Why Do Policy Motivated Justices Conform to Unfavorable Precedents?

Justin Wedeking
Department of Political Science
University of Kentucky
1661 Patterson Office Tower
Lexington, KY 40506-0027
Email: justin.wedeking@uky.edu

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Abstract

Why do policy motivated justices conform to unfavorable precedents? This paper suggests two theories, social-legal backgrounds and precedential characteristics, help explain why justices support unfavorable precedents. To test the explanatory power of these theories, the paper uses data from the 1953-1994 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 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 that she explicitly admitted that her decisions would not be grounded in the law, but would stem from her background and experiences. 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). This raises an important question - do social backgrounds and experiences influence a justice’s likelihood of upholding precedent?

In searching for an answer, we find that the literature on Supreme Court decision making tends to emphasize a justice’s personal policy preferences. For example, proponents of both the attitudinal and strategic models typically view justices as being 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 non-preferred outcome that would require upholding an unfavorable precedent. However, scholars have also argued that precedent constrains the justices’ decisions (e.g., Knight and Epstein 1996; Wahlbeck 1997). Yet, when empirically investigating preferential versus precedential voting behavior, Spaeth and Segal (1999, 309) found justices vote their preferences approximately 90% of the time and only 10% of
the votes followed the principle of *stare decisis*. This raises a more general question: if Supreme Court justices are primarily motivated by policy making, with little or no institutional constraints, why do Supreme Court justices vote for an unfavorable precedent at the final vote on the merits?\(^1\)

Using the precedent-progeny framework established by Spaeth and Segal (1999; Segal and Spaeth 1996a), this paper investigates 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 paper 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 paper 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 paper makes several contributions. First, while some of the results are intuitive (e.g., older precedents make adherence to precedent more likely), some results are counter-intuitive (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

\(^1\) 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).
decision making. In fact, the empirical results suggest that the effects of “the law” or legally based factors are multifaceted and ambivalent, sometimes pulling justices in opposite directions. For example, I find that an elite legal pedigree and whether the landmark controlling case 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 also Black and Owens (2009), who found 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 paper offers supporting evidence that a justice’s socialization and legal background are non-trivial 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.

Are Justices Influenced by Precedent?

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 justices were influenced by *stare decisis* (e.g., precedent). 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 where the holding of the landmark case is applied). Segal and Spaeth (1996a; and Spaeth and Segal 1999) found that justices overwhelmingly voted against precedent, which provided support consistent with the attitudinal model. 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

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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.
preferences are a strong influence on voting behavior (Brenner and Stier 1996; Songer and Lindquist 1996).\footnote{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. The manuscript is agnostic with respect to these points and chooses 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.} 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.

**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). Moreover, previous 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 1988; 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 “timebound” (Ulmer 1986).

The complete abandonment of background models is somewhat surprising, however, given two factors. First, in his article Ulmer states, “[n]one of our findings establishes necessarily that social background models in general are time-bound” (1986, 965). Second, Tate and Handberg (1991) provide evidence that background/personal attribute models were robust in explaining judicial behavior for 46 justices serving from 1916 through 1988. In other words, social background models are not timebound. The implication of this premature abandonment is highlighted by McGuire (2008) who points out that it comes at a cost of painting an “incomplete causal picture” of the justices’ behavior (2008, 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 has documented 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 1991; Niemi and Jennings 1991). 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).

One such area that has not been considered is whether a justice was raised in a home with
a parent as 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 non-lawyers. 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 (Braman 2009, 26).

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4 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 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.
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. Given this, when a justice’s parent was a lawyer, they would be exposed to this legalistic environment and be surrounded by legal principles, like *stare decisis*. Thus, we expect they would be 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? It could be argued that some attorneys may use “the law” simply as a means to an end, or lawyers may be cynical or unhappy with the legal process. This is unlikely because even lawyers who are motivated by self-interest were trained in a profession built on *stare decisis*, where Silverstein (2009) argues the United States has become increasingly controlled by a profusion and overgrowth of rules, laws, and statutes. In order to advance one’s own self-interest, 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 because most attorneys practice before lower court judges, those judges are constrained in their decision making by precedent handed down by higher courts (Randazzo 2008). 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 whether justices were raised in a home with 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

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5 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).
concept that setting aside personal preferences can have rewards, and that prior legal decisions should not be ignored or overruled lightly because they came at the expense of great sacrifice. However, if an attorney were more Machiavellian, then we would 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. It suggests that the beliefs and attitudes of justices that have explored an internationalist world, where they are exposed 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 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 \textit{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, “cold” logic, and the goal is to achieve a detached, analytical perspective.

