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Ideological Preferences of Supreme Court Justices: The Shift throughout Tenure

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Ideological Preferences of Supreme Court Justices: The Shift throughout Tenure

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By

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I. Introduction

Since the formation of the United States Supreme Court in 1790, there have been 17 chief justices and 103 associate justices that have served on the Court.[1] For over 200 years the Court has been serving our country, and for over 200 years our formulation of political beliefs and ideologies have altered how the people view and the justices interpret the constitution. Nine justices serve on the Supreme Court at a time: one chief justice and eight associate justices. All of these justices are different – they have lived different lives, grown up in different circumstances, experienced different issues – all to which led them to understand the law and decide on cases respectively. Their experiences, families, and educations have formed their political beliefs and how they interpret the constitution – whether that be in a conservative, traditionalist lens that views the constitution as stable or in a liberal, progressive lens that views the document as ever-changing. These attributes determine the way the justices will decide on court cases that will affect our government, our society, and our country's endeavors in the future, possibly forever.

With justices serving for an average of 16 years,[2] and deciding the outcome of 1,280 cases during the course of their tenure on the court, it raises the question whether these justices retain their exact ideological leaning throughout their entire term as a justice that they held when they began. Though their lives prior to their appointments form their beliefs, their seat on the bench has an influence on them after their appointments. Presidents nominate qualified professionals to become justices, but do so usually based on the individual possessing the same ideological beliefs and judgements as the president. For example, if the current president identifies as a Democrat, they will nominate an individual that shares their similar Democratic

[1] "The Court as an Institution." *Supreme Court of the United States*, https://www.supremecourt.gov/about/institution.aspx.
[2] "The Court as an Institution." *Supreme Court of the United States.*

ideals to fill the vacancy on the Supreme Court bench. A Republican president hopes that the nominated justice will interpret the constitution and decide on cases in a Republican manner. This is to ensure that the president's ideological beliefs will have a lasting influence on court hearings and hopefully impact the constitution, laws, and precedents in the same ideological manner. But, as the years serving in term progress, justices' ideals and opinions might be influenced by the people, cases, current issues, and even their fellow justices. Society's influence may change their outlook and opinions on specific, impactful issues in our country that are brought up through these court cases. This sparks debates about the justices and their voting habits and leads to the central question of this paper: Do Supreme Court justices change or alter their ideological leanings and political preferences throughout their term on the bench?

For example, throughout time on the Court, a Republican justice may begin to interpret the constitution in a different manner than formerly assumed, much to the nominating president's regret. This circumstance and this research question are important to our society because it brings up issues with the legitimacy of the justices' votes in the eyes of the citizens, if they believe the justices' voting patterns have changed. It can cause individuals in the political party of said justice to become skeptical of and upset with the justice who seems to have formed new, differing beliefs than they previously obtained – they feel cheated, and begin to distrust the justice as well as the judicial process. Trust within our judicial system is vital for the reliance, cooperation, and success of our government. This also causes for Supreme Court cases later decided on in said justice's term to possibly be analyzed and voted on differently than cases earlier in their term, which causes people to question if the earlier or later cases were justly or rightfully decided, or even constitutional. There are many factors and consequences if the justice's voting habits have changed – those being good or bad consequences is subjective to the

interpreter. This paper will research and analyze previous and current justices' terms to formulate a hypothesis on whether time, society, and the constitution impact and change the opinions and vote of the justices throughout their term, and whether that is a positive or negative consequence of being influenced.

For this thesis, I will analyze the tenure of five Supreme Court justices across the decades, ranging from the year 1940 up to the present year of 2022. The analysis will examine the variation between the justices' decisions at the beginning of their term compared to the decisions near the end of their term. The purpose of this study is to properly distinguish whether Supreme Court justices who have served on the bench for more than a decade are impacted by ideological drift and preference shifts throughout their career. The importance of this analysis is to determine the impact of whether there is ideological drift among the justices. Such ideological drift poses many additional questions such as whether their ideological drift affects their interpretation of the constitution. How does the drift impact the precedents that govern our nation, freedom, and democracy? Do the previous decisions of these justices lose merit now that their opinion on the matter has evolved? Should these justices have term limits? These questions will be evaluated alongside this analysis.

II. Literature Review

Studies of Judicial Behavior

Supreme Court justices are considered and nominated based on their qualifications, experiences, career accomplishments, and ideologies. It is important to the executive branch that the preferences of the justices they nominate remain stable during their term on the court, for if their preferences vary, their nomination is not advocating for and representing the presidency's political ideology as they had hoped for. As Epstein and her colleagues note, just because a

justice is a Republican or Democrat, and thus voting liberally or conservatively, their views may still be different than that of the president.[3] History explains that actors in government institutions — especially the Supreme Court — often behave unpredictably.[4] Due to instances like this, many political scientists have attempted to measure, reason, and predict the ideologies of justices based on research and statistics. Many use exogenous measures — measures that are based on information that is causally prior to any votes being cast [5] — to capture ideology. This legal model of measuring decision-making argues that the decisions of the Supreme Court are based on the facts of the case, the precedents, the plain meaning of statutes and the Constitution, and the intent of those who framed legal provisions.[6]

In contrast, the attitudinal model holds that the Supreme Court justices decide a case in light of their ideological attitudes and values.[7] Many political scientists use this model to analyze justices and measure their respective ideologies. A well-known method that takes these models into account is the Segal-Cover scores. Two political scientists, Segal and Cover, derived these scores by content-analyzing newspaper editorials written between the time of the justices' nomination to the U.S. Supreme Court and their confirmation.[8] Though these scores are desirable to certain political scientists, they are computed once — at the time of the justice's nomination — and do not fully analyze the full term of the justice's tenure on the Supreme Court. Segal and Cover base a lot of their measures on the attitudinal model, and this model cannot fully explain the voting fluctuations observed in the actual data.[9]

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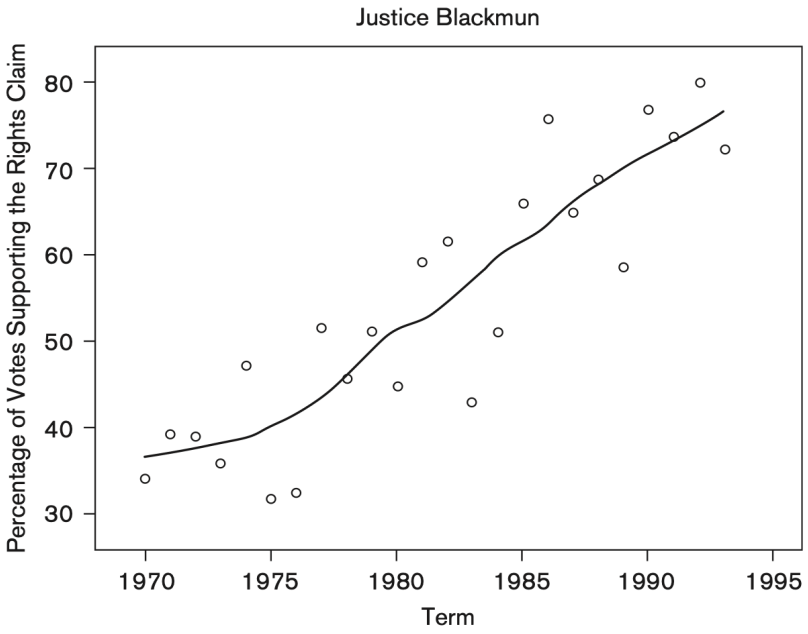
[3] Epstein, Lee, et al. "Ideology and the study of judicial behavior." 2012.
[4] Owens, Ryan J. and Wedeking, Justin, Predicting Drift on Politically Insulated Institutions: A Study of Ideological Drift on the United States Supreme Court (December 29, 2010). https://ssrn.com/abstract=1738309
[5] Epstein, "Ideology and the study of judicial behavior."
[6] Lim, Youngsik. "An Empirical Analysis of Supreme Court Justices' Decision Making." *The Journal of Legal Studies*, vol. 29, no. 2, 2000, pp. 721–752. *JSTOR*, www.jstor.org/stable/10.1086/468091. 722.
[7] Lim, "An Empirical Analysis of Supreme Court Justices' Decision Making." 722
[8] Epstein, "Ideology and the study of judicial behavior."
[9] Lim, "An Empirical Analysis of Supreme Court Justices' Decision Making." 724

New research shows that virtually all the justices serving since 1937 grew more liberal or conservative during their tenure on the Court.[10] Figure 1 illustrates one of the more extreme examples: Justice Harry Blackmun's nearly complete flip, from acting as one of the Court's most conservative members to among its most consistent civil libertarians. This proves that an ideological score developed in 1970 would not be especially useful in predicting Blackmun's votes two decades later, in 1990.[11]

[10] Epstein, "Ideology and the study of judicial behavior."
[11] Epstein, "Ideology and the study of judicial behavior."



Source: Graph of Justice Harry Blackmun's Segal Cover Scores, 1970-1994.[12]

Figure 1: Support for Civil Liberties Claims: The Career Voting Record of Justice Harry A. Blackmun.

Note: This figure reports the percentage of votes cast each term in which Justice Blackmun supported defendants in criminal cases; women and minorities in civil rights cases; and individuals against the government in First Amendment, privacy, and due process cases. The superimposed line is a first-degree less smooth with span = 0.45.[13]

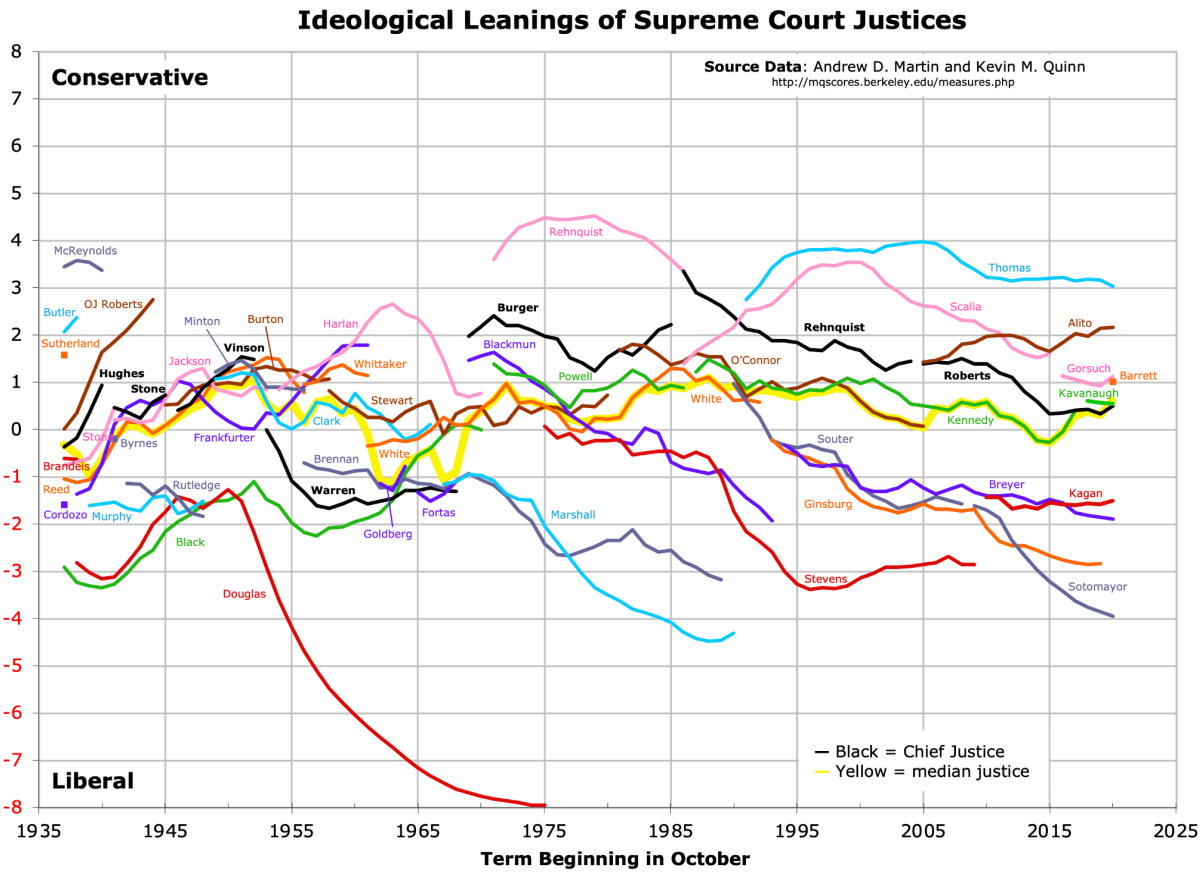
Figure 1 displays the ideological drift of Justice Blackmun during his time on the court but could also stand for and represent many other justices as well. Justice Blackmun will be discussed in more depth later in this paper, but this shows that to truly score and present a justice's ideology, one must look at their entire time on the bench and compare their earlier voting patterns to their voting patterns at the end of or later within their term. This article

[12] Epstein,"Ideology and the study of judicial behavior."
[13] Epstein,"Ideology and the study of judicial behavior."

showcases that justices, no matter what ideology, grow as professionals and may alter their ideology and opinions, swaying their decision making and interpretations later in their career.

Another scoring model represents and displays the change in the direction of ideologies, is the Martin-Quinn Score. The Martin and Quinn (2002) fits a dynamic item response theory model which provides time-varying ideal points for Supreme Court justices.[14] The Martin-Quinn Score was developed to measure the politics in the Supreme Court and to get a better understanding of the trend in decisions of the justices through time. This scoring graph represented below is the graph of all of the justices, from 1935 to 2020, and their voting trend over time.[15]

[14] Martin, Andrew D., and Kevin M. Quinn. "Can Ideal Point Estimates be Used as Explanatory Variables?", *Washington University in St. Louis. Unpublished Manuscript* (2005).
[15] Graph of the Martin-Quinn Scoring of Ideological Leanings below. *Martin-Quinn Scores*, https://mqscores.lsa.umich.edu/index.php.



Source: Graph of the Martin-Quinn Scoring of Ideological Leanings below. *Martin-Quinn Scores.* [16]

Figure 2

Figure 2 presents us with a simple summary of the trend in votes of each justice from 1935, these ideal points being updated annually as the Court decides additional cases.[17] Lower, or negative, numbers on the ideological scale represent liberalism; high, or positive, numbers on the ideological scale represent conservatism.[18] It is easy to see that not a single justice remained stable in their voting over their years in court. Though it shows the voting swaying in many directions, from 1955 and on the scores mostly begin to lean towards the liberal spectrum in the

[16] Graph of the Martin-Quinn Scoring of Ideological Leanings below. *Martin-Quinn Scores.*
[17] Martin and Quinn, "Can Ideal Point Estimates be Used as Explanatory Variables?"
[18] Martin and Quinn, "Can Ideal Point Estimates be Used as Explanatory Variables?"

graph. This may be due in part to the progressive era of that time period. Many social rights movements were heavily pushed, promoted, and enacted during these decades, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the revolutionary court decision of *Brown v. Board of Education* in 1954, which could have very well been a turning point in many justice's views. The changing of society and of the times plays an essential role in what justices believe in and what issues matter most to them. Though the trend in ideologies mostly lean more liberal over time, that does not mean that these justices are strictly liberal by the end of their term. Seen in many justices, though their trend may dip towards a more liberal voting, their ideology is still above the moderate line, or 0, and they remain conservative, or Republican in many aspects.

Justice Sandra Day O'Connor provides an example. Though she began more conservative (present on the graph), throughout her time serving her decisions were measured to become more liberal over time, though her ideals as a whole still remained conservative/Republican seeing that her 'scoring' remained above the moderate line. But if her initial preferences remained completely stable, odds are that she would not have provided the fifth vote to uphold Michigan Law School's affirmative action program in the 2003 case, *Grutter v. Bollinger*.[19] This case showcases her preference change and proves that the graph is correct in her motion to score more liberally at the end of her term. This graph helps present evidence and prove that justice's ideals alter and develop throughout their time as a Supreme Court justice.

Do political preferences change?

There have been some models and research that present us with the basis that preference does not change, but many political scientists attempt to disagree. The "stability assumption," which assumes that one is consistent over time, has been labeled on justices by certain political

[19] I previously studied this case.

scientists. The attitudinal model, a social-psychological theory of decision making, states that political actors have a set of, “interrelated beliefs that describe, evaluate, and advocate action with respect to an object or situation,” that guide their decision making.[20] These beliefs and ideals are subject to change though, especially along with the mood of the public. When the public follows and represents mostly liberal (or conservative) ideals, the Court is significantly more likely to issue liberal (or conservative) decisions.[21] Justices do not respond to public opinion directly, but rather respond to the same events or forces that affect the opinion of other members of the public.[22] Though the attitudinal model refers to the stability assumption, it makes no hard claim to their beliefs remaining the same throughout their term. Many justices, including Hugo Black, William O. Douglas, and Harry Blackmun, have been cases of variation in preferences. Sidney Ulmer, a political scientist who studied justices Black and Douglas, states how he supposes that because "service on the Court is a learning process," the length of a judicial career itself would promote change.[23] These two justices were analyzed and found that their preferences did indeed shift during their terms, even after examining case control stimuli. This shows that preference may change based on the longevity of a justice's term.

Justices' roles on the bench may be affected due to the introduction of national trends that arise through their term. Their behavior is affected by factors in national issues, such as in economic, social, and environmental issues, that become prominent while they are serving. Examples of these include economic inflation or recessions, social advocates and prominent civil rights issues, or environmental impacts, climate change, and world health issues (i.e.,

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[20] “Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices” - “The Journal of Politics.” *University of Chicago Press Journals*, https://www.journals.uchicago.edu/doi/pdfplus/10.2307/2647649.
[21] Epstein, Lee, and Andrew D. Martin. "Does Public Opinion Influence the Supreme Court-Possibly Yes (But We're Not Sure Why)." *U. Pa. J. Const. L.* 13 (2010): 263.
[22] Epstein and Martin. "Does Public Opinion Influence the Supreme Court-Possibly Yes (But We're Not Sure Why)."
[23] “Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices,” The Journal of Politics.

COVID-19). These issues and factors may sway justices' previous ideals, for they had either never known of these situations or had never been faced with attempting to resolve such an issue before. Though this research is relative to a few justices, it still presents cases where ideals and opinions were changed.

In Justice Harry Blackmun's case, he denies ever having a preference change. When he was nominated by President Richard Nixon, he was described by the people as, "consistently… on the conservative side of the issues."[24] But over time, even within his first decade of serving, Justice Blackmun's votes went from being secure and reliable to unpredictable. In his decisions, he grew away from voting like his conservative friend and colleague Chief Justice Warren E. Burger and began voting alongside more liberal associate justices. During the past decade or so, the law reviews have been full of articles attesting to changes in Harry Blackmun's political attitudes. When a justice has taken part in deciding on a precedent of a current case, their present decision should be affected by their past decision.[25] This is not necessarily the case with Justice Blackmun. Although Blackmun himself denies these charges – attributing supposed changes to shifts on the Court – it is hard to believe that the same man who dissented in *Furman v. Georgia* (1972) wrote, 22 years later, "From this day forward, I no longer shall tinker with the machinery of death," in *Callins v. Collins* (1994).[26] This is one of the most prominent shifts in Blackmun's beliefs. The change between being a supporter of the death penalty to then shifting to actively voting against it is a remarkable drift. In the case *Gregg v. Georgia* (1976), Justice Blackmun joined the majority opinion in ruling that, "a punishment of death did not violate the Eighth and Fourteenth Amendments under all circumstances. In extreme criminal cases, such as when a

[24] Ruger, Theodore W. "Justice Harry Blackmun and the Phenomenon of Judicial Preference Change." *Missouri Law Review,* vol. 70, no. 4, Fall 2005, p. 1209-1230. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/molr70&i=1219.
[25] Lim, "An Empirical Analysis of Supreme Court Justices' Decision Making." *722*
[26] "Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices," The Journal of Politics.

defendant has been convicted of deliberately killing another, the careful and judicious use of the death penalty may be appropriate if carefully employed."[27] Then, as stated previously, in an unusual step of dissenting a decision to not approve a writ of certiorari of *Callins v. Collins* (1994), a case decided almost 22 years after his dissent in *Furman* and 18 years after his opinion in *Gregg*, Blackmun renounced his approval of the death penalty. He announced that he was unequivocally turning against the death penalty because he no longer believed that the procedural safeguards erected in the 1970s were working.[28]

In many more cases at different points of his career, Justice Blackmun portrayed changed voting behavior. In the case *Garcia v. San Antonio Metropolitan Transit Authority* (1984), Blackmun ruled in favor of protecting employees of SAMTA in regards to imposing the federal minimum wage and federal mandated overtime pay for their employees, in which he previously argued against federal involvement in state and local affairs. These cases, along with a plethora of others, demonstrate a distinct change in his preferences, which affected his voting habits throughout time. Later in his life, he stated how his views and perhaps those of other justices did evolve while on the bench, and considers that, "when one goes on the Supreme Court of the United States his constitutional philosophy is not fully developed… And if one didn't grow and develop down there, [he] would be disappointed in that person as a Justice."[29]

Overall, preference change has been found to occur in the 20th and 21st century, and it is a phenomenon that affects many justices. Political scientists studied the voting preference changes among sixteen justices between 1937 and 1993, and found that even after controlling for variation stimuli, alterations in voting preferences changed in nine out of the sixteen justices.[30] In

[27] Gregg v. Georgia. (n.d.). *Oyez*.
[28] Callins v. Collins. *Oxford Reference.*
[29] Ruger, "Justice Harry Blackmun and the Phenomenon of Judicial Preference Change."
[30] Ruger, "Justice Harry Blackmun and the Phenomenon of Judicial Preference Change."

another study, Owens and Wedeking found that only fifteen percent of justices on the court since 1937 to today have remained truly ideologically consistent.[31] Put plainly, the protection justices enjoy from the control of other branches allows them the freedom to change over time, and there is little that political actors reasonably can do in response. Though some more than others, this study shows that justices serving for many years and deciding on many valuable cases will lead them to succumbing to changes in their voting habits. This study is one of many that prove that preference change is a real situation. Although the extent to which Justice Blackmun changed his preference is very unusual, the fact that his preferences changed while on the Court is not, and empirical research suggests that many long-serving Supreme Court Justices experience significant preference change during their tenure.[32]

Ideological Drift

Ideological drift in law means that legal ideas and opinions will eventually change people's political valence as they are used over and over again.[33] Political valence can be categorized as the personal integrity and competence that are valued by constituents who cannot monitor every decision their representatives make. The personal qualities of representatives are important not only because voters value them for their own sake, but also because such qualities make for a trusting relationship that allows voters to protect themselves.[34] Political and governmental figures' valence varies over time as they are applied and understood repeatedly in new contexts and situations as time progresses.[35] As the world advances, society does too, and as time goes on people want to keep their preferences prominent in the political world. As stated in

[31] Owens and Wedeking, Predicting Drift on Politically Insulated Institutions: A Study of Ideological Drift on the United States Supreme Court.
[32] Ruger, "Justice Harry Blackmun and the Phenomenon of Judicial Preference Change."
[33] Balkin, Jack M. "Ideological drift and the struggle over meaning." *Conn. L. Rev.* 25 (1992): 869.
[34] Stone, W. J., & Simas, E. N. (2010). Candidate Valence and Ideological Positions in U.S. House Elections. *American Journal of Political Science.*
[35] Balkin, "Ideological drift and the struggle over meaning." 870.

the introduction, presidents hope to create lasting legacies in the form of justices who share their ideologies.[36] They reasonably believe that these justices will behave as they expect, but once elected officials nominate and confirm justices to the court, they enjoy very little actual power to influence how the Court decides cases.[37] Justices may fluctuate, or drift, in their ideologies due to society progression and worldly changes. This leads to a degradation of the relationship between their preferences and their nominating party.[38]

It is clear that contrary to the claims of prominent scholars, the president and his supporters within the Senate cannot guarantee that the appointed justice will remain in the exact same mind frame that the president wants or needs to have a relevant and lasting impact on government decisions. An example of this situation is with Justice David Souter. When George H.W. Bush selected Souter to serve on the Court in 1990, the president had a multitude of reasons to believe he was appointing a justice who would cast consistent conservative votes.[39] Before Souter joined the Court, news sources deemed him even more conservative than two of President Ronald Reagan's appointees, Sandra Day O' Connor and Anthony Kennedy, at the time of their nominations.[40] The President and the editors were not initially wrong. For the 1990 term, Justice Souter's decisions were conservative, like everyone had guessed. During his first two terms, Souter was the Court's likely median, or swing, justice.[41] But, Justice Souter's ideology began to shift, which led him to become closer to being a more liberal member of the Court. Souter waivered with nearly every case, which led to Bush's nomination failing in keeping his 'legacy' on the judicial bench.

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[36] Epstein, Lee, et al. "Ideological Drift among Supreme Court Justices: Who, When, and How Important." Northwestern University Law Review, vol. 101, no. 4, 2007, p. 1483-1542. HeinOnline.
[37] Owens and Wedeking, Predicting Drift on Politically Insulated Institutions: A Study of Ideological Drift on the United States Supreme Court
[38] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[39] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[40] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[41] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."

Another example of this is with Chief Justice William Rehnquist. Taking a look at the Martin-Quinn Scoring model, it is shown that Rehnquist's votes began to drift more liberally over time. At first, Justice Rehnquist was said to be the most conservative justice of all time, as President Richard Nixon wanted.[42] Rehnquist lasted on the court for over three decades, but when Rehnquist was promoted to Chief Justice, Rehnquist began to drift to the left.[43] In regard to the Martin-Quinn Score, every year between 1986 and his death in 2005, Rehnquist's preferences were significantly more liberal than in 1985.[44] Though his preference change did not happen as drastically as Justice Blackmun's, it still showcased in his decisions how his ideology drifted to become more liberal through his term as a justice. These are a few examples upon many where ideological drift and preference change has impacted justices and their decisions while on the Supreme Court bench.

III. Analysis

Through the extensive research of these articles and journals, I hypothesize that Supreme Court justices change in their ideologies and preferences as the time in their term progresses, specifically, they begin to make decisions and agree with outcomes in a more 'liberal' leaning mindset and manner. This ideological phenomenon can be traced back to social, economic, and environmental factors that impact our society, government, and our justices.

Justices tend to grow in their profession, which leads to an introduction of new ideals and a reevaluation of their own opinions and beliefs. Personal preference is an inevitable feature of legal decision,[45] and it is clear through research that ideological drift is a phenomenon that happens to justices when they serve lengthy terms on the Supreme Court. In the journal article

[42] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[43] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[44] Epstein, "Ideological Drift among Supreme Court Justices: Who, When, and How Important."
[45] Miller, Eric J. "Judicial Preference." *Houston Law Review,* vol. 44, no. 5, Winter 2008, p. 1275-1336. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/hulr44&i=1283.

"Ideology and the Study of Judicial Behavior," Epstein proves through extensive research that virtually all justices serving since 1937 grew more liberal or conservative during their tenure on the Court. These changes are displayed in the Martin-Quinn Score graph. On this graph alone, it showcases that there is much variation among the justices in their ideologies, and that some ideologies tend to shift drastically one way or the other.

Analysis Overview

In this analysis, I will be measuring whether Supreme Court Justice's experience ideological drift as their term progresses throughout the years. The independent variable in this experiment is the number of years these justices serve on the Court. The dependent variable is their preference change. The preference change is dependent on the length of the term as a Justice. The longer the Justice is on the bench, the more of a chance their preferences could be influenced or altered. An example of ideological change that was discussed previously within this paper was with Justice Harry Blackmun. Justice Blackmun was a justice for over 20 years, which led to his growth not only as a justice, but as a professional, government employee, and citizen. The societal, economic, political, and environmental factors that were formed, shifted, and expanded within his 20 years on the court led to his ideologies altering as well. The length of his term allowed for his preferences to drift. This phenomenon not only happened to Justice Blackmun, but may also be seen and analyzed happening to many justices throughout all decades of the Supreme Court.

For this thesis, an analysis will be conducted over five different Supreme Court justices from five different decades. The measures and variables to be used for this analysis will be to examine these justices from different decades served on the Court spanning 20 years apart. I will choose Justices with varying ideological beliefs, and who served on the Court respective to these

or near these decades: 1940, 1960, 1980, 2000, and 2020. The justices chosen will have served over ten years on the court and their decisions while on the bench will be compared over their decades served. These experimental times are twenty years apart so a later analysis over preference change throughout the court's history can be properly studied and compared from differing points throughout the centuries.

The cases selected and examined will be cases where the justice's had to make decisions that dealt with prominent political issues. These issues are personal human rights, race, gender, the death penalty, minorities, and First Amendment issues. This data will be analyzed to see whether their decisions align with that of what their respective nominating party believed and promoted. The point of this analysis is to see if their preference changed over time as a justice, and to see whether their ideologies were influenced by the court and society. This leads to the null hypothesis: Supreme Court Justices tend to keep their original ideological beliefs, with no measurable variation, to which they were nominated during their term. If the justices' later decisions align closely with their earlier decisions in similar cases, as well as what their identified political party believes and promotes, then their preferences did not necessarily change and their ideologies did not shift, confirming the null hypothesis. If their later decisions do not match their earlier decisions, then their preferences did change and ideologies did shift, confirming the research hypothesis. With the data collected through my measures, I aim to confirm my research hypothesis and reject the null hypothesis.

After this analysis has been completed with all five of the justices, their ideological drifts will then be compared to each other to see whether preference change was prominent in only a certain time period or if this occurrence happened in multiple or across all of the decades examined. This will prove if preference change is a constant phenomenon within the Justices

residing on the Supreme Court. Exclusions to this experiment are that any justice analyzed in the literature review will not be analyzed in this experiment, for they have already been examined and have already had their ideological drift discussed. This testing design and method would be that of a post-test design, for the examination of the justice's behavior after they have already stated their ideology and made their decisions on multiple court cases interpreted by the Supreme Court over the years.

Terminology

A major concept in this analysis is ideological drift. Ideological drift, a term coined by Jack Balkin, describes a phenomenon by which ideas and concepts change people's political valence as they are introduced into new social and political contexts over time.[46] Time is a large part of ideological drift, making it an essential part of this experiment. A second concept is years on the bench. To properly analyze and collect data about ideology drift, one must look at how many years a justice has been serving for. In this experiment's case, twenty years (two decades) is a proper amount of time to get a grasp of if one's preference has changed. A last concept of this research is preference change. Preference change, like ideological drift, is defined as when one's policy, moral, economic, or political preferences are altered or influenced, which result in the individual changing their opinion, or preference, on a certain topic. Preference change and ideological drift are very similar concepts, but both needed in this explanation.

Study Analysis

Justice Hugo Black, served Aug 19, 1937 - Sep 17, 1971

Background

[46] Balkin, "Ideological drift and the struggle over meaning."

Coming from a rural county and a humble beginning, Hugo Black refused to let his past dictate his future.[47] Black was the eighth and last child of a family who lived on a farm in Alabama. Black's mother greatly valued education and ran a strict house, where she made all of their clothes, milked the cows, and taught the kids. His father was a prosperous storekeeper who earned a good living. Black was a gifted student with a reading level beyond his years, which he got from his mother, and after the family moved to Ashland, Alabama the children were able to attend a good school.[48] He attended Ashland College, a combination high school and junior college, and upon graduation enrolled in Birmingham Medical College in 1903 at the age of 17.[49] Black discovered medicine was not his calling and enrolled in the two-year program of the University of Alabama Law School in 1904. He was the youngest in the class and the least qualified law student, but he didn't let this deter him; instead he used it as a motivator. He graduated in 1906 on the honors list and was admitted to the bar. Black returned to Ashland to open up his own office with great diligence and little money, but in 1907 his office burnt down along with all his law books.[50] He took his capital with him to Birmingham to start over. Black began to earn his name in the town. His break came when he represented an African American laborer who was forced to work beyond his prison sentence. With the exception of a large insurance company, his clients were always small businesses or individuals.[51] Black became skilled at examining witnesses, and in 1914 he ran for prosecuting attorney who pledged to clean up the docket and kept a fast pace with convictions to do so. By the time he left office to volunteer for the army, the docket was up to date. He then joined the army and served as artillery captain within the U.S. during WWI. After being discharged, between 1920 and 1925 Black's

[47] Hugo L. Black. (n.d.). *Oyez*.
[48] Hugo L. Black. (n.d.). *Oyez*.
[49] Hugo L. Black. (n.d.). *Oyez*.
[50] Hugo L. Black. (n.d.). *Oyez*.
[51] Hugo L. Black. (n.d.). *Oyez*.

practice was thriving. One of the most sensational cases he handled was the trial of a Methodist minister for murdering a Catholic priest. Black was a liberal lawyer who argued it was self-defense, and true to his track record, he won.

On September 11, 1923, Black joined the KKK after weighing the decision for over a year.[52] Though he had never engaged in racial discrimination and often ruled in favor of African-Americans, he believed the membership would gain him political advancement.[53] He resigned in 1925 at the beginning of his campaign for U.S. senator, where Black once again found himself the youngest and least experienced in a competitive field. But he was viewed as a sympathizer to the common people because of his humble roots, and he was sworn in as a U.S. senator from Alabama. Black was quite active in committees and on the floor, and he fought for legislation to ensure fair labor and minimum wage.[54] In 1935, he became chairman of the Senate Committee on Education and Labor. Black's diligence and support of presidential policy gained him the attention of President Franklin D. Roosevelt for a Supreme Court appointment, where Black was sworn in as an Associate Justice on August 18, 1937.[55]

Ideology

Black persisted in seeking and deciding on issues he thought important. Though Black was a controversial member, he was also one of the court's most intelligent leaders. He relied greatly on historical intent, which was evident from his opinions regarding the Fourteenth Amendment that limited judicial discretion.[56] He came to the bench with positivist jurisprudence and a literalist interpretation of the First Amendment. However, he did not believe this extended to symbolic speech and recognized the government's power to deny people the freedom to

[52] Hugo L. Black. (n.d.). *Oyez*.
[53] Hugo L. Black. (n.d.). *Oyez*.
[54] Hugo L. Black. (n.d.). *Oyez*.
[55] Hugo L. Black. (n.d.). *Oyez*.
[56] Hugo L. Black. (n.d.). *Oyez*.

express ideas. Aside from his strict interpretation of the Constitution, he was generally an activist and a liberal.[57]

Analysis

Two cases at the beginning of Justice Black's term highlight his liberal-leaning ideology that he encompassed at the beginning of his term: *Chambers v. Florida* (1940) and *Adamson v. California* (1947). Both of these cases regarded the Fourteenth Amendment of the constitution, and whether the nation should use it to incorporate the Bill of Rights to the state governments. In *Adamson v. California* (1947), the case concerned whether a defendant's Fifth Amendment right not to bear witness against himself is applicable in state trials and protected by the Fourteenth Amendment's Due Process Clause. A divided Court found that the Fourteenth Amendment's Due Process Clause did not extend to defendants a Fifth Amendment right not to bear witness against themselves in state courts.[58] In a lengthy dissent which included a deep investigation of the Fourteenth Amendment's history, Justice Black argued for the absolute and complete application of the Bill of Rights to the states. Black believed that the Fourteenth Amendment was intended to, and did, make the prohibition against compelled testimony applicable to trials in state courts.[59] From his examination of the historical intent of the constitution, Black claimed that the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, proves that one of the chief objects that the provisions of the Amendment's first section were intended to accomplish was to make the Bill of Rights applicable to the states.[60] This case was one of Black's most monumental dissents and opinions on the court as a whole. He claimed in his judgment that

[57] Hugo L. Black. (n.d.). *Oyez*.
[58] Adamson v. California. (n.d.). *Oyez*.
[59] Legal Information Institute. (n.d.). *Adamson v. People of State of California.* Legal Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supremecourt/text/332/46
[60] Legal Information Institute. (n.d.). *Adamson v. People of State of California.*

history conclusively demonstrates that the language of the first section of the Fourteenth Amendment, taken as a whole, was thought by those responsible for its submission to the people, and by those who opposed its submission, sufficiently explicit to guarantee that thereafter no state could deprive its citizens of the privileges and protections of the Bill of Rights.[61]

As the years progressed during Justice Black's term, social and political issues prominent in the nation developed and trickled through the Courts. During these evolutionary decades, citizens of the nation, including Supreme Court Justices, either reevaluated their political preferences and ideological beliefs or remained loyal to their previously held beliefs. Though most people did one or the other, it seems as if Black did both. This is shown in the case of *Boddie v. Connecticut* (1970), which was argued in the second-to-last year of Justice Black's term. Black was the only justice who dissented. The case was over a welfare recipient unable to pay her divorce fee and denied a fee waiver, which raised the question of whether Connecticut's fee requirement for divorce filings violate the Due Process Clause of the Fourteenth Amendment.[62] Justice Black's dissent argued that issues of marriage and divorce are the exclusive domain of the states. The dissent also distinguished divorces from poor defendants in criminal cases because courts have always placed a higher importance for protection in criminal cases versus civil cases.[63] This decision differs almost completely from what Black previously stated in *Adamson v. California* (1947), where he believed that there is a guarantee that thereafter no state could deprive its citizens of the privileges and protections of the Bill of Rights. Black held that the power of the states over marriage and divorce is complete except as limited by specific constitutional provisions such as in *Loving v. Virginia* (1967), a case in which the court

[61] Legal Information Institute. (n.d.). *Adamson v. People of State of California.*
[62] Boddie v. Connecticut. (n.d.). *Oyez*.
[63] *Boddie v. Connecticut*. Casebriefs Boddie v Connecticut Comments. (n.d.). Retrieved April 4, 2022, from https://www.casebriefs.com/blog/law/civil-procedure/civil-procedure-keyed-to-subrin/an-introduction-to-civil-procedure/boddie-v-connecticut-3/

decided that the federal government does in fact have a say in marriages.[64] This claim of Black's exhibits prominent, and even confusing, changes in belief. The Supreme Court is the entity that interprets special constitutional provisions, which the *Boddie* case closely mirrors similar issues impacted by constitutional rights as in the case of *Loving v. Virginia* (1967). His decision to justify the case decision of incorporating the Equal Protection Clause in *Loving v. Virginia* to the states because of discrimination in a marriage warrants a reasonable assumption that the Fourteenth Amendment incorporated to the states also applies to those discriminated based on economic status within a marriage. Justice Black's ideological shift from being an advocate of the incorporation of the Fourteenth Amendment Due Process Clause into the states, seen in *Adamson v. California* (1947), to the hesitation of said incorporation, seen in *Boddie v. Connecticut* (1970), presents a preference change within his ideological beliefs throughout his tenure on the Court. His reevaluation in his preferences is prevalent in the 1967 to 1970 cases, while his loyalty to an attempt to protect civil rights in the 1947 case to the 1967 case is also persistent. This leads to ideological drift within his term.

Over the last 10 years of his term, Justice Hugo Black gradually became more conservative, dissenting often with the liberal court of Chief Justice Earl Warren.[65] This can be seen in controversial cases, such as *Griswold v. Connecticut* (1965), a 7-2 decision where Black was one of two to dissent. The case concerned very socially prevalent matters of women's autonomy and was ruled with a liberal leaning belief and explanation. Justice Black's decline in following closely with present day 1970 liberal ideology can be seen in Figure 2, Graph of the Martin-Quinn Scoring of Ideological Leanings: *Martin-Quinn Scores*. Black began his term ranking at a -3 on the Martin-Quinn graph, which is a prominent liberal ranking at his time. This

[64] *Boddie v. Connecticut, 401 U.S. 371 (1971)*. Justia Law. (n.d.). Retrieved April 4, 2022, from https://supreme.justia.com/cases/federal/us/401/371/
[65] Hugo L. Black. (n.d.). *Oyez*.

was seen in his rampant battle to help incorporate civil liberties into the state governments of our nation. Black slowly became more conservative in comparison to his counterparts on the bench. As time progressed, Black's strict interpretation of the constitution got tighter as he attempted to protect what he believed was the integrity of American rights in balance with government control and power. He ended his term being ranked a 0, or neutral, on the Martin-Quinn graph. This ranking on the graph, along with the proof from his contrasting decisions over the incorporation of the Fourteenth Amendment Due Process Clause, provides that Justice Hugo Black did experience a preference change while seated on the bench.

Justice William O. Douglas, served Apr 17, 1939 - Nov 12, 1975

Background

Determined and competitive in nature, William O. Douglas set the record for longest continuous service on the Supreme Court.[66] Though the family struggled financially, his mother enrolled the children in Yakima High School, a highly competitive environment in which Douglas thrived. Being active in his high school debating team, he rarely lost a debate. Good grades were demanded by his mother and Douglas delivered, graduating valedictorian in 1916.[67] He went to Whitman College on a full scholarship. During college, Douglas went to school in the mornings and often worked full days after class. Though his financial struggles continued, forcing him to live in a tent during one term of college, his situation did not detract from his involvement at Whitman. Douglas was a star of the debating team, student congress president, and president of Beta Theta Pi.[68] He wrote for the campus literary magazine, occasionally delivered sermons at campus services, and tutored students for his economics professor.[69] After

[66] William O. Douglas. (n.d.). *Oyez*.
[67] William O. Douglas. (n.d.). *Oyez*.
[68] William O. Douglas. (n.d.). *Oyez*.
[69] William O. Douglas. (n.d.). *Oyez*.

graduating, Douglas took a job at his old high school to save money. He later arrived in New York City to attend Columbia Law School in 1922 with only six cents in his pocket.[70] Douglas worked his way through law school by starting a tutoring service for high school seniors who wanted to attend an Ivy League School, eventually earning $25 an hour as his service grew in demand.[71] Douglas graduated second in his class at Columbia in 1925 and began working for one of the most prestigious Wall Street law firms. After working as a lawyer for a few years, Douglas left to teach at Columbia Law School and then taught at Yale, becoming one of the law school's youngest chaired professors. Douglas left Yale to go to Washington along with other legal scholars to work in the New Deal. He championed FDR's policies and soon became chairman of the Securities and Exchange Commission in 1937 while still dealing with financial problems.[72] Due to Douglas's loyalty to the New Deal and his friends on the inside, he became the second-youngest Supreme Court appointee in history.[73] Douglas was appointed Associate Justice of the Supreme Court by President Franklin D. Roosevelt and confirmed on April 4, 1939.

Ideology

Douglas was well-known for his strict commitment to civil liberties and authored many opinions that expressed his views on individual rights, such as free speech. He saw legal doctrines not as concrete, but as devices that could be manipulated for good or ill.[74] He supported the right to privacy, limits on government interference, and the rights of illegitimate children. While critics claimed his work showed haste and that he did not develop a coherent legal analysis, defenders admired the forceful and blunt manner by which he reached the core issue in each case.[75] Douglas supported New Deal legislation, especially in the areas of labor law and

[70] William O. Douglas. (n.d.). *Oyez*.
[71] William O. Douglas. (n.d.). *Oyez*.
[72] William O. Douglas. (n.d.). *Oyez*.
[73] William O. Douglas. (n.d.). *Oyez*.
[74] William O. Douglas. (n.d.). *Oyez*.
[75] William O. Douglas. (n.d.). *Oyez*.

control of markets. He believed in regulating business and helped change the antitrust analysis of price fixing. Douglas often wrote or voted in support of the theories developed by Justice Hugo L. Black, who also championed civil liberties during his time.[76]

Analysis

Douglas spent much of his time on the court fighting for civil liberties guaranteed in the Bill of Rights for those who were being discriminated against. This is prevalent within his decisions on many cases during his tenure. One of the most prominent ones was *Betts v. Brady* (1942). In this case, Betts was indicted for robbery and was unable to afford counsel, to which he requested one be appointed for him, but the judge in the case denied it. Betts subsequently plead not guilty, but was convicted of robbery, which he argued he was wrongfully denied his right to counsel. The question of the case was whether denying a request for counsel for an indigent defendant violate the Constitution.[77] In a contentious debate, the majority ruled no, it does not violate the constitution. Justice Douglas, along with Justice Hugo Black, dissented this decision. They argued that denial of counsel based on financial stability makes it so that those in poverty have an increased chance of conviction, which violates the Fourteenth Amendment Equal Protection Clause. Coming from a background of poverty, Justice Douglas understood and advocated heavily for this right to be justly given to the people. This decision was overruled in 1963 in the monumental case *Gideon v. Wainwright*, where Douglas joined the unanimous opinion, while also adding a detailed opinion of his own. Justice Douglas elaborated on the relation between the Bill of Rights and the first section of the Fourteenth Amendment. Douglas claims that the rights protected against state invasion by the Due Process Clause of the

[76] William O. Douglas. (n.d.). *Oyez*.
[77] Betts v. Brady. (n.d.). *Oyez*.

Fourteenth Amendment are not watered-down versions of what the Bill of Rights guarantees, but equal, and should justly protect citizens in all jurisdictions.[78]

His passion for incorporating the Bill of Rights into the state's never ceased throughout his entire tenure. As the Warren Court came into effect, he continuously advocated for civil liberties and the incorporation of them into the states. This was most evident in the monumental case of *Griswold v. Connecticut* (1965). This case challenged the constitutionality of the statute under the Fourteenth Amendment before the Supreme Court with the question of whether the Constitution protects the right of marital privacy against state restrictions on a couple's ability to be counseled in the use of contraceptives.[79] In a 7-2 decision, Justice Douglas voiced the majority opinion that the Constitution did in fact protect the right of marital privacy against state restrictions on contraception. Douglas argued that the "penumbras" surrounding many of the constitutional amendments, like the Fifth Amendment's protection against self-incrimination, suggested that the right to privacy from the state can be inferred as something that the Constitution is intended to protect.[80] Douglas stated that a right to privacy can be inferred from several amendments in the Bill of Rights, and this right prevents states from making the use of contraception by married couples illegal.[81] Douglas stood his ground on cases involving citizens' liberties granted in the Bill of Rights, and voted in favor of the people in almost every case heard during his tenure, including but not limited to *Terminiello v. City of Chicago* (1949), *Brady v. Maryland* (1963), and *Griswold v. Connecticut* (1965), where he voiced the majority opinion in all.

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[78] *Gideon v. Wainwright*. background - landmarkcases.org. (n.d.). Retrieved April 4, 2022, from https://www.landmarkcases.org/assets/site_18/files/gideon_v_wainwright/teacher/pdf/background_level_3_gideon_teacher.pdf
[79] Griswold v. Connecticut. (n.d.). *Oyez*. Retrieved April 1, 2022, from https://www.oyez.org/cases/1964/496
[80] *Griswold v. Connecticut, 381 U.S. 479 (1965)*. Justia Law. (n.d.). Retrieved April 4, 2022, from https://supreme.justia.com/cases/federal/us/381/479/
[81] Griswold v. Connecticut. (n.d.). *Oyez*.

Justice Douglas was scored the most liberal justice to ever grace the Supreme Court. He began his tenure with a Martin-Quinn (M-Q) Score of -3, which is already one of the most liberal scores on the graph itself, sitting with justices who ended with that score, like Justice Thurgood Marshall, Justice Sonia Sotomayor, and Justice Paul Stevens. Justice Douglas, though, ended his tenure with an M-Q score of -8. This is the most liberal score on this graph of any Supreme Court justice ever to sit on the bench. The overwhelming conclusive result is that Justice William O. Douglas' ideology was liberal and became more liberal throughout his tenure. Though his ideology remained liberal, his preferences changed and embodied the time, and his ideology shifted more to the left while other justices abstained from these changing times. This score can be measured from his continuous voting for complete protection, incorporation, and enactment of civil liberties at the federal and state level. Even when civil rights activists like Justice Hugo Black began to wane in light of more radical (at the time) beliefs, Douglas encompassed them into his own beliefs. Douglas was seen as so liberal minded, that there was even an investigation attempt to impeach him. At President Richard Nixon's behest, Republican House Minority Leader Gerald Ford brazenly called for the impeachment of Douglas, the nation's leading liberal judge — and the House Judiciary Committee responded with a six-month investigation, while the Senate awaited a potential trial that never occurred. Ford's actions against Douglas mirrored the anger that millions of Americans, then as now, harbored toward changing social, economic, and moral norms.[82] Ford and Nixon were concerned with his constant push for his 'liberal agenda,' which included his case decisions and published book in early 1970 titled "Points of Rebellion," which conveyed his thesis that armed rebellion against the government might be necessary to fight "the Establishment" that increasingly was illegally surveilling and oppressing

[82] Kastenberg, J. E. (2019). *The campaign to impeach justice William O. Douglas: Nixon, Vietnam, and the Conservative attack on Judicial Independence*. University Press of Kansas.

its citizens.[83] Douglas' liberalness bled into his personality, and was seen as who he was as a whole by many politicians and citizens. This granted him the title of the most liberal justice in history, while also scoring him a -8 on the Martin-Quinn graph.

Justice Thurgood Marshall, served Oct 2, 1967 - Oct 1, 1991

Background

Justice Thurgood Marshall was the first African American justice to be appointed to the United States Supreme Court. Growing up in Baltimore, Marshall experienced the racial discrimination that shaped his passion for civil rights early on, which also led to his political beliefs and ideological leanings as an adult. The city of Baltimore had a death rate for African-Americans that was twice that of Caucasians, and due to school segregation, Marshall was forced to go to an all-black grade school.[84] Marshall's parents tried to shelter him from the reality of racism, and with enough money earned, he was able to attend a first-rate high school, which granted him the proper education for him to strive in his endeavors and attend Lincoln University.[85] During college, Marshall was active in Greek life, the debate team, and was involved with civil rights movements, where he helped desegregate a movie theater to later describe that moment as one of the happiest in his life.[86] All of these experiences and opportunities in life shaped Thurgood Marshall into the man he wanted to become, a lawyer. After being denied by his first choice, the University of Maryland Law School, due to the color of his skin, Marshall decided to go to Howard University, where he graduated valedictorian of his class.[87] Post-law school, Marshall started his own practice, taking cases involving police

[83] Robenalt, J. D. (2022, March 29). *Gerald Ford tried to impeach a Supreme Court justice - and failed*. *The Washington Post*. Retrieved April 4, 2022, from https://www.washingtonpost.com/history/2022/03/29/gerald-ford-william-douglas-impeachment/
[84] Thurgood Marshall. (n.d.). *Oyez*.
[85] Thurgood Marshall. (n.d.). *Oyez*.
[86] Thurgood Marshall. (n.d.). *Oyez*.
[87] Thurgood Marshall. (n.d.). *Oyez*.

brutality and evictions, many for clients who could not afford an attorney. He later joined the legal team for the NAACP, where he argued his first case concerning how the University of Maryland Law School should allow an African American admission, to which he won. Marshall furthered and accomplished many grand endeavors fighting for civil liberties, challenging segregation, working for special counsels for the NAACP, and even secured his dream role of being the attorney to argue *Brown v. Board of Education* (1954) in front of the Supreme Court. After more impressive years in his career, serving as a federal judge and as the Solicitor General, President Lyndon B. Johnson appointed him as the first black Supreme Court Associate Justice in 1967.

Ideological beliefs of Justice Marshall

During Marshall's tenure on the Supreme Court, he was known to be a steadfast liberal, stressing the need for equitable and just treatment of the country's minorities by the state and federal governments.[88] A pragmatic judicial activist, he was committed to making the U.S. Constitution work for the citizens; most illustrative of his approach was his attempt to fashion a "sliding scale" interpretation of the Equal Protection Clause that would weigh the objectives of the government against the nature and interests of the groups affected by the law. He was also adamantly opposed to capital punishment and generally favored the rights of the national government over the rights of the states.[89] Marshall recognized that the courts had a central part to play in the effort of social fairness that required changing the dominant paradigm of power and privilege which exists throughout the political-social-economic order.[90] This was their constitutional role, which required legal competence. Marshall keenly understood that judicial

[88] Smentkowski, B. P. *Thurgood Marshall*. *Encyclopedia Britannica*.
[89] Smentkowski, B. P. *Thurgood Marshall*. *Encyclopedia Britannica*.
[90] Barker, L. J. (1992). Thurgood Marshall, The Law, and The System: Tenets of an Enduring Legacy. *Stanford Law Review*.

opinions, resulting from the interplay of judges, lawyers, procedures, and principles, could never escape the shadow of politics.[91] Marshall viewed the American legal system as operating within a political governing structure, yet grounded in and restrained by enduring principles of law and equality. This reflected in his ideological belief and legal thought process when it came to deciding cases.

One must also take into consideration jurisprudence, and the influence of other justices in their philosophy of law. Particularly in the 1980s, a fair amount of the justices' correspondence dealt with suggestions by one justice to another that some words or phrases in a draft opinion be modified slightly.[92] This taking place during Marshall's tenure most certainly impacted his outlook on certain issues, or his impact on others jurisprudence through his liberal views in civil rights, affirmative action, and racial de-stigmatization.

Analysis of Thurgood Marshall

First, one must recognize that the 1960's was an impressive decade of evolving civil liberties within the United States. Justice Thurgood Marshall was appointed in 1967, therefore beginning his tenure on a court that was already heading full force towards attempted equality within the nation. This era was defined as the Due Process Revolution, or the Warren Court era, which was a decade that was active in deciding cases involving rights of suspects, defendants, and search and seizure regarding criminal law. Justice Marshall, a civil rights activist and liberal leaning man, entering into such a revolutionized court inevitably adhered to and promoted his specific ideals and beliefs. Justice Marshall was appointed by President Lyndon B. Johnson, recognizing Marshall's remarkable achievements in his career as well as honoring former president John F. Kennedy's appointment of Marshall as a judge on the U.S. Court of Appeals for

[91] Barker, L. J. (1992). Thurgood Marshall, The Law, and The System: Tenets of an Enduring Legacy. *Stanford Law Review*.
[92] Mark V. Tushnet, The Supreme Court and Race Discrimination, 1967-1991: The View from the Marshall Papers.

the Second Circuit. Appointed twice by two Democratic presidents, it is easily assumed that Justice Marshall would decide cases liberally. Regarding Figure 2, presentation of Martin-Quinn scoring, Justice Marshall began his term on the Supreme Court as liberal, beginning with a score of -1. He was scored similarly (-1) and at the same time as Justice Abraham Fortas, Justice William J. Brennan, and Chief Justice Earl Warren were scored.

With a beginning score of -1, this puts Justice Marshall as liberal leaning, granting that his decisions should be liberal. The question is – how liberal? The liberalness of his ideology depends on the liberalness of the Court at the time. He began his tenure on the Warren Court, a fairly liberal court. This had an impact on Marshall as a justice. A man who identified with a liberal ideology and with the Democratic party enveloped in a court also filled with liberal thinking associates provides the reassurance one needs to solidify their preferences as well as further their beliefs and ideals within this liberal manner.

In 1968, at the beginning of Justice Marshall's term, the Supreme Court heard the case of *Benton v. Maryland* (1968). The question of this case concerned whether Benton's second indictment, trial, and conviction for larceny violated the Fifth Amendment provision against double jeopardy.[93] In a 7-2 decision, the court held that the double jeopardy prohibition of the Fifth Amendment, a fundamental ideal in our constitutional heritage, is enforceable against the states through the Fourteenth Amendment. The majority opinion was written by Marshall. Marshall voiced that the original burglary conviction shall remain stable, but the added larceny conviction shall not hold due to it already being decided against during the original trial. The appeal being a reviewal of the original trial, Marshall asks the crucial questions: Is there, in these circumstances, a live 'case' or 'controversy' suitable for resolution by this Court, or is the issue moot? Is the petitioner asking for an advisory opinion on an abstract or hypothetical question?

[93] Benton v. Maryland. (n.d.). *Oyez*.

The answer to these questions is crucial, for it is well settled that federal courts may act only in the context of a justiciable case or controversy.[94] This decision, headed by the justices on the court with democratic preferences and liberal ideologies, governs one of the most prominent and important civil liberties dear to rights activists, especially one like Marshall: The Due Process clause of the 5th amendment. The due process clause guarantees that every individual shall be allowed the "due process of law" before the government may deprive someone of life, liberty, or property. This includes the right to not self-indict and abridgements against double jeopardy. This is essential in the progression and evolution of our nation's equality under the law. The incorporation of this clause into the state courts was a huge leap towards citizen protection under federal and state law alike, which closely aligns with liberal ideology and democratic preferences.

In Marshall's later years during his tenure, the court decided the case *Alabama v. White* (1990). The question of the case: Does an anonymous tip alone provide a reasonable suspicion sufficient to stop and search an individual's car? In a 6-3 decision, Justice Byron R. White wrote for the majority and the Court held that the totality of the circumstances provided a sufficiently reasonable suspicion that the suspect Vanessa White possessed illegal drugs.[95] Justice Thurgood Marshall and Justice William J. Brennan joined in the dissent of Justice John Paul Stevens, stating that the majority's standard allows anyone with enough knowledge of a person's routine to cause police to search that person. The standard also gives officers too much freedom to claim that they received an anonymous tip to justify any search.[96] This attempt to protect the privacy and security of citizens through the 4th amendment is another example of a democratic

[94] Legal Information Institute. (n.d.). *John Dalmer Benton, petitioner, V. State of Maryland.* Legal Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supremecourt/text/395/784
[95] Alabama v. White. (n.d.). *Oyez*.
[96] Alabama v. White. (n.d.). *Oyez*

interpretation of the 4th amendment. Marshall attempts to combat this court decision, for he recognizes that police officers may use and abuse this to their advantage, especially concerning minority individuals. His passion for civil and private rights still remained, if not increased, after over 20 years on the bench.

Though at the beginning of Justice Marshall's term his ideology and his secureness in it definitely could have been amplified by the court he was placed into, this case shows that Marshall, alongside his liberal leaning justices William J. Brennan and John Paul Stevens, were not easily influenced to shed their democratic ideals to succumb to the conservative jurisprudence and domination of the 1990 Supreme Court. He continued to interpret the constitution in a liberal framework. His liberalness could be seen as more extreme here than before, for his comparison is against six conservative justices present on the court, rather than the liberal heavy Warren court. This impacted his Martin-Quinn Score, scoring him as more liberal than he was previously considered because during the end of his term he fought harder for civil and privacy rights against his associates who interpreted the constitution differently than Marshall viewed it.

The conclusive result of Thurgood Marshall's analysis is that his ideology did shift. He began his tenure as a liberal justice (-1) and ended his term as a justice who identified and decided more liberally (-4.5) than before. His ideology shifted from -1 to -4.5. The impact of the beliefs and ideologies of his associates on the court had an impact on his shift. Beginning his tenure on the Warren Court certifiably had an impact on his jurisprudence. The court itself, and Marshall of course, were also impacted by the change in societal, economic, and political factors during these years. The Civil Rights act of 1964, the Voting Rights act of 1965, Fair Housing Act of 1968, the women's liberation movement, and civil protests all had tremendous impacts on the

advancement of our society and the way our government can lead and govern its nation's citizens. This civil rights era guided the court to answer prominent questions that ruled the political, economic, and social world during this time, making prominent decisions that Justice Marshall was able to contribute his jurisprudence to. One of the most controversial questions that the court answered was in the case *Roe v. Wade* (1973), which posed the question, does the Constitution recognize a woman's right to terminate her pregnancy by abortion? [97] The court answered yes – inherent in the Due Process Clause of the Fourteenth Amendment is a fundamental "right to privacy" that protects a pregnant woman's choice whether to have an abortion.[98] Justice Marshall joined Justice Blackmun, previously discussed as one of the justices who had the largest ideological shift, in giving the opinion.

Justice John Paul Stevens, served Dec 19, 1970 - Jun 29, 2010

Background

Justice John Paul Stevens overcame family tragedy during the Great Depression and went on to become the third-longest serving justice in the history of the Supreme Court. Growing up, his family ran an extremely successful business empire that included what was then the world's largest hotel, making the Stevens family one of the wealthiest in Chicago.[99] Disaster struck when the three reigning men were all indicted on embezzlement charges. The family business and the hotel were lost, but teenage John Paul Stevens did not allow the hardship to slow him down. During the trial and in its aftermath, Justice Stevens continued to excel in his studies at the University of Chicago preparatory high school and attended the University of Chicago.[100] Justice John Paul Stevens then gathered an extensive resume: from enlisting and serving in the Navy

[97] Roe v. Wade. (n.d.). *Oyez*.
[98] Roe v. Wade. (n.d.). *Oyez*.
[99] John Paul Stevens. (n.d.). *Oyez*.
[100] John Paul Stevens. (n.d.). *Oyez*.

during WWII as a code breaker, to then attending Northwestern School of Law and graduating with the highest GPA in the law school's history, to completing a clerkship for Justice Wiley Rutledge, joining a prominent law firm specialized in antitrust law, starting his own law firm, becoming a professor at Northwestern and the University of Chicago, and serving on the special counsel to the U.S. House of Representatives and the U.S. Attorney General's office.[101] In 1970, President Richard Nixon appointed Justice Stevens to the U.S. Court of Appeals for the Seventh Circuit. Five years later, he was elevated to Supreme Court when Justice William O. Douglas stepped down.[102]

Ideology

As an appellate judge, Justice Stevens continued to establish himself as an expert legal thinker. Justice Steven was appointed by President Gerald Ford, a Republican, claimed to be a devout conservative and held preferences of one. Over time, however, Justice Stevens emerged as a leader for the Court's liberal wing.[103] It is claimed that his 35 years on the United States Supreme Court transformed him, improbably, from a Republican antitrust lawyer into the outspoken leader of the court's liberal wing.[104] During Steven's term, the court took an active role in balancing individual liberty and national security and in policing the constitutional separation of powers. Societal debates over the rights of gay men and lesbians, the role of race and disability, private property rights, environmental regulation, guaranteed rights, and the separation of church and state also made their way onto the Supreme Court's docket, and Justice Stevens, a

[101] John Paul Stevens. (n.d.). *Oyez*.
[102] John Paul Stevens. (n.d.). *Oyez*.
[103] John Paul Stevens. (n.d.). *Oyez*.
[104] Greenhouse, L. (2019, July 17). *Supreme Court justice John Paul Stevens, who led liberal wing, dies at 99*. The New York Times. Retrieved April 4, 2022, from https://www.nytimes.com/2019/07/16/us/john-paul-stevens-dead.html

claimed Republican, was as surprised as anyone to find himself not only taking the liberal side but also becoming its ardent champion.[105]

Analysis

Justice Stevens began his time on the court as a claimed republican justice, with a Martin-Quinn score of 0 (neutral). Replacing Justice William O. Douglas, a justice President Gerald Ford did not approve of due to his far leftist views and 'liberal agenda,' President Ford nominated Justice Stevens expecting him to decide on cases with republican preferences and conservative ideological beliefs. Yet even in the first few years as a justice, Stevens' preferences were already clashing against the average republican views and advocations. In a case decided in the second year of Stevens' term, *Dobbert v. Florida* (1977) concerned whether the changes to the Florida death penalty statutes submitted Dobbert to a trial by *ex post facto* laws or deny him his rights to equal protection and a fair trial.[106] The majority opinion, headed by the Republicans of the court, ruled no it does not, and that despite the fact that the Florida laws governing the death penalty changed during the time period the crimes in question were committed, the changes were procedural and better for the sentencing system. Surprisingly taking a non-traditional route within republican beliefs, this decision was dissented by Justice Stevens. Stevens claimed that since the previous Florida death penalty statutes were found to be unconstitutional, they cannot be considered a fair warning, like the majority opinion claimed. He also argued that Dobbert would not have faced the death penalty if tried slightly earlier, and it showed "capricious action" on the part of the government to subject him to the death penalty.[107] This early decision showed that Justice Stevens' beliefs were not as concrete in a conservative

[105] Greenhouse, L. (2019, July 17). *Supreme Court justice John Paul Stevens, who led liberal wing, dies at 99*. The New York Times.
[106] Dobbert v. Florida. (n.d.). *Oyez*.
[107] Dobbert v. Florida. (n.d.). *Oyez*.

ideology as some may have thought. His opinion in this case was joined by Justice William J. Brennan, Jr. and Justice Thurgood Marshall, two leaders of the Court's liberal wing. This showcased early on that Justice Stevens' ideology might shift away from previously held notions and beliefs of the Republican party.

Justice Stevens continued to grow into his role as the liberal champion on the court. He decided liberally in a multitude of significant cases, including *Sony v. Universal City Studios Inc.,* in which the Court held that no violation of copyright laws were involved in the use of home VCR's. Stevens even wrote the majority opinion for many of these monumental decisions, such as *Atkins v. Virginia* (2002), in which the Court banned capital punishment for the mentally impaired, *Rasul v. Bush* (2004), and *Hamdan v. Rumsfeld* (2006).[108]

One of the most prominent cases during Stevens' tenure as well a revolutionary case concerning disabilities was *PGA Tour Inc. v. Casey Martin* (2001). This case reviewed whether the denial of a golf cart to disabled golfer Casey Martin, who has an approved degenerative circulatory disorder that prevents him from walking golf courses under the Americans with Disabilities Act of 1990 (ADA), was valid or not.[109] The Court ruled no, it was not valid, and thus validated disabled golfer Casey Martin's right to ride in a golf cart under the ADA. In *Martin*, Justice Stevens led the court to a 7-2 vote liberal victory, claiming the ADA had no worth if it did not create new opportunities for the disabled.

In his last years on the court, Stevens continued to embody the title of the leader of the left wing. In 2009, the Court heard the case *Arizona v. Gant*. In this case, Gant was apprehended by Arizona state police on an outstanding warrant for driving with a suspended license. After the officers handcuffed Gant and placed him in their squad car, they went on to search his vehicle,

[108] John Paul Stevens. (n.d.). *Oyez*.
[109] PGA TOUR, Inc. v. Martin. (n.d.). *Oyez*.

discovering a handgun and a plastic bag of cocaine. At trial, Gant asked the judge to suppress the evidence found in his vehicle because the search had been conducted without a warrant in violation of the Fourth Amendment's prohibition of unreasonable searches and seizures, but this was denied. The question of the case was if a search conducted by police officers after handcuffing the defendant and securing the scene was a violation of the Fourth Amendment's protection against unreasonable searches and seizures.[110] The Court ruled that yes, under the circumstances of this case, the defendant's Fourth Amendments rights were violated. With Justice John Paul Stevens writing for the majority, the Court reasoned that "warrantless searches are per se unreasonable" and subject only to a few, very narrow exceptions. He held that police may search the vehicle of its recent occupant after his arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of the arrest. Here, Mr. Gant was arrested for a suspended license and the narrow exceptions did not apply to his case. Stevens decision in this case, deciding for the rights of defendants and imposing stricter precautions on law enforcement, furthers his image as a liberal champion and solidifies his ideological leaning.

After his time on the court, it shows that Justice Paul Stevens preferences shifted from what a Republican-nominated justice would be assumed to follow to decades later identifying with being one of the liberal forces to be reckoned with on the Supreme Court. This follows with Justice Stevens beginning his term as a neutral justice, being ranked 0 on the Martin-Quinn Graph, to ending his term scored as -3. His public ideological leaning shifted and preferences changed as he sat on the bench through the world's most progressive decades. His shift assisted the court in championing many liberal legal decisions and granted many citizens equal protection under the law.

[110] Arizona v. Gant. (n.d.). *Oyez*.

Justice Ruth Bader Ginsburg, served Aug 10, 1993 - Sept 18, 2020

Background

Ruth Bader Ginsburg spent a lifetime flourishing in the face of adversity before being appointed a Supreme Court justice, where she successfully fought against gender discrimination and unified the liberal associates of the court.[111] Her mother heavily influenced her early life and watched Ginsburg excel at James Madison High School, but was diagnosed with cancer and died the day before Ginsburg's high school graduation. Ginsburg's success in academia continued throughout her years at Cornell University, where she graduated at the top of her class in 1954. Shortly after having her first child and upon her husband's return from his service, Ginsburg enrolled at Harvard Law. Ginsburg's personal struggles neither decreased in intensity nor deterred her in any way from reaching and exceeding her academic goals, even when her husband was diagnosed with testicular cancer in 1956, during her first year of law school. At Harvard, Ginsburg tackled the challenges of motherhood and of a male-dominated school where she was one of nine females in a 500-person class. She faced gender-based discrimination from even the highest authorities there, who chastised her for taking a man's spot at Harvard Law.[112] She served as the first female member of the *Harvard Law Review*. After her husband recovered from cancer and moved to New York City to accept a position at a law firm, Ruth Bader Ginsburg transferred to Columbia Law School and served on their law review as well. She graduated first in her class at Columbia Law in 1959.

Though her educational career was an immense success, it could not protect her from the gender-based discrimination women faced in the workplace in the 1960s. She could barely receive a clerkship or jobs at any law firms and was always offered a much lower salary than her

[111] Ruth Bader Ginsburg. (n.d.). *Oyez*.
[112] Ruth Bader Ginsburg. (n.d.). *Oyez*.

male counterparts. She instead pursued legal research in civil procedure, and then taught at Rutgers University Law School in 1963 until accepting an offer to teach at Columbia in 1972.[113] Ginsburg also directed the influential Women's Rights Project of the American Civil Liberties Union during the 1970s. In this position, she led the fight against gender discrimination and successfully argued six landmark cases before the U.S. Supreme Court.[114] Her take on gender discrimination was strategic, calculated, and equal, fighting not just for the women left behind, but for the men who were discriminated against as well. Ginsburg was then nominated to the U.S. Court of Appeals for the District of Columbia in 1980 by President Jimmy Carter. She served on the court for thirteen years until 1993, when President Bill Clinton nominated her to the Supreme Court of the United States.

Ideology

Ruth Bader Ginsburg began her career as a justice right where she left off – as an advocate, fighting for women's rights. Her style in advocating from the bench matches her style from her time at the ACLU: slow but steady and calculated. Instead of creating sweeping limitations on gender discrimination, she attacked specific areas of discrimination and violations of women's rights one at a time, so as to send a message to the legislatures on what they can and cannot do.[115] Her attitude is that major social change should not come from the courts, but from Congress and other legislatures. This method allows for social change to remain in Congress' power while also receiving guidance from the court. This showcases her specific interpretation of the constitution well – though she pursued progression and evolution, she still appreciated the specific roles of the government stated in the constitution and works to ensure that the branches of government retain their respective power while being guided by one another. Justice Ruth

[113] Ruth Bader Ginsburg. (n.d.). *Oyez*.
[114] Ruth Bader Ginsburg. (n.d.). *Oyez*.
[115] Ruth Bader Ginsburg. (n.d.). *Oyez*.

Bader Ginsburg identified as a liberal originalist. Originalism is a theory of the interpretation of legal texts, including the text of the Constitution.[116] Originalists believe that the constitutional text ought to be given the original public meaning that it would have had at the time that it became law.[117] Justice Ginsburg had a different originalist view than most, those of who often identify as a conservative. Unlike her associate Justice Scalia, who claimed to be an originalist and argued the 14th Amendment's equal-protection clause did not protect women, Ginsburg believed equality was the motivating idea behind the constitution. Ginsburg claims that was what the Declaration of Independence started with but it could not come into the original Constitution because of the odious practice of slavery that was retained.[118] Justice Ginsburg advocated that the constitution and equality were intertwined, which reflected in her ideology and preferences.

Analysis

As an originalist, Ginsburg viewed the constitution in respect to those who wrote it and how they intended it to be perceived. Ginsburg was also an activist, and knew that this country deserved progression in many governmental and legal aspects. This granted her the score of 0, or neutral, on the Martin-Quinn Graph at the beginning of her term. Though nominated by President Bill Clinton, a Democrat, her originalist ideology portrayed her as more neutral than her associates who believed that the constitution should evolve with society. Though this was her belief, she still hit the ground running in her first years as a justice.

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[116] Calabresi, S. G., Beeman, R. R., Rubenstein, J. R. & D., & Siegel, R. P. & R. (n.d.). *On originalism in constitutional interpretation*. On Originalism in Constitutional Interpretation | The National Constitution Center. Retrieved April 4, 2022, from https://constitutioncenter.org/interactive-constitution/white-papers/on-originalism-in-constitutional-interpretation

[117] Calabresi, S. G., Beeman, R. R., Rubenstein, J. R. & D., & Siegel, R. P. & R. (n.d.). *On originalism in constitutional interpretation*. On Originalism in Constitutional Interpretation | The National Constitution Center.

[118] *Analysis: How Justice Ruth Bader Ginsburg viewed herself as an originalist*. Constitutional Accountability Center. (n.d.). Retrieved April 4, 2022, from https://www.theusconstitution.org/news/analysis-how-justice-ruth-bader-ginsburg-viewed-herself-as-an-originalist/

Justice Ginsburg was an active proponent of women's rights, and that did not cease when she became a justice. In 1996, Ginsburg wrote the majority opinion in *United States v. Virginia*, holding that qualified women could not be denied admission to Virginia Military Institute.[119] In her opinion, Ginsburg not only addressed all parties involved, but also addressed the nation as a public entity that has suppressed women for centuries. In the majority opinion, Ginsburg states:

> "Today's skeptical scrutiny of official action denying rights or opportunities based on sex responds to volumes of history. As a plurality of this Court acknowledged a generation ago, "our Nation has had a long and unfortunate history of sex discrimination." *Frontiero* v. *Richardson*, (1973). Through a century plus three decades and more of that history, women did not count among voters composing "We the People"; not until 1920 did women gain a constitutional right to the franchise. And for a half century thereafter, it remained the prevailing doctrine that government, both federal and state, could withhold from women opportunities accorded men so long as any "basis in reason" could be conceived for the discrimination. *Goesaert* v. *Cleary* (1948)."[120]

Ginsburg knew her time advocating for equal protection under the law was not over once she entered the court as a justice, but had only just begun. Ginsburg did not shy away from giving pointed guidance when she felt the need. Her opinions, concurrences, and dissents were always elaborate and connective to the nature of federal procedure, constitutionality, and progressiveness in the new era.

With the new millennia came a new Court, a divided one. There were five main republican Justices – Chief Justice John Roberts, Justice Antonin Scalia, Justice Clarence Thomas, and Justice David Souter, and Justice Samuel Alito – a court majority. It was this shift

[119] Ruth Bader Ginsburg. (n.d.). *Oyez*.
[120] Ginsburg. (1996, June 26). *United States v. Virginia et al., 518 U.S. 515 (1996)*. Legal Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supct/html/94-1941.ZO.html

in the court where Justice Ginsburg can be seen as shifting her ideologies as well, honing in on equality under the law. This is evident in the monumental case of *Ledbetter v. Goodyear Tire & Rubber Co*. (2007) where the plaintiff, a female worker being paid significantly less than males with her same qualifications, sued under Title VII but was denied relief under a statute of limitations issue. The facts of this case mixed Ginsburg's passion of federal procedure and gender discrimination. The decision was a 5-4 vote no, that a plaintiff cannot bring a salary discrimination suit under Title VII of the Civil Rights Act of 1964 when the disparate pay is received during the 180-day statutory limitations period, but is the result of discriminatory pay decision that occurred outside the limitations period. Justice Ginsburg broke with tradition and wrote a highly colloquial version of her dissent to read from the bench. In her dissent, Justice Ginsburg called the majority's ruling out of tune with the realities of wage discrimination and "a cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose." Ginsburg called for Congress to undo this improper interpretation of the law in her dissent. She suggested that "the Legislature may act to correct this Court's parsimonious reading of Title VII."[121] From this case, Ginsburg was set on ensuring women's rights were counted and cared for by our nation. She feverishly worked with President Barack Obama to pass the very first piece of legislation he signed, the Lilly Ledbetter Fair Pay Act of 2009, a copy of which hung proudly in her office until her passing.[122]

Her will to ensure equality even outside of the court complemented her passion towards the never-ending battle of injustice. This can be seen in her help in ruling for the 5-4 decision in *Obergefell v. Hodgins* (2015). Ginsburg joined five associate justices in holding that the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of the

[121] Ledbetter v. Goodyear Tire and Rubber Company. (n.d.). *Oyez*.
[122] Ruth Bader Ginsburg. (n.d.). *Oyez*.

fundamental liberties it protects, and that analysis applies to same-sex couples in the same manner as it does to opposite-sex couples.[123] This groundbreaking decision was one of the most progressive Supreme Court rulings in history, designating that equality within marriages is a civil right protected by the constitution.

In comparing her preferences from her appointment to decades after, Ginsburg continued to fight in the non-ending battle for women's rights. In a case during one of her last years on the bench, Justice Ginsburg assisted in championing an immense step in women's body autonomy all across the country. In the case of *Whole Woman's Health v. Hellerstedt* (2016), the concern was whether a court's "substantial burden" analysis should take into account the extent to which laws that restrict access to abortion services actually serve the government's stated interest in promoting health.[124] In a controversial 5-3 decision, the court held that in applying the substantial burden test, courts must weigh the extent to which the laws in question actually serve the stated government interest against the burden they impose.[125] The provisions of H.B. 2 at issue do not confer medical benefits that are sufficient to justify the burdens they impose on women seeking to exercise their constitutional right to an abortion. Therefore, the provisions unconstitutionally impose an undue burden.[126] Justice Ginsburg joined the majority opinion, and also concurred, stating that modern abortions are so safe relative to other medical procedures, including childbirth itself, that any law that made accessing abortions more difficult in the name of safety could not pass judicial review. This was an immense win for women seeking abortions and overall women's health clinics within Texas and across the nation. Comparing this decision to her decision two decades before in *United States v. Virginia* (1996), Ginsburg's passions

[123] Obergefell v. Hodges. (n.d.). *Oyez*.
[124] Whole Woman's Health v. Hellerstedt. (n.d.). *Oyez*.
[125] Whole Woman's Health v. Hellerstedt. (n.d.). *Oyez*.
[126] Whole Woman's Health v. Hellerstedt. (n.d.). *Oyez*.

remained the same. This shows that her preferences did not necessarily change, but her ideology in context with her associates and in respect to modern society did shift more liberal than she began her term with.

After serving almost three decades on the court, Ginsburg ended her tenure ranked at a Martin-Quinn Score of -3. Though not as apparent, Justice Ginsburg ideology shifted due to many factors influenced by an advancing world. Her time spent on a Republican heavy court, in the limelight of her supporters, and living through and deciding on extreme societal issues throughout her entire lifetime gradually shifted her views from neutral-progressive to evolutionary by the end of her tenure. Though she still claimed to be an originalist, the progressive nature and passion for justice shifted her ideology.

IV. Discussion

So, why does any of this matter?

It matters for many reasons. First, with ideologies shifting and preferences changing with each new year, how do we know if each decision the court makes is proper justice if the justices do not have stable preferences? We do not know whether they provided proper justice for all, only they can use their rational thinking aligned with their interpretation of the constitution in regard to each case. Then again, we don't truly know if any facet of the government is ensuring justice, freedom, equality, cooperation, or efficiency in the best manner either. This is why the citizens have the power to elect representatives, officials, presidents, etc., in hopes to procure the representatives who will ensure this. Those that have been elected then are entrusted and tasked with the role to appoint these justices. We trust the nominations, check them through the appointment process, and confirm or deny them. With what the people and government have done to lead the justice to the bench, it is from there that we must trust and respect the justices'

rationale and reason during their judicial review. We trust that with each new preference change and ideological shift within each justice, they grow more towards what they rationally believe to be equal justice for all under the law.

Second, in the winner-takes-all mindset of our modern-day political parties, it matters whether the justices will decide in favor of the political agenda of their party. Though the justices are essentially free from party influence, their decisions still heavily affect the issues advocated for by these parties. Issues concerning the interpretation of civil rights including free speech and the right to bear arms, women's body autonomy, separation of church and state, antitrust laws, discrimination, government regulation, and more. These parties feel this immense need to win, and with each ideological drift from justices supposed to help them get there, they slowly lose sight of that finish line. Reusing a previous example, Justice Harry Blackmun made almost a complete flip from acting as one of the court's top conservatives to one of their most liberal champions. Those in the Republican party were essentially robbed of an important actor in the judicial branch who was thought to advocate for GOP's views and beliefs.

Lastly, it leads to the Court to establish new precedents or overturn old precedents. Today, the Court is more willing to overturn its precedents than ever before; in fact, since the 1950s, the Court has overturned twice as many precedents than it did in the more than 150 previous years of its existence.[127] This is due to both presidential appointments and ideological drift among the current justices. One of the most famous shifts in the ideology of the Supreme Court occurred in 1954, when the Court ruled that school segregation was unconstitutional in the landmark decision of *Brown v. Board of Education*. This effectively overturned the 1896 ruling in *Plessy v.*

[127] Khan Academy. (n.d.). *Legitimacy of the judicial branch: Lesson Overview (article)*. Khan Academy. Retrieved April 4, 2022, from https://www.khanacademy.org/humanities/us-government-and-civics/us-gov-interactions-among-branches/us-gov-legitimacy-of-the-judicial-branch/a/legitimacy-of-the-judicial-branch-lesson-overview

Ferguson, which permitted racial segregation. Looking back from decades into the future, one would reasonably assume that this was the right decision. But in the 1950s this decision received backlash from those who profit and agreed with segregation. This happens with almost every divisive case. Those who gave backlash as well as those who gave support like to believe they know what is best and freely give public opinion on these matters, but without the proper credentials, analysis, and position that the justices hold, the average citizen can only use what knowledge and views they have obtained through their life to voice their public opinion. Though the public may not agree with a ruling or overturning of a precedent, one must trust that from their experience, even though their ideologies drift and preferences change, that the justices are interpreting the constitution as properly and effectively as they can.

Ideological drift matters because it directly leads to how justices will rule with each year. If the justices change their preferences, their viewpoint will be altered when reviewing case after case. This is true when the justices review cases concerning issues in which they have already made decisions for in the past, such as *Plessy v. Ferguson* and *Brown v. Board of Education.* This raises a central question: Do the previous decisions of these justices lose merit now that their opinion on the matter has evolved? Though many may believe that ideological drift is bad, it allows for new perspective, free thinking, and a new source of rationale in an ever-changing world. The previous decisions do not lose merit in the sense that when they were decided that is what the justices thought was the best rational decision. With the overturning of previous precedents or new opinions of justices, it shows development and progression towards a more focused viewpoint and understanding of the law and how they impact our society.

Why should we care? Because the decisions made and precedents created govern our everyday life. If ideological drift happens, it shifts how our lives will be regulated. Some agree

with the shift, some do not. The moral of it all: there is never going to be a 'right' answer when it comes to interpreting the constitution to govern a nation. Every decision is subjective to each justice's, and each citizen's, personal perspective in regard to their upbringing, education, livelihood, and preferences. Ideological shift accounts for the change in perspective and preference for each justice, and though many would rather have a court with stable preferences, it is a phenomenon that happens on the court that will impact the nation for decades to come.

Why are most justice's ideological drifts to the left?

The job of judging, unlike most occupations, strongly encourages individuals to see sides of an issue that are otherwise easily ignored. The information that emerges may help explain why juridical drift is so often leftward. A basic tenet of critical theorists is that perspective matters. Confronting theories, evidence, and differences in life experience that one would otherwise be inclined to miss, and that may challenge or perhaps contradict common sense notions, is part of the daily job for judges. Because a judge or justice gets the entire story from both perspectives, they are best inclined to vote as rationally as possible. By receiving both perspectives and weighing the significance of them, this can easily result in the justice voting in a more liberal meaning because they were in the best position to hear and understand both viewpoints on the issue. The shift to the left confuses much of the public, for they are not in the same position as these justices and therefore cannot understand to the full extent of how and why the justices decide how they do. What is patently absurd to the average American often seems appropriate and just to a jury and a judge once they hear all the evidence. Legal scholars who carefully examine the facts and outcomes of cases like this tend to agree that the mistaken perception is

usually the public's.[128] Confronting theories, evidence, and differences in life experience that one would otherwise be inclined to miss, and that may challenge or perhaps contradict common sense notions, is part of the daily job for judges. This is the reason why many justices are perceived to shift left.[129] The action of understanding perspective causes ideological drift among justices.

Is ideology or preference change something that could be avoided, or is it inevitable to reevaluate your values, preferences, and beliefs as time progresses?

Based on conclusive data from the sources used and the case analysis of the justices in this thesis – essentially no, it cannot be avoided. At least for justices serving since 1937, ideological drift was not only possible, it was likely.[130] The analysis conducted in this thesis showcased preference change throughout the court's history, from 1940 to 2020. The trend from justices serving in the 1950s experiencing ideological drift mirrored to justices serving in the 2000s experiencing ideological confirmed my hypothesis — ideological drift is a phenomenon that does happen on the court and has happened for the majority of a century. Comparing the five justices in this study, all of them experienced ideological drift. This proves that ideological drift is not a random occurrence, but a constant occurrence. From Justice Hugo Black to Justice Ruth Bader Ginsburg, and a majority of justices in between, ideological drift and preference change is recognized and accounted for.

The notions of “left” and “right” or “liberal” and “conservative” are themselves subject to drift, because over time the positions taken by those who identify themselves (or are identified)

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[128] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*. Boston Review. Retrieved April 4, 2022, from https://bostonreview.net/articles/jon-d-hanson-adam-benforado-the-drifter-supreme-court-makes-justices-more-liberal/

[129] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*.

[130] Epstein, Lee, et al. "Ideological Drift among Supreme Court Justices: Who, When, and How Important."

as conservatives and liberals tend to change.[131] As stated above, with each new case comes a new perspective of relating to, sympathizing with, or understanding the individuals of a case. Best stated by Justice Anthony Kennedy, "suddenly, there's a real person there."[132] Kennedy emphasized that judging influences ideology for the simple reason that, instead of dealing in abstractions, they are dealing with the actual party itself. The party that was impacted by the constitution, a law, the state, a government actor, etc. This changes things. It brings emotion and empathy to the court. It shifts ideology.

Each new political environment in which a justice operates has an impact on said justice – how they function on the court, their relations with the other branches, their relations with other justices, etc., With each new addition to the court comes a new perspective. This new perspective has an impact on each senior justice that could affect their reasoning, alter their beliefs, and change how they view prominent matters. As countless experiments have shown, it is generally assumed that behavior is controlled by personality, attitudes, choice, character, and will. This is what presidents assume when nominating the justices, expecting that since they know their character, they can ensure that they will remain unchanged on the bench. But these "dispositional" factors are often far less significant than "situational" factors such as unseen features of our environments and subconscious processes within the justices.[133] By allowing disposition to eclipse situations, we often misunderstand why people behave as they do — and thus are surprised when our predictions fail.[134] This happens with a lot of representatives in the government, from each branch of government as well. When an individual makes a decision not subject to their exact political party, campaign advocacy, or general ideology, people are

[131] Balkin, Jack M. "Ideological drift and the struggle over meaning."
[132] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*.
[133] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*.
[134] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*.

shocked. This is just mere ideological drift seen at work. As government employees assume their position, their situation becomes real, and they are impacted by situational factors that they had never been subject to before. It becomes less about these dispositional factors and more about best reacting to each new issue and circumstance at hand. With each new situation comes a new perspective, which leads to the eventual change within preferences and ideological beliefs. Thus, ideological drift is merely impossible to avoid.

Should justices have term limits?

This has been a debate for decades, accumulating compelling arguments for either side. The President has a term limit, the Senate and the House have term limits, why is the Judicial Branch the exception? Why are the justices not as regulated, checked, and threatened with removal as it seems the former are? A Supreme Court justice's job, in simple terms, is the promise of equal justice under the law. Though this seems like a black and white definition, justice under the law is an extremely complex and subjective understanding, easily influenced by persuasive means. The Supreme Court deals with some of the most significant questions that will set precedent over our nation every year. Issues that many parties – the executive, the legislature, political parties, international factors, lobbyists, businesses, etc. – would like to have a say in. From the media, to government actions, international relations, to the daily life of a justice, it is virtually impossible to escape the influence of others, but it is not without trial. An attempt to combat persuasive factors is to appoint justices for life in good behavior. Without the pressure of pleasing a political party to ensure reelection or funding breathing down their neck, the justices have liberty to use their own rational and reasoning that they have developed as professionals to decide on these cases. The justice system has potential to easily become corrupt if the justices were subject to the coercion and constraints of the previously mentioned parties. Structural

buffers designed to protect judges from outside influences also encourage juridical drift by allowing judges greater leeway to pursue the truth wherever it leads with this judicial independence.[135]

Even without the political pressure of satisfying a party or the stress of reelection, influence still seeps its way into the court. As discussed throughout this thesis, societal, political, and economic factors fall through the cracks of the Supreme Court's barrier. Even if not pushed by a particular agenda, these factors still have the possibility to influence the decisions and ideologies of these justices. From this analysis, the longer the justice is on the bench, the more factors could change their preferences. To what extent would the influence, drift, and change happen if the Justices did have term limits and were subject to pressures of politics, lobbying, pay outs, etc.? This is a question I alone cannot answer, but is a question encompassed by a multitude of facets, opinions, and potential yet unknown outcomes.

Should justices have requirements to be able to be appointed?

The Constitution does not specify qualifications for Justices such as age, education, profession, or native-born citizenship.[136] A justice does not have to be a lawyer or a law school graduate, but all justices have been trained in the law. Many of the 18th and 19th century justices studied law under a mentor via apprenticeship because there were few law schools in the country.[137] The last Justice to be appointed who did not attend any law school was James F. Byrnes (1941-1942). He did not graduate from high school and taught himself law, passing the bar at the age of 23.[138]

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[135] Benforado, A., & Hanson, J. D. (2012, June 28). *The drifters*.
[136] *FAQ General Information*. Home - Supreme Court of the United States. (n.d.). Retrieved April 4, 2022, from https://www.supremecourt.gov/about/faq_general.aspx
[137] *FAQ General Information*. Home - Supreme Court of the United States. (n.d.).
[138] *FAQ General Information*. Home - Supreme Court of the United States. (n.d.).

When the constitution was drafted, it is reasonable to assume that the drafters did not foreseeably see the Judicial Branch to be as impactful for our nation as they have been in the last century. For the first 50 years of the court, the Supreme Court dealt with miniscule hearings compared to what the court has on their docket today. The qualifications of the justices were not vast, and as the constitution held, there were no special requirements. Though this could hold back then, with the evolution of our country, no specific qualifications or special requirements warrants mistakes and controversies.

Many believe that the current nomination and appointment process is flawed. Instead of nominating and confirming potential justices based on a specific set requirement of merit or experience, the president chooses contenders based on their own personal preference, ideological leanings, and political party. Presidents pursue political objectives in making judicial nominations, especially nominations to the Supreme Court, while senators pursue political objectives in providing their "advice and consent," especially with nominations to the Supreme Court.[139] With this being the forefront for nomination, it pushes many important factors that should be taken into account to the back seat -- factors like race, gender, ethnicity, demographic, background, financial status, subjective experiences, and more, that could allow a Justice to relate and resonate with the diverse citizens that they will be making fundamental decisions for. Though many Presidents attempt to consider these factors, the most important contributor is their ideology. Take Justice Amy Coney Barrett. Barrett has spent virtually all of her professional life in academia. Until President Donald Trump nominated her to the 7th Circuit Court of Appeals in 2017, she had never been a judge, never worked in the government as a prosecutor, defense lawyer, solicitor general, or attorney general, or served as counsel to any legislative body — the

[139] Santa Clara Law Review, “Advice and Consent: The Politics of Judicial Appointments.”

usual professional channels that Supreme Court nominees tend to hail from.[140] She was quickly nominated and confirmed through a two month process essentially because she was a Republican woman with conservative ideals, similar to President Trump's. This does not necessarily result in her lack of qualification or potential in being a good justice, but does raise the question: Should justices have requirements to be able to be appointed? Should there be qualifications met? Should justices have to previously have been former judges, former litigators, former government employees? Should justices be graduates of a top ten law school, or does any law degree suffice? These questions breed no easy answers but are questions to consider when evaluating justices' decisions and ideologies on the court. If none of these justices share a base set of qualifications, how do we know if they have the knowledge, experience, and proper rationale to administer life changing decisions that will govern the nation for decades to come? Though I will not be answering these questions in this thesis, I felt the need to raise the questions to the readers.

V. Summary

In summary, Supreme Court Justices' ideologies do shift with their time on the Supreme Court. This is influenced in many manners, but most prominently with the altering and progression of societal and political issues and views. Though it is a phenomenon that occurs with Supreme Court Justices, it also occurs to almost every individual throughout their life as humans develop and expand their knowledge and is close to impossible to prevent.

The experiment conducted in this thesis confirmed my hypothesis. I hypothesized that Supreme Court justices change in their ideologies and preferences as their tenure progresses,

[140] Mencimer, S. (2020, October 23). *Amy Coney Barrett is the least experienced Supreme Court nominee in 30 Years*. Mother Jones. Retrieved April 4, 2022, from https://www.motherjones.com/politics/2020/10/amy-coney-barrett-is-the-least-experienced-supreme-court-nominee-in-30-years/

specifically, they begin to make decisions and agree with outcomes in a more ‘liberal’ leaning mindset and manner. This ideological phenomenon can be traced back to social, economic, political, and environmental factors that impact our society, government, and our justices. With my analysis and discussion, I have confirmed that this phenomenon of ideological drift to the left does happen for many justices, but not all. Ideological drift is a fascinating occurrence, one not even known to or considered by the majority of the nation.

Ideological drift, in a sense, humanizes the justices. It allows for them to change their beliefs while recognizing new ideas and views as well as the faults of previous ones. It allows the people to better relate to and understand the justices as people rather than supreme authorities within the government. With understanding the idea of ideological drift and preference change, and its impact on the justices, precedent, and the future of our nation, we as citizens can better understand the Supreme Court as a whole. We can better rationalize the decisions made, opinions administered, and precedents set forth to govern this country. Ideological drift is not something to necessarily fear or attempt to combat, but something to help citizens further understand our Judicial branch. With the work and analysis of this thesis, I hope I achieved that goal.

References

Adamson v. California. (n.d.). *Oyez*. Retrieved March 30, 2022, from https://www.oyez.org/cases/1940-1955/332us46

Alabama v. White. (n.d.). *Oyez*. Retrieved March 13, 2022, from https://www.oyez.org/cases/1989/89-789

Analysis: How Justice Ruth Bader Ginsburg viewed herself as an originalist. Constitutional Accountability Center. (n.d.). Retrieved April 4, 2022, from https://www.theusconstitution.org/news/analysis-how-justice-ruth-bader-ginsburg-viewed-herself-as-an-originalist/

Arizona v. Gant. (n.d.). *Oyez*. Retrieved April 2, 2022, from https://www.oyez.org/cases/2008/07-542

Balkin, Jack M. "Ideological drift and the struggle over meaning." *Conn. L. Rev.* 25 (1992): 869

Barker, L. J. (1992). Thurgood Marshall, The Law, and The System: Tenets of an Enduring Legacy. *Stanford Law Review*, *44*, 1237–1247. https://doi.org/10.2307/1229056

Benton v. Maryland. (n.d.). *Oyez*. Retrieved March 13, 2022, from https://www.oyez.org/cases/1968/201

Betts v. Brady. (n.d.). *Oyez*. Retrieved April 1, 2022, from https://www.oyez.org/cases/1940-1955/316us455

Boddie v. Connecticut. (n.d.). *Oyez*. Retrieved March 30, 2022, from https://www.oyez.org/cases/1969/27

Boddie v. Connecticut. Casebriefs Boddie v Connecticut Comments. (n.d.). Retrieved April 4, 2022, from https://www.casebriefs.com/blog/law/civil-procedure/civil-procedure-keyed-to-subrin/an introduction-to-civil-procedure/boddie-v-connecticut-3/

Boddie v. Connecticut, 401 U.S. 371 (1971). Justia Law. (n.d.). Retrieved April 4, 2022, from https://supreme.justia.com/cases/federal/us/401/371/

Calabresi, S. G., Beeman, R. R., Rubenstein, J. R. & D., & Siegel, R. P. & R. (n.d.). *On originalism in constitutional interpretation*. On Originalism in Constitutional Interpretation | The National Constitution Center. Retrieved April 4, 2022, from https://constitutioncenter.org/interactive-constitution/white-papers/on-originalism-in-cons titutional-interpretation

Callins v. Collins. *Oxford Reference.* Retrieved 4 Apr. 2022, from https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095543295.

Dobbert v. Florida. (n.d.). *Oyez*. Retrieved April 2, 2022, from https://www.oyez.org/cases/1976/76-5306

"Do Political Preferences Change? A Longitudinal Study of U.S. Supreme Court Justices" – "The Journal of Politics." *University of Chicago Press Journals,* https://www.journals.uchicago.edu/doi/pdfplus/10.2307/2647649

Epstein, Lee, and Andrew D. Martