more likely to adhere to that precedent in future cases. However, negative vitality generally indicates that a controlling landmark precedent is "bad" law and is less authoritative. This suggests that when facing a decision controlled by a landmark precedent with negative vitality, justices are less likely to uphold the doctrine of stare decisis.

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[10] There are exceptions to the argument that age is equivalent to settled law—e.g., *Plessy v. Ferguson's* (1896) separate-but-equal doctrine stood for over fifty years. This suggests that equating a precedent's age with "settled" law may be contingent on the extent that the social and economic functions that precedent serves remain compatible with other societal values.

Additionally, Hansford and Spriggs (2006) argue that personal policy preferences are crucial to understanding how justices interpret precedent. Specifically, in terms of motivation, justices interpret precedent so that it better reflects the preferences of the justices sitting on the current court and by the need "to justify and promote the legitimacy of new policy choices contained in the Court's majority opinions" (p. 125). This suggests that ideology and vitality are closely intertwined, and that ideology will affect the link between precedential vitality and voting. Thus, I hypothesize: *ideological opposition to the controlling precedent attenuates the relationship between positive vitality and precedential voting* (i.e., precedential voting becomes less likely). Additionally, I hypothesize: *ideological opposition to the controlling precedent intensifies the relationship between negative vitality and precedential voting (i.e., precedential voting becomes more likely)*.

DATA AND METHOD

The data come from Spaeth and Segal (1999), who coded justices' votes as either preferential or precedential according to the test developed in Segal and Spaeth (1996a). The data consist of observations from individual-level justice votes in progeny cases that originated from the controlling precedent in which the justice dissented (e.g., Spaeth and Segal, 1999).[11] The analysis here examines 1,187 votes from 21 justices over the 1953-94 terms in progeny cases that originated from "landmark decisions" during the Warren, Burger, and Rehnquist Courts.[12] These 21 justices represent all of the justices that ascended to the bench after 1950 and before 1990.[13] The unit of analysis is a justice's vote in a progeny case if she or he dissented in the original landmark ruling case. For example, Spaeth and Segal's data set contains any vote in a progeny case where Justice X dissented in the controlling landmark case. Conversely,

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[11] This approach assumes that the justice who dissented in the precedent has the same preference in the progeny case. Other scholars have adopted this assumption (e.g. Brenner and Stier, 1996; Segal and Spaeth, 1996; Songer and Lindquist, 1996). Moreover, the assumption has not prohibited other scholars from researching the subject. For example, at the conclusion of their book, Hammond, Bonneau, and Sheehan (2005) write, "[e]ither kind of preference change [short- or long-term] could cause problems in testing our model" (p. 254).

[12] Spaeth and Segal (1999) examine 2,425 individual votes across *all* Court eras and case types (e.g., "landmark" and "ordinary" cases). Here is a breakdown of the missing data: I did not sample 596 observations because they are "ordinary" cases; 562 observations are missing because they are pre-1953, where data for most covariates are sparse; 50 observations are missing due to the *New York Times* case-salience measure; 21 observations are missing due to the four variables involving precedential vitality; and 9 observations are missing due to various combinations of three or more variables. This leaves 1,187 votes in this study. I only analyze the votes that originated from landmark cases (and not ordinary cases) because they represent a more stringent test of finding any type of legal influence on precedential voting because that is presumably where policy considerations are highest (i.e., where more attitudinally consistent behavior is expected). More important, Spaeth and Segal's data set contains the complete universe of landmark cases. This is consistent with what Spaeth and Segal found (1999:307-10), with precedential voting in ordinary cases at 17.6 percent versus 10 percent in landmark cases. Additionally, 14 of the 21 justices in the data had at least 21 observations or more, and removing the "low observation" justices does not change the results.

[13] All justices are included in the analysis with the exception of Abe Fortas, who was not in the Spaeth and Segal (1999) data set because he did not cast any votes in progeny cases that stemmed from a dissent in a landmark decision.

Spaeth and Segal's data set excludes any progeny vote where Justice X voted with the majority in the corresponding landmark case because Spaeth and Segal (1999) argue Justice X's vote in the landmark case may or may not stem from precedent.

I use Spaeth and Segal's (1999) measure of precedential voting as my dependent variable, where a 1 indicates a justice votes against precedent (i.e., a preferential vote) and a 0 indicates conforming to precedent (i.e., voting for precedent).[14] Before moving on, I think it will be constructive to examine the "worth" of this dependent variable. While Segal and Spaeth have spent much time and space outlining the virtues of this measure (Segal and Spaeth, 1996; Spaeth and Segal, 1999), I add that it moves the literature on voting behavior beyond a conception of voting that focuses solely on the liberal-conservative direction of the vote. Additionally, the measure represents a very clear and strict definition of precedential behavior, and that makes the results from any subsequent empirical test more valuable in assessing what constitutes legalistic behavior. And perhaps most important, this measure helps provide answers as to whether social-background variables or characteristics of precedent influence the likelihood of justices following precedent. I admit, however, it is a blunt measure with many critics.[15]

Because the dependent variable is binary, I use logistic regression to estimate the model, with robust standard errors clustered on the landmark case.[16]

KEY EXPLANATORY VARIABLES

Based on the earlier theoretical sections, there are five variables of primary interest: 1) social-legal background; 2) legal (background) pedigree; 3) importance of a precedent; 4) age of a precedent; and 5) the vitality of precedent. I construct the first key explanatory variable, *social-legal background*, by summing four binary indicators taken

[14] Of the 1,187 cases in the analysis, 101 (8.51 percent) were precedential votes and 1,086 (91.49 percent) were against precedent. There are 127 landmark cases and 421 progeny cases in the data.

[15] For example, Friedman (2006) suggests that precedent is just one interpretation of the "law." Second, Friedman argues that as a normative matter, "it is not clear that fidelity to precedent requires a justice to bow to the opinion of a majority as opposed to adhering to one's own views of the law" (2006:267). Third, Friedman argues that the effect that landmark cases have on progeny cases "is not felt in the way Spaeth and Segal imagine" (2006:267). Additionally, Songer and Lindquist (1996) note that it assumes a simplistic choice between precedent or preferences that fails to consider the case-selection process. Further, Brenner and Stier (1996) make the point that a progeny case is rarely "on all fours" with a landmark precedent, and if it were, there is little need to hold oral argument and issue a separate opinion. Finally, Brisbin (1996) argues, "By choosing to categorize the use of precedent as a legal act, Segal and Spaeth disregard the claim that the use of precedent is but a technique for the implementation of other forms of political attitudes" (1996:1008). My use of the measure is not to dispute these claims, as they make important points, but it is vital to use measures from the published record to build on previous findings (King, 1995). In sum, by treating the Spaeth and Segal measure at face value I gain the added benefit of creating a more difficult test when assessing the influence of social-background factors.

[16] I also tried several alternative estimation strategies. I report the logistic regression results because other sophisticated techniques revealed the same results, and because logistic regression is a more intuitive and widely known method that allows one to readily generate a vast array of post-estimation quantities of interest. I also tried a hierarchical model with individual justice votes nested within progeny cases; logistic regression with robust standard errors clustered on the progeny case, justice, term, and a combination of the justice-precedent, or not clustered at all; and a rare events logit (Tomz, King, and Zeng, 1999).

from tables in Epstein et al. (2007): 1) whether the justice grew up in a family with a tradition of judicial service (Table 4-2); 2) whether their father's occupation was a lawyer (Table 4-3); 3) whether they served as a law professor (Table 4-6); and 4) whether a justice received formal education abroad (Table 4-4). I sum the four indicators into one scale because of the theory that they are all part of the same underlying theoretical construct. This is a common data-reduction technique used in other fields (e.g., public opinion and political psychology) when indicators are part of the same theoretical construct, such as the socialization of legal values. The alpha coefficient for the four items is .75, which is above the commonly accepted rule-of-thumb of .7, and suggests that these four items are measuring the same, underlying theoretical construct. A factor analysis of the four variables confirms they are part of the same underlying construct.[17]

I measure *elite legal pedigree* by summing two binary indicators taken from Epstein et al. (2007:1): whether the justice graduated from an elite law school (Table 4-4); and 2) whether the justice had previously been a judge (Table 4-9). Serving as a lower-court judge, especially in the federal judiciary, is a prominent mark of elite stature. I define elite law schools as Harvard, Yale, Columbia, Stanford, Chicago, Berkeley, Michigan, and Northwestern.[18]

I use Fowler and Jeon's (2008) authority score, with one modification, to indicate the importance of a precedent. Fowler and Jeon examine the extent to which other opinions cite a particular case to generate their authority score. I modify the Fower and Jeon score by subtracting the mean and dividing by the standard deviation (i.e., standardize it), and I label it *authority importance score*. I expect it to have a negative sign, where more important precedents increase the likelihood of a precedential vote. I measure *age of precedent* with the number of years between a progeny and the controlling landmark precedent. This measure accounts for the fact that a precedent becomes more valuable and "settled" as it withstands the test of time. I expect a negative sign, with more "settled" precedents increasing the likelihood of a precedential vote.[19]

Positive and negative precedent vitality uses Hansford and Spriggs's (2006) measure of precedent vitality based on the vitality of the landmark precedent in the year of the progeny vote. I separate precedent vitality into positive, negative, and neutral categories because Hansford and Spriggs (2006) found that vitality had different

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[17] While the scale for social-legal background theoretically ranges from 0 to 4, only 0 through 3 are observed because no justice met all four indicators. An alternative estimation strategy is to incorporate the concept using each category as a dummy variable. This estimation reveals a significant difference between having no social-legal background and having some (or more) social-legal background experience. I chose to specify the more parsimonious model to conserve degrees of freedom.

[18] Fourteen of the 21 justices in the data attended an elite law school. The schools selected as "elite" are adopted from Johnson, Wahlbeck, and Spriggs (2006:106).

[19] I tested for the possibility that the effect of age is curvilinear. In an auxiliary analysis not shown here, a squared age term was inserted into the model and, after graphing out the predicted probabilities, it was not significant.

effects on positive and negative treatment of a precedent. I operationalize positive and negative vitality as dichotomous variables because I theorize that justices essentially care about whether the overall vitality is positive or negative, not necessarily the extent or degree of the positive or negative vitality. For example, it is unclear that justices prefer a three-time positively cited precedent compared to a twice positively cited precedent. If anything, a justice would probably cite them both. Thus, if the landmark precedent has a sum total positive vitality at the time of the progeny case, I code *positive precedent vitality* as 1 and 0 otherwise. If the landmark precedent has a negative vitality at the time of the progeny case, I code *negative precedent vitality* as 1 and 0 otherwise. I omit neutral vitality from the model as the baseline category. Additionally, based on the Hansford and Spriggs (2006) findings that precedent vitality interacts with ideological distance from the status quo, I include interactions for each vitality variable with the measure of ideology (discussed below). The interaction terms help us gauge how different groups of justices (e.g., liberals versus conservatives) consider precedent.

CONTROL VARIABLES

For control variables, I include *ideology* to account for the attitudinal model (Segal and Spaeth, 1993, 2002) and the fact that Spaeth and Segal (1999) find limited evidence that liberals are more likely to vote their preferences (or exhibit higher levels of judicial activism than conservatives). *Ideology* is the absolute value of Martin-Quinn scores (Martin and Quinn, 2002), represented as negative if the justice's attitude is directionally consistent with the landmark precedent, positive if directionally inconsistent.[20] For example, conservative justices receive their positive Martin-Quinn score if the landmark precedent was liberal because justices are more likely to vote their preference, while they will receive a negative Martin-Quinn score if the precedent was conservative. Thus, the stronger a justice opposes a landmark precedent, the less likely the justice casts a precedential vote (I expect a positive sign).[21]

I include two other variables, *political experience* and *tenure length* as additional controls to account for preferential behavior. Hurwitz and Stefko (2004) found a justice's tenure on the Court is an important predictor of preferential voting. I define *tenure length* as the number of years the justice was on the Supreme Court at the time of the progeny vote. Similar to Hurwitz and Stefko, I expect it to have a positive sign, which indicates as tenure increases a justice is more likely to cast a preferential vote. *Political experience* accounts for whether the justices have held elected office and have experience in policymaking (i.e., where I expect justices to inject their personal policy

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[20] I chose Martin-Quinn measures over Segal-Cover scores (Segal and Cover, 1989) because Martin-Quinn measures allow justices' ideal points to vary over time. As a result, this coding scheme differs from Hurwitz and Stefko (2004) who used Segal-Cover scores, which code liberal justices as positive while Martin-Quinn scores code liberal justices as negative (see Epstein et al., 2007:Tables 6-1 and 6-2).

[21] Use of Martin-Quinn ideal-point measures are deemed "okay" in this context because the dependent variable is not the liberal-conservative vote on the merits (c.f., Martin and Quinn, 2005).

preferences into the decision-making process). I code it a 3 for federal office, 2 for state office, 1 for local office, and 0 for never held elected office (Epstein et al., 2007:Table 4-8). I made federal office the highest value based on the assumption that federal policymaking experience is more valuable in making legal policy on the federal bench.[22]

Another control variable accounts for the importance of assessing the Court's policy outputs in relation to the status quo (Bonneau et al., 2007). I code the *court reaffirmed the status quo* a 1 when the court reaffirms the status quo (e.g., decides both the landmark and progeny cases in a liberal direction, or vice versa) and 0 otherwise. Other control variables include case complexity to control for the possibility that some cases present more than one legal provision. I take it from the variable "laws" in Spaeth (2006). *Size of coalition* controls for the fact that some coalitions are more tenuous than others (adopted from Hurwitz and Stefko, 2004). I score it as the number of necessary votes needed before the decision is reversed. If the vote was 5-4, which is a minimum winning coalition, then it takes a value of 1 because only one vote can reverse the outcome. Likewise, a vote of 6-3 takes a value of 2, 7-2 receives a score of 3, 8-1 takes a value of 4, and a 9-0 vote takes a value of 5. Higher values indicate a safer majority coalition and growing consensus, and should predict more precedential votes (expect negative sign), while a minimum winning coalition indicates the issue is not consensual.[23]

Previous research on Supreme Court decision making suggests it is important to control for case salience (McAtee and McGuire, 2007). For case salience, I use the measure of whether the case received *New York Times* front-page coverage because it best approximates the theoretical construct of case salience (Epstein and Segal, 2000).[24] A salient case suggests high visibility, indicating the presence of a larger attentive public that provides motivation to respect the rule of law and adhere to precedent. But increased salience also suggests a case is important for substantive policy implications, which provides motivation for a justice to vote against precedent. Thus, there are conflicting directional expectations for the salience measure.

Controls are also included for the era and issue areas of the Court. These include Burger Court and Rehnquist Court, with Warren Court omitted as the baseline. These control variables account for previous research that shows precedential voting varies across time (Spaeth and Segal, 1999:313-14), concerns about Warren Court justices exhibiting high levels of judicial activism, research that suggests strategic behavior is more likely during certain periods (Perry, 1991; Johnson, Spriggs, and

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[22] One alternative means of estimating political experience is to include dummy variables for each category. This results in justices who have state or federal political experience being significantly more likely to vote preferentially than those who have no or local political experience. I chose the more parsimonious specification.

[23] Removing the *size of coalition* variable does not change the main results in Table 1. Including separate indicators to control for minimum winning coalitions and unanimous coalitions also do not change the results.

[24] An alternative measure, the number of amicus briefs submitted in each case standardized by term (Maltzman, Spriggs, and Wahlbeck, 2000), revealed no differences. It measures whether a case had more or less amici filings than the terms average case (c.f., Bonneau et al., 2007:902, n. 21).

Wahlbeck, 2005), and that uncertainty and institutional pressures will vary over time (e.g., Maltzman and Wahlbeck, 1996). I measure civil rights and liberties with the Spaeth (2006) "value" variable to account for previous research that shows the attitudinal model is more successful in some areas than others (Segal and Spaeth, 2002:419-21; Gillman, 2003:4), and the proportion of precedential votes differs across issue areas (Spaeth and Segal, 1999:311-12). I code civil rights and liberties a value of 1 for all observations from Spaeth's "value" variable that equals 1-6. This includes criminal procedure, civil rights, First Amendment, due process, privacy, and attorneys. I code all other areas (unions, economics, judicial power, and federalism) as 0.

RESULTS

There is support for several, but not all, of the hypotheses (see Table 1). If justices come from a strong social-legal background, they are more likely to cast a precedential vote. The positive sign for the elite legal pedigree variable indicates that justices with a more elite pedigree are more likely to vote against precedent, and also demonstrates that socialization influences can have opposing effects (more on this below). Additionally, justices are more likely to cast a precedential vote when faced with an older precedent (see Table 1). The positive precedent vitality variable and the interaction with ideology are also significant, but because interaction effects are not significant based on coefficients alone (Brambor, Clark, and Golder, 2006). I discuss the significance of the interaction effect more in Figure 4 below. Negative precedent vitality, however, was not significant.[25]

The hypothesis concerning a precedent's importance based on citation networks, however, did not find support. In fact, Fowler and Jeon's (2008) *authority importance score* has a positive sign, which is contrary to the stated expectations. The positive coefficient indicates that justices are more likely to vote against precedent when faced with more important precedents, as measured by their previous network-citation scores. While I hypothesized it to be negative, consistent with the idea that precedent is a norm that constrains justices (Knight and Epstein, 1996), the positive coefficient may nevertheless provide support for existing accounts of the attitudinal model about the citation of precedent as motivated reasoning and the justices cloaking their policy preferences with legal doctrine (Braman, 2009; Segal and Spaeth, 1996b:1075).

Factors associated with an increase in the likelihood of voting against precedent are *ideology*, *political experience*, and *tenure length*. Factors associated with an increase in precedential voting are the *Court reaffirms the status quo* and the *size of the coalition*. I found no support for the measures of *case complexity*, *civil rights and liberty issue*, the *Court era*, or *case salience*, though it was close to conventional levels of significance (p=.054).

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[25] The results in Table 1 are robust when excluding various control variables, such as *size of coalition* and *Court reaffirms status quo*.

Table 1
Explaining Precedential Voting

	Coefficient	Standard Errors
Case salience: Front page of *New York Times*	.525	(.272)
Size of coalition	-.289**	(.107)
Burger Court	-.631	(.330)
Rehnquist Court	.179	(.591)
Civil rights & liberty issue	-.342	(.479)
Case complexity: If case had multiple legal provisions	.629	(.341)
Age of precedent	-.156**	(.041)
Social-Legal background	-.393**	(.143)
Elite legal pedigree	1.106**	(.305)
Authority importance score	.578*	(.228)
Positive precedent Vitality	-.814*	(.379)
Negative precedent Vitality	.022	(.359)
Ideology	.410**	(.099)
Ideology X positive precedent vitality	.492*	(.208)
Ideology X negative precedent vitality	.122	(.145)
Political experience	.392*	(.188)
Tenure length	.082*	(.037)
Court reaffirms status quo	-1.374**	(.295)
Constant	1.715	(1.100)
n	1,187	
Pseudo R^2	.242	
Log pseudolikelihood	-261.87	
Wald chi^2 (18)	198.28**	
Proportion correctly predicted	92.1%	
Proportional reduction error	9%	

** $p<.01$, * $p<.05$ (two tailed). The dependent variable is dichotomous: 0= precedent vote, 1= preference vote. Entries represent logit coefficients with robust standard errors clustered on the landmark precedent (e.g., Hurwitz and Stefko, 2004). I obtain similar results when clustering on the progeny, justice, term, justice-precedent, or not clustering at all. Additionally, a rare-events logit (Tomz, King, and Zeng, 1999) produced similar results.

To enhance the interpretation of the variables of interest, I calculated predicted probabilities using the SPOST commands in Stata (Long and Freese, 2005). Figures 1 and 2 contain the predicted probabilities for *age of precedent* and *social-legal background*, respectively. Figure 1 shows the probability of casting a precedential vote in a progeny case based on the age of a controlling landmark precedent, with all other variables set to the mean/modal values. The upward trend in Figure 1 is clear: as a precedent

Figure 1
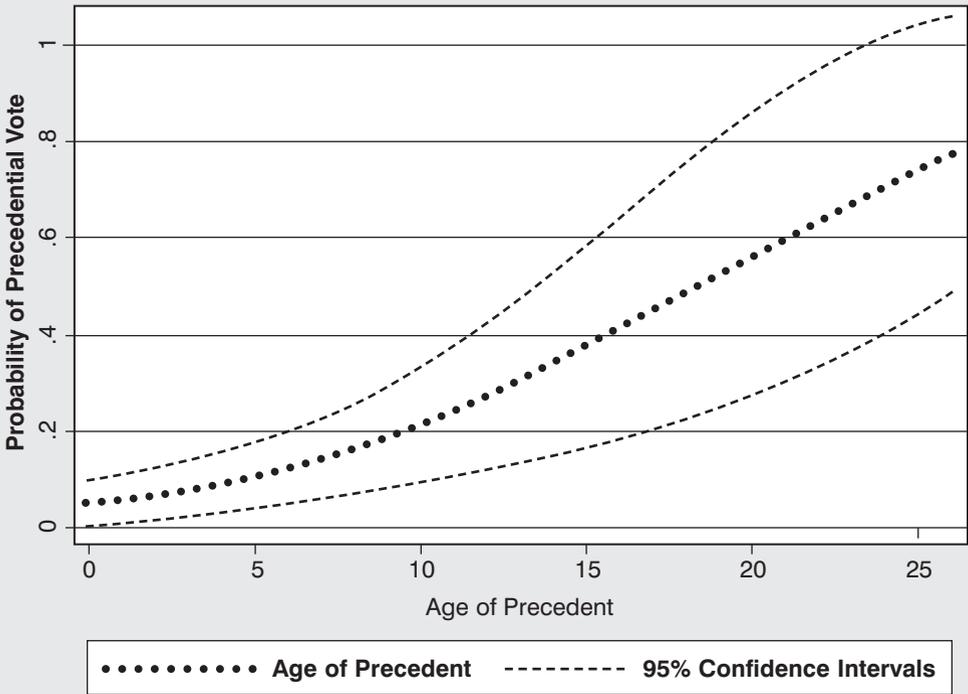### Precedential Voting: Age of Precedent

Figure 1 represents the probability of a precedential vote based on the age of the landmark precedent with all other variables set to the mean/modal values with 95% confidence intervals. The probability of voting against precedent is (1-probability of precedential vote).

becomes older, justices become more likely to uphold that precedent. I can also draw more subtle inferences with Figure 1. For example, during the first 10 years, a precedent has a minimal effect, at best, with the probability of a precedential vote at approximately .2. But by year 20 the probability of a precedential vote climbs above .5, and at year 25 the probability exceeds .75, though the confidence interval is larger. Nevertheless, the results suggest landmark precedents weigh more heavily on the justices' minds after the initial 10 years, supporting the idea that justices view older precedents as settled law.

Figure 2 shows the probability of voting for precedent across the different levels of *social-legal background*, and it has a general upward trend. As a justice's background includes more socialization of legal concepts and principles, the more likely that justice is to cast a precedential vote. The means are significantly different from each other, as indicated by difference statistics on the figure. A justice with a strong background has a probability of casting a precedential vote of .46, while a justice with no legal socialization or background has a probability of .21.

Figure 2
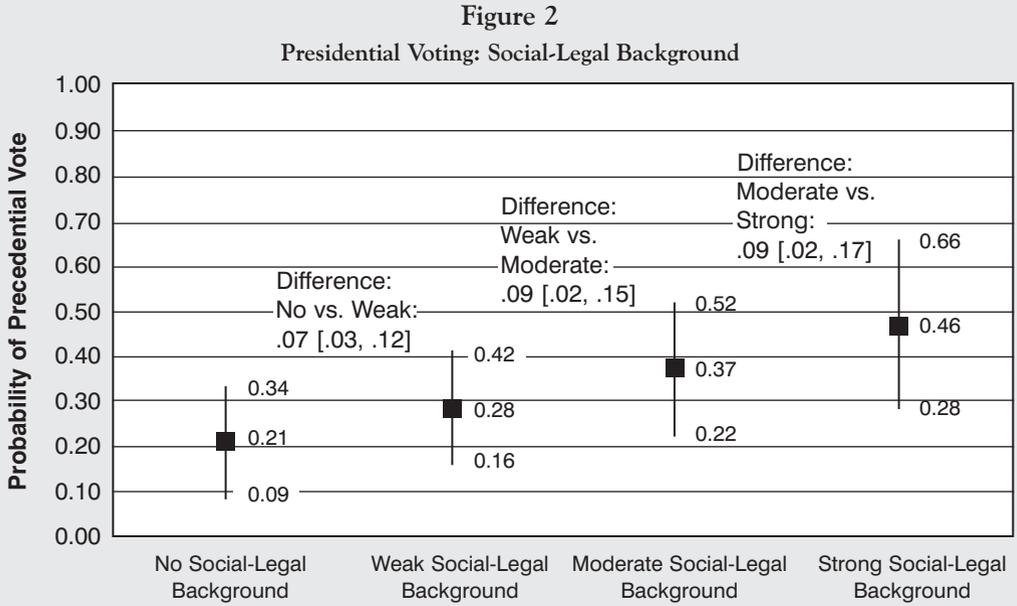**Presidential Voting: Social-Legal Background**

Figure 2 displays the probabilities of a precedential vote with 95% confidence intervals for corresponding levels of social-legal background with all other variables set to the mean/modal values. The probability of voting against precedent is (1-probability of precedential vote). Despite the overlapping confidence intervals, the means of each category are significantly different from each other at the p<.05 level, as indicated by the difference coefficients with 95% confidence intervals that do not include 0 (for more on overlapping confidence intervals, see Cumming and Finch 2005). Justices with a strong social-legal background include Harlan, Kennedy, and Stewart; justices with a moderate social-legal background include Frankfurter and Scalia; justices with a weak social-legal background include Blackmun, Burger, Burton, Clark, Douglas, Goldberg, Rehnquist, Stevens, and White; justices with no social-legal background include Black, Brennan, Marshall, O'Connor, Powell, Warren, and Whittaker.

The predicted probabilities for elite legal pedigree reveal the importance of how legal pedigree can negatively influence precedential votes. After setting all other variables to their mean/modal values, I calculated the probability of a precedential vote if a justice has either no elite legal pedigree (*elite legal pedigree*=0) or an elite legal pedigree (*elite legal pedigree*=2). For justices with no elite legal pedigree, the probability of a precedential vote is .377 (with a 95 percent confidence interval of .161, .591). However, for justices with an elite legal pedigree, the probability of a precedential vote drops to .062 (with a 95 percent confidence interval of .019, .104). This suggests that justices with an elite legal pedigree are significantly *less* likely to follow established precedents than justices without elite legal pedigrees.

Figure 3 graphs the probability of a precedential vote based on the Fowler and Jeon *authority importance score*, and it has a negative slope. This indicates that justices are less likely to conform to an unfavorable precedent when faced with an influential precedent (based on citation patterns in the network of citations). Another interesting aspect to Figure 3 is the generally low level of effect it has, where even the most

Figure 3
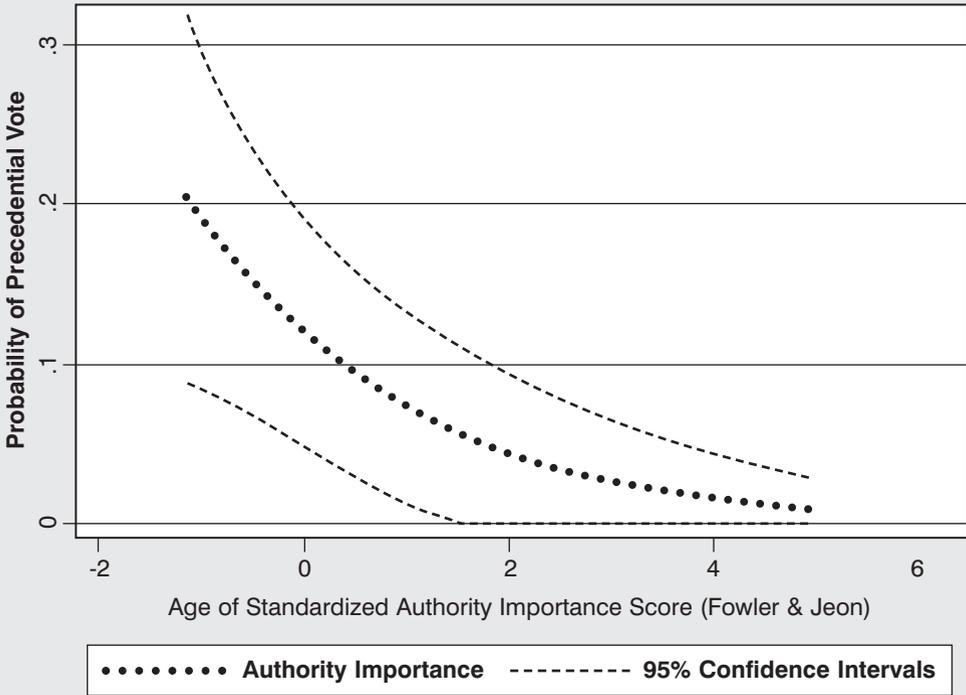**Authority Importance Influence on Precedential Voting**

Figure 3 illustrates the effect of Fowler and Jeon's authority importance score (standardized) on the probability of voting for precedent.

unimportant authority only has approximately .2 probability of a precedential vote. Thus, if it is a norm for justices to cite precedent, then the relative importance of the past citation patterns of landmark cases are having relatively little overall effect in guiding justices to conform with precedent in progeny cases.

On the effect of positive precedent vitality, because recent research suggests it is necessary to graph out interaction effects to assess their significance (Brambor, Clark, and Golder, 2006), Figure 4 graphs out the marginal effect of positive precedent vitality based on the interaction with ideology.[26] It is important to remember that because my dependent variable codes precedential votes as 0, a negative coefficient in Table 1 and Figure 4 indicates a greater likelihood of a precedential vote. Figure 4 shows, on the left hand side, when justices ideologically favor the landmark precedent, the marginal effect is negative, indicating an association between "*positive precedent vitality*" and an increased likelihood of precedential voting. However, the interaction

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[26] The marginal effect is graphed using the Stata utility "grinter" (Boehmke, 2006). The graph of negative precedent vitality revealed no significant effect.

Figure 4
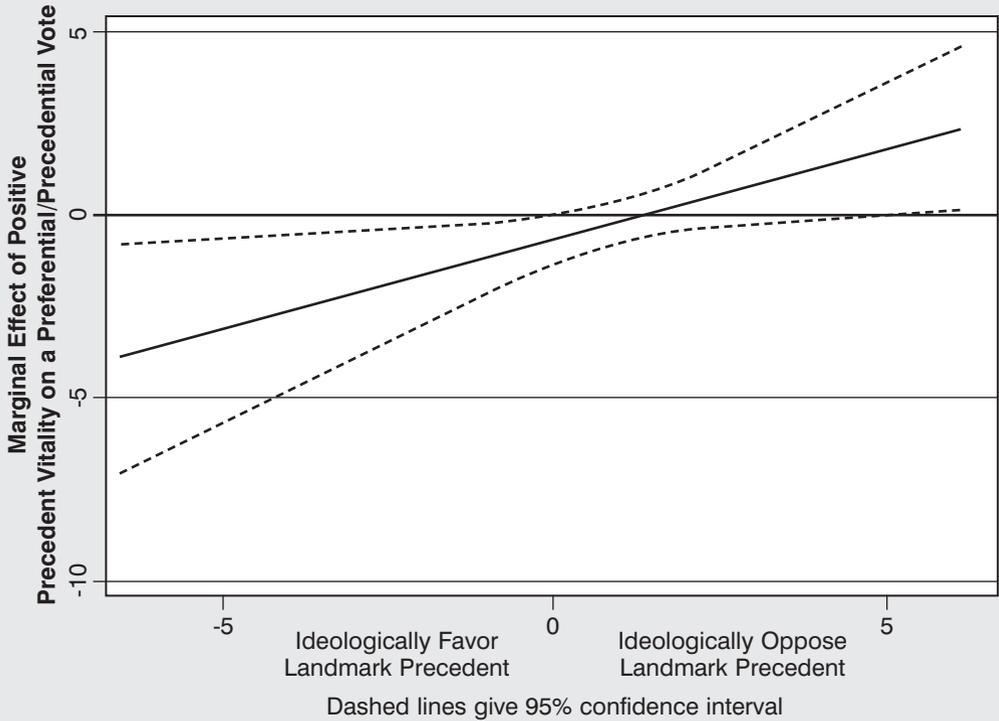**The Interactive Effect of Positive Precedent Vitality**

Figure 4 tests the significance of the interaction between *positive precedent vitality* and ideology by using the Stata data utility "grinter" (Boehmke, 2006). The graph "tests" the significance of the interaction by examining the mean marginal effect of *positive vitality* across the ideological spectrum. When graphed in this manner, the vertical axis represents the influence of *positive precedent vitality* on the dependent variable (0=precedential vote; 1=preferential vote). Thus, when the mean marginal effect of *positive vitality* is negative (the left side of the graph), it indicates a likely precedential vote. However, when the mean marginal effect is positive (the far right side), it indicates a likely preferential vote. This suggests *positive precedent vitality* has opposite effects conditional upon ideology.

is "significant" in the sense that as justices become less ideologically favorable toward the landmark precedent, justices no longer have an increased likelihood of precedential voting. In other words, as you move from left to right in Figure 4, the line designating the marginal effect crosses the zero threshold, which indicates it is statistically indistinguishable from zero. This suggests that positive precedent vitality, essentially, has a limited influence on justices adhering to precedent. And, in fact, though it only covers a small portion of the far right side of the graph (i.e., when justices strongly oppose a landmark precedent on ideological grounds), the effect of positive precedent vitality switches and becomes associated with an increased likelihood of voting *against* precedent. This builds on Hansford and Spriggs's (2006) core finding that shows

positive vitality does curtail voting against a controlling precedent, but there are limits to this curtailment based on the level of ideological opposition to the landmark case.

CONCLUSIONS AND IMPLICATIONS

This article tests several legal-based influences connected by two broad, legal theories in an attempt to explain precedential voting. I found justices are more likely to conform to precedent when socialized with a strong legal background, when the landmark case has positive precedent vitality, and when controlling landmark precedents are older. These results hold while finding support for multiple indicators of the justices' personal attitudes. Moreover, among the legalistic factors, the results showed justices are more likely to vote against precedent when they have an elite legal pedigree and when a case has a landmark precedent well-grounded in citation patterns.

The work here builds on and goes beyond earlier research by Spaeth and Segal (1999), Hurwitz and Stefko (2004), and Hansford and Spriggs (2006). For example, Spaeth and Segal (1999) predominantly focused on the extent to which justices conformed to precedent, and paid little attention to what factors influenced precedential voting. Hurwitz and Stefko (2004) primarily focused on whether newcomer justices were more likely to support precedent, while Hansford and Spriggs (2006) examined why and when the Supreme Court interpreted precedent positively and negatively. The goal here was to test two broad theories of social backgrounds and precedential characteristics to find out whether they contributed to our understanding of when and why justices vote to uphold an unfavorable precedent. In that context, the results on positive vitality complimented Hansford and Spriggs (2006) findings about the intertwinement of ideology and precedent by showing that positive vitality can lead to voting both for and against precedent, depending on how the justice views the landmark precedent. The null finding for negative vitality, however, is different from Hansford and Spriggs (2006) and suggests that once a case becomes "bad law," it does not exert the same type of effect that positive vitality does.[27] The work also confirms Hurwitz and Stefko's (2004) core finding, but goes beyond it by including other potential factors that may lead to precedential behavior.

Additionally, this article makes several other contributions to our understanding of judicial and legal decision making. First, this article demonstrates that there are multiple legal characteristics of landmark precedent that affect the likelihood of precedential voting. While previous research has investigated the importance of a landmark precedent, few scholarly works consider the possibility that landmark precedents possess different traits that affect their ability to shape the legal decision making of justices. Second, as part of that multifaceted nature of legalistic influences, this analysis

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[27] Though I should note that Hansford and Spriggs (2006), when examining lower-federal-court use of Supreme Court precedent, did not find any relationship between precedent vitality and negative treatments by lower-court decisions.

documents how each characteristic may differentially affect the likelihood of a prece-dential vote. Third, the article reinvigorates support for the importance of accounting for the justices' social-legal background, whether it is through the transmission of val-ues from their parents, career socialization, or the legal values from a previous job. Finally, because the results showed that social-legal backgrounds have effects in both directions, the concerns raised by critics about Justice Sonia Sotomayor may have been premature because of the presence of other conflicting legal pressures. The results also highlight another ripe area for future research involving social backgrounds, namely, the audiences that justices might cater toward (e.g., Baum, 2006), but that is beyond the scope of this study.

The analysis should also signal caution to other researchers when examining judicial behavior for evidence of the constraining effect of the law. One indicator of the effect of the law, a precedent's importance based on citation patterns, revealed a result in an unexpected direction. Thus, if one indicator, such as age of precedent (or positive vitality) suggests justices are likely to respect stare decisis, justices may not do this based on the fact that other characteristics of the precedent may, in the words of Black and Owens (2009), "liberate" them in deciding the case in another direction. This supports the idea that the law, its characteristics, and their social-legal back-grounds may leave justices ambivalent as to how to vote.

The findings carry important implications for the stability of the law. For exam-ple, Bueno de Mesquita and Stephenson (2002) note that lawyers are familiar with the argument for why policy-oriented judges would respect precedent, namely, because stability in the law is itself a legal policy that judges value. Thus, when justices ignore precedent at the expense of their own backgrounds, it raises a potential concern that justice are creating instability in the law, which can further disrupt and harm society. What these results show, however, is that social-background factors and precedential characteristics do not solely increase preferential voting at the expense of precedential voting. Rather, legal background factors and precedential characteristics have many faces and occasionally push justices to decide more in accordance with an unfavorable precedent. In sum, it appears it is this competition of factors, where one factor bal-ances another, that helps support a general stability in the law. **jsj**

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