Teaching places individuals in situations where they must reconcile legal discrepancies in order 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 fosters 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 are constrained 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, where legal educators strive to train better lawyers. 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 has yet to be struck down. Moreover, few law professors openly advocate the absolute disregard for precedent. To do so would be 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. The hypothesized influence of these legal background and socialization factors is: *A strong judicial-legal background should 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 lower court judges have incentives to uphold precedent because their decisions may be reviewed by a higher court, they are not constrained in 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 any one decision being reviewed is small, and that gives ample opportunity to insert their personal policy preferences into the law. Thus, it is theorized here that experience as a lower court judge gives a justice expertise on how to better inject their own personal policy preferences into the law, and the ability to do this becomes less constrained when a lower court judge is elevated to the U.S. Supreme Court because there is no threat of being overturned by a higher court.  

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*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 the situations when precedent*
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). An elite law school education is theorized here 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 that attend elite law schools. For example, Chicago is typically viewed as having a more conservative law school student body while Berkeley is viewed as having a more liberal law school student body (Princeton Review). 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), 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 or that non-elite graduates are not talented at making 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. Tangentially, this credibility advantage is supported empirically by the fact that 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 & 133-134), and elite law school graduates also get the vast majority of Supreme Court clerkships (Peppers 2006, 26-28).

does not provide a clear guiding answer that enables lower court judges to insert their preferences into the law.
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, students at law school who are surrounded by like-minded students become socialized and trained to think in a similar way. 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 placed in a deliberative setting, “people are likely to move toward a more extreme point in the ideological direction to which the group’s members were originally inclined” (274), something he terms as ideological amplification. As Suhay (2008) notes, the conformity is driven by individuals who feel pride when conforming to peers’ beliefs and behavior, and shame when deviating from it. There is also a social comparison mechanisms, where individuals want to be perceived favorably by other group members, and once they hear what others believe, often adjust their positions (Sunstein 2007). Group conformity was documented on Catholics (Suhay 2008) 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 should be better equipped to insert their policy preferences into the law. Thus, it is hypothesized that: An elite judicial pedigree should decrease the likelihood of precedential voting in progeny cases.\(^7\)

\(^7\) 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
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 confirmation transcript). 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 the accuracy with which the legal rule in a precedent is communicated 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), where increasing the temporal distance between the progeny and 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.
controlling landmark precedent suggests that the law in that area is being refined, with the actual importance of the questions and controversies generally becoming narrower in scope and smaller in magnitude. Moreover, empirical evidence in the literature supports the idea of some controlling precedents becoming “settled law.” For example, Hansford and Spriggs (2006, 84) find older precedents are less likely to be overruled. It is theorized that the age of a precedent contributes to the difficulty that justices will encounter when trying to form a majority that overturns a precedent several years after it was initially decided.\(^8\) Hence, it is hypothesized that: 

*older precedents should increase the likelihood of precedential voting in progeny cases.*

A second legal characteristic of a case is that some controlling landmark precedents are deemed 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, some cases are cited in opinions more often than others by justices. 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 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 importantly cited precedents should increase the likelihood of precedential voting in progeny cases.*

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\(^8\) 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 50 years. This suggests that equating a precedent’s age with being settled law may be contingent on the extent that the social and economic functions that precedent serves remain compatible with other societal values.
A third characteristic of the controlling precedent that should influence 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 that has a positive vitality indicates that the past courts have treated this case in a positive manner, and suggests justices will be more likely to adhere to that precedent in future cases. A controlling landmark precedent that has a negative vitality, however, indicates that it is less authoritative and is generally considered to be “bad” law. This suggests that when facing a decision controlled by a landmark precedent with negative vitality, justices should be less likely to uphold the doctrine of stare decisis.

Additionally, Hansford and Spriggs argue that personal policy preferences are crucial to understanding how justices interpret precedent, where justices are motivated to 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” (2006, 125). This suggests that ideology and vitality are closely intertwined, and that ideology will affect the link between precedential vitality and voting. Thus, it is hypothesized that: as a justice is more ideologically opposed to the controlling precedent, the relationship between positive vitality and precedential voting should become attenuated (i.e.,
precedential voting becomes less likely). Additionally, it is hypothesized: as a justice is more ideologically opposed to the controlling precedent, the relationship between negative vitality and precedential voting should become intensified.

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).9 The analysis here examines 1,187 votes from 21 justices over the 1953-1994 terms in progeny cases that originated from “landmark decisions” during the Warren, Burger, and Rehnquist Courts.10 While 21 justices may seem small, it represents all of the justices that ascended to the bench after

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9 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” (254).

10 In their original analysis, Spaeth and Segal (1999) examine behavior in 2,425 individual votes across all Court eras. There are 1,187 votes in this study because covariates are only available for part of the time period and the analysis is restricted to votes in progeny cases that originate from landmark decisions. Analyzing votes that originated from landmark cases represents a more difficult test of finding any type of legal influence on precedential voting because Spaeth and Segal’s dataset contains the complete universe of landmark cases and that is presumably where policy considerations are highest (i.e., when more attitudinally consistent behavior is expected). This is consistent with what Spaeth and Segal found (1999, 307-10), with precedential voting in ordinary cases at 17.6% versus 10% 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.
1950 and before 1990, with the exception of Abe Fortas, whom Spaeth and Segal (1999) also exclude from their study (see Table 9.1). The unit of analysis is a justice’s vote in a progeny case if s/he dissented in the original landmark ruling case. For example, Spaeth and Segal’s dataset contain any vote in a progeny case where Justice X dissented in the corresponding landmark case. Conversely, Spaeth and Segal’s dataset exclude any progeny vote where Justice X voted with the majority in the corresponding landmark case because it cannot be determined whether voting in the majority in a landmark case was based on precedent or not (Spaeth and Segal 1999).

The dependent variable is taken from Spaeth and Segal (1999) and is coded a “1” when a justice votes against precedent (for preferences), and coded “0” for precedential voting. Before moving on, the “worth” of this dependent variable needs to be addressed. While Segal and Spaeth have spent much time and space outlining the virtues of this measure (Segal and Spaeth 1996; Spaeth and Segal 1999), one point I add is that it represents a very stringent definition of precedential behavior, something that makes the results from a subsequent empirical test valuable in assessing what contributes towards legalistic behavior. Admittedly, it is a blunt measure that is not without its critics. Previous scholars have critiqued this conceptualization of precedent. For example, Friedman (2006) raises several concerns. First, Friedman suggests that precedent is just one interpretation of the “law.” Second, he 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). And 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). Other scholars also point to imperfections. Songer and Lindquist (1996)

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11 Of the 1,187 cases in the analysis, 101 (8.51%) were precedential votes and 1,086 (91.49%) were against precedent. There are 127 landmark cases and 421 progeny cases in the analysis.
note that it assumes a simplistic choice between precedent or preferences that fails to consider
the case selection process. 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 would be little need to hold oral
argument and issue a separate opinion. Finally, Brisbin (1996) argues that “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). The use of the measure here is not to dispute these claims, as they make important points,
but all variables have measurement concerns and my basic goal is to build off of Spaeth and
Segal’s original findings.

I treat the measure, while acknowledging its bluntness, as a useful measure of voting
behavior that is part of the published record (e.g., King 1995). The measure’s strength is that it
moves beyond a conception of voting that focuses solely on the liberal-conservative direction of
the vote. And, perhaps most importantly, this measure helps provide answers as to whether
social background variables, or characteristics of precedent, have an effect on the likelihood that
justices follow precedent. In sum, the strengths and benefits from using the measure outweigh
the weaknesses, because without it, we have no solid measure of whether a justice is upholding
or voting against precedent.

Because the dependent variable is binary, logistic regression is used to estimate the model
and evaluate the hypotheses, with robust standard errors clustered on the landmark case. 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.\textsuperscript{12}

**Independent Variables**

For the five legal concepts of primary interest, the *Social-Legal background* variable is constructed by summing four binary indicators taken from tables in Epstein, Segal, Spaeth, and Walker (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). The four indicators are summed into one scale because they are all theorized to be 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.\textsuperscript{13}

\textsuperscript{12} Other estimation strategies I tried include: a hierarchical model with individual justice votes nested within progeny cases revealed similar results; logistic regression with robust standard errors clustered on the progeny case, justice, term, and a combination of the justice-precedent, or not at all, and no substantive differences were revealed; a rare events logit (Tomz, King, and Zeng 1999) revealed no differences.

\textsuperscript{13} 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 would be 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.
Elite Legal pedigree is measured by summing two binary indicators taken from Epstein, Segal, Spaeth, and Walker (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. Elite law schools are defined as Harvard, Yale, Columbia, Stanford, Chicago, Berkeley, Michigan, and Northwestern.\textsuperscript{14} The importance of a precedent is indicated by Fowler and Jeon’s (2008) authority score that taps how influential various cases are based on other opinions that cite that case. The Fowler and Jeon score is standardized by subtracting the mean and dividing by the standard deviation and labeled Authority importance score. It is expected to have a negative sign, with more important precedents increasing the likelihood of a precedential vote. Age of precedent is measured by the number of years between a progeny and the controlling landmark precedent, and accounts for the fact that a precedent becomes more valuable and “settled” as it withstands the test of time. A negative sign is expected, where more “settled” precedents should increase the likelihood of a precedential vote.\textsuperscript{15}

Positive and negative precedent vitality uses Hansford and Spriggs’ (2006) measure of precedent vitality based on the vitality of the landmark precedent in the year of the progeny vote. Precedent vitality is separated into positive, negative, and neutral categories because Hansford and Spriggs (2006) found that vitality had different effects on positive and negative treatment of a precedent. Both positive and negative vitality are operationalized as dichotomous variables because it is believed that justices essentially care about whether the overall vitality is positive or

\textsuperscript{14} 14 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).

\textsuperscript{15} 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.
negative, not necessarily the extent or degree of the positive or negative vitality. For example, it is unclear that justices would prefer to cite a precedent that has been cited positively three times compared to another precedent that has been cited positively only twice. If anything, a justice would probably cite them both. Thus, if the landmark precedent had a sum total positive vitality at the time of the progeny case, positive precedent vitality was coded as “1” and “0” otherwise. If the landmark precedent had a negative vitality at the progeny case, negative precedent vitality was coded “1” and “0” otherwise. The baseline category that is omitted from the model is neutral vitality. Additionally, based on the Hansford and Spriggs (2006) findings that precedent vitality interacts with ideological distance from the status quo, interactions for each vitality variable with the measure of ideology (discussed below) are included. The interaction terms help us gauge the extent to which precedent is considered differently by different groups of justices (e.g., liberals versus conservatives).

For control variables, Ideology is included 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. For example, conservative justices receive their positive Martin-Quinn score if the landmark precedent was liberal because they will be highly motivated to vote their preference, while they will receive a negative Martin-Quinn score

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16 Martin-Quinn measures were chosen 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, Segal, Spaeth, and Walker 2007, Tables 6-1 & 6-2).
if the precedent was conservative. Thus, the stronger a justice opposes a landmark precedent, the
less likely the justice casts a precedential vote (a positive sign is expected).\footnote{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).}

Two other variables, \textit{Political experience} and \textit{Tenure length} are included 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. \textit{Tenure length} is defined as the number of years the justice was on the Supreme Court at the time of the progeny vote. Similar to Hurwitz and Stefko, it is expected it to have a positive sign, which indicates as tenure increases a justice is less likely to cast a precedential vote. \textit{Political experience} accounts for whether the justices have held elected office and have experience in policymaking where injecting their personal policy preferences into decision making is expected. It is coded 3 for federal office, 2 for state office, 1 for local office, and 0 for never held elected office (Epstein, Segal, Spaeth, and Walker 2007, Table 4-8). Federal office is coded as highest based on the assumption that federal policymaking experience will be more valuable in making legal policy on the federal bench.\footnote{One alternative means of estimating political experience is to include dummy variables for each category. This results in state or federal political experience being significantly more likely to vote preferentially than having no or local political experience. I chose the more parsimonious specification.}

Another control variable accounts for the importance of assessing the Court’s policy outputs in relation to the status quo (Bonneau, Hammond, Maltzman, and Wahlbeck 2007). The variable, \textit{Court reaffirmed the status quo} is coded “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 \textit{Case complexity} to control for the possibility that some cases present more than one legal provision. It is taken from the variable “laws” in Spaeth (2006). \textit{Size of coalition} controls for the fact that some coalitions are more tenuous than others.
(adopted from Hurwitz and Stefko (2004)). It is scored as the number of necessary votes needed before the decision would be reversed. If the vote was 5-4, which is a minimum winning coalition, then it takes a value of “1” because only one vote is needed to 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.\textsuperscript{19}

Previous research on Supreme Court decision making suggests it is important to control for case salience (McAtee and McGuire 2007). For case salience, the measure of whether the case received \textit{New York Times} front page coverage is used because it best approximates the theoretical construct of case salience (Epstein and Segal 2000).\textsuperscript{20} 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 \textit{Burger Court} and \textit{Rehnquist Court}, with \textit{Warren Court} omitted as the baseline. These control variables account for previous research that shows: precedential voting varies across time (Spaeth and Segal 1999, 313-4), concerns about Warren Court justices exhibiting high levels of judicial

\textsuperscript{19} Removing the \textit{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.

\textsuperscript{20} An alternative measure, the number of amicus briefs submitted in each case standardized by term (Maltzman et al. 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, footnote 21).
activism, research that suggests strategic behavior is more likely during certain periods (Perry 1991; Johnson, Spriggs, and Wahlbeck 2005), and that uncertainty and institutional pressures will vary over time (e.g., Maltzman and Wahlbeck 1996). Civil Rights & Liberties are taken from 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, 419-421; Gillman 2003,14), and the proportion of precedential votes differs across issue areas (Spaeth and Segal 1999, 311-312). Civil Rights & Liberties are given a value of 1 for all observations from Spaeth’s “value” variable that equal 1-6. This includes criminal procedure, civil rights, first amendment, due process, privacy, and attorneys. All other areas (unions, economics, judicial power, and federalism) are given values of 0.

Results

The results are listed in Table 1, and reveal support for several, but not all of the hypotheses. 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 a vote against precedent, and also demonstrates that socialization influences can have opposing effects (more on this below). Additionally, Table 1 shows that older precedents are associated with justices casting a precedential vote. The positive precedent vitality variable and the interaction with ideology are also significant, but because interaction effects cannot be deemed significant based on coefficients alone (Brambor, Clark, and Golder 2006), a graph of the interaction will be examined below. Negative precedent vitality, however, was not significant.  

21 The results in Table 1 are robust when excluding various control variables, such as Size of coalition and Court reaffirms status quo.
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 more important precedents based on previous network citation scores are associated with a greater likelihood of justices voting against precedent. While it was hypothesized to be negatively signed, 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).

*Ideology*, as expected, is strongly associated with voting against precedent. Other factors associated with an increase in the likelihood of voting against precedent are *political experience* and *tenure length*. Factors that are associated with an increase in precedential voting are the *Court reaffirms the status quo*, and the *Size of the coalition*. No support was found for *Case complexity*, if it was a *Civil Rights & Liberty issue*, the *Court era*, or *case salience*, though it was close to conventional levels of significance (p<.054).

To enhance the interpretation of the variables of interest, predicted probabilities were calculated using the SPOST commands in Stata (Long and Freese 2005). The predicted probabilities for *age of precedent* and *social-legal background* are graphed in Figures 1 and 2, 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 precedents become older, justices become more likely to uphold that precedent. Figure 1 also allows for more subtle inferences to
be drawn. 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, it appears that after the initial 10 years from the original decision, landmark precedents weigh more heavily in the justices’ minds and it is likely that a precedent is accepted as settled law.

[Figures 1 & 2 about here]

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.

The predicted probabilities for elite legal pedigree are graphed in Figure 3, where the probability of a precedential vote if a justice has either no elite legal pedigree ($\text{elite legal pedigree}=0$) or an elite legal pedigree ($\text{elite legal pedigree}=2$) are shown. The probabilities are graphed along the complete ideological spectrum to ease comparisons of justices with different ideological values while taking into account whether the justice was predisposed to favor or oppose the precedent. The main point revealed in Figure 3 is that justices with an elite legal pedigree are less likely to follow established precedents than justices without elite legal pedigrees, and this finding holds across most values of the ideological spectrum.

[Figures 3 & 4 about here]
Figure 4 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 the more important a 
precedent is based on citation patterns in the network of citations, the less likely a justice is to 
conform to that precedent. Another interesting aspect to Figure 4 is the generally low level of 
effect it has, where even the most 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. Rather, it appears that 
more cited precedents are related to voting against precedent.

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 5 graphs out the marginal effect of positive precedent vitality based on the 
interaction with ideology. It is important to remember that because my dependent variable 
codes precedential votes as 0, a negative coefficient in Table 1 and Figure 5 indicates a greater 
likelihood of a precedential vote. As Figure 5 shows, on the left hand side, when justices 
ideologically favor the landmark precedent, the value is negative, indicating that “positive 
precedent vitality” is associated with a greater likelihood of precedential voting. However, the 
interaction is “significant” in that this effect is eventually negated as justices become less 
ideologically favorable towards the landmark precedent (i.e, as you move from left to right in 
Figure 5, the line crosses the 0 threshold). This indicates that positive precedent vitality, 
especially, has a limited effect on guiding justices on whether to adhere to precedent. And, in 
fact, though it only covers a small portion of the far right side of the graph, the effect of positive

22 The marginal effect is graphed using the Stata utility “grinter” (Boehmke 2006). The graph of negative 
precedent vitality revealed no significant effect.
precedent vitality switches and becomes associated with an increased likelihood of voting against precedent when justices are strongly ideologically opposed to the landmark precedent. This builds on Hansford and Spriggs’ (2006) core finding that shows positive vitality does curtail voting against a controlling precedent, but it is limited by the level of ideological opposition to the landmark case.

[Figure 5 about here]

CONCLUSIONS AND IMPLICATIONS

This paper tests several legal-based influences connected by two broad, legal theories in an attempt to explain precedential voting. Support for precedential influences was found for justices who were socialized with a strong legal background, for cases with positive precedent vitality, and for cases that were controlled by older precedents. These results hold while finding support for multiple indicators of the justices’ personal attitudes. Moreover, among the legalistic factors, the results showed that justices with an elite legal pedigree and cases with landmark precedents well-grounded in citation patterns are associated with a justice being more likely to vote against precedent.

The work here builds on and goes beyond earlier research by Spaeth and Segal (1999), Hurwitz and Stefko (2004), and Hansford and Spriggs (2006). Spaeth and Segal (1999) were predominantly concerned about the extent to which justices conformed to precedent, with little attention to what factors are related to precedential voting. Hurwitz and Stefko (2004) were primarily interested in 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. 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 paper makes several other contributions to our understanding of judicial and legal decision making. First, this paper 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, little inquiry has been given to the possibility that landmark precedents possess different traits that affect its ability to shape the legal decision making of justices. Second, as part of that multifaceted nature of legalistic influences, this analysis documents how each characteristic may differentially affect the likelihood of a precedential vote. Third, the paper reinvigorates support for the importance of accounting for the justices’ social-legal background, whether it is the transmitted values from their parents, career socialization, or the legal values acquired through 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 they were not considered within the larger context. The results also highlight another ripe area for

23 Though, we should note that Hansford and Spriggs (2006), when examining lower federal court usage of Supreme Court precedent, did not find any relationship between precedent vitality and negative treatments by lower court decisions.
future research involving social backgrounds, namely the audiences that justices might cater towards (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 backgrounds may leave justices ambivalent as to how to vote.

The findings carry important implications for the stability of the law. For example, 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 valued legal policy. Thus, when a justice ignores precedent at the expense of their own backgrounds, it raises a potential concern that the justice is creating instability in the law, which can further disrupt and harm society. What these results show, however, is that these concerns are largely alleviated by the fact that when a social background factor (or precedential characteristic) appears to exert an influence on a justice’s decision making, it does not directly lead to a justice flouting precedent. Rather, legal background factors and precedential characteristics have many faces and often push justices to decide more in accordance with an unfavorable precedent. In sum, it appears it is this competition of factors, where one factor balances another that leads to a general stability in the law.
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and Berkeley leaning liberally are based on rankings as recent as August 2008.


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**Table 1**  Explaining Precedential Voting

<table>
<thead>
<tr>
<th>Case salience: <em>Front Page of New York Times</em></th>
<th>Coefficient</th>
<th>Standard Errors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size of coalition</td>
<td>-0.289**</td>
<td>(0.107)</td>
</tr>
<tr>
<td>Burger Court</td>
<td>-0.631</td>
<td>(0.330)</td>
</tr>
<tr>
<td>Rehnquist Court</td>
<td>0.179</td>
<td>(0.591)</td>
</tr>
<tr>
<td>Civil rights &amp; liberty issue</td>
<td>-0.342</td>
<td>(0.479)</td>
</tr>
<tr>
<td>Case complexity: If case had multiple legal provisions</td>
<td>0.629</td>
<td>(0.341)</td>
</tr>
<tr>
<td>Age of precedent</td>
<td>-0.156**</td>
<td>(0.041)</td>
</tr>
<tr>
<td>Social-Legal background</td>
<td>-0.393**</td>
<td>(0.143)</td>
</tr>
<tr>
<td>Elite Legal pedigree</td>
<td>1.106**</td>
<td>(0.305)</td>
</tr>
<tr>
<td>Authority importance score</td>
<td>0.578*</td>
<td>(0.228)</td>
</tr>
<tr>
<td>Positive Precedent Vitality</td>
<td>-0.814*</td>
<td>(0.379)</td>
</tr>
<tr>
<td>Negative Precedent Vitality</td>
<td>0.022</td>
<td>(0.359)</td>
</tr>
<tr>
<td>Ideology</td>
<td>0.410**</td>
<td>(0.099)</td>
</tr>
<tr>
<td>Ideology X Positive Precedent Vitality</td>
<td>0.492*</td>
<td>(0.208)</td>
</tr>
<tr>
<td>Ideology X Negative Precedent Vitality</td>
<td>0.122</td>
<td>(0.145)</td>
</tr>
<tr>
<td>Political experience</td>
<td>0.392*</td>
<td>(0.188)</td>
</tr>
<tr>
<td>Tenure length</td>
<td>0.082*</td>
<td>(0.037)</td>
</tr>
<tr>
<td>Court reaffirms status quo</td>
<td>-1.374**</td>
<td>(0.295)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.715</td>
<td>(1.100)</td>
</tr>
</tbody>
</table>

| n                                           | 1187        |
| Pseudo R²                                    | 0.242       |
| Log pseudolikelihood                         | -261.87     |
| Wald ch²(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), similar results are obtained 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.**
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 can be calculated by using the formula (1-probability of a precedential vote).
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 can be calculated by using the formula (1 - probability of a 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.
Figure 3 displays the probability of voting for precedent with either no elite legal pedigree (indicated by circles) or an elite legal pedigree (indicated by triangles) across the ideological predisposition towards the landmark precedent. The gap between the confidence intervals indicates we can be confident that the difference between the two values is meaningful for a large range of justices. The probability of voting against precedent can be calculated by using the formula (1-probability of a precedential vote).
Figure 4 illustrates the effect of Fowler and Jeon’s authority importance score (standardized) on the probability of voting for precedent.
Figure 5  The Interactive Effect of Positive Precedent Vitality

Figure 5 tests for the significance of the interaction between positive precedent vitality and ideology by graphing the marginal effect of positive vitality across ideological favorability/opposition to the landmark precedent. It is important to remember the dependent variable codes a precedential vote as 0, so a negative coefficient above indicates a likely precedential vote. The left side of the graph indicates when justices are ideologically close to the landmark precedent (even though they dissented), the marginal effect of positive precedent vitality is significant and negatively signed, indicating an increased likelihood of the justice casting a precedential vote in the progeny case. However, as the justice becomes more ideologically opposed to the landmark precedent (moving horizontally from left to right on the figure), the marginal effect of positive precedent vitality becomes less negative and eventually insignificant towards the middle as it crosses the 0 threshold. However, the effect eventually reverses direction on the far right side of the graph by becoming positive. In these cases, where a justice ideologically opposes a landmark precedent, positive precedent vitality increases the likelihood of voting against precedent in the progeny case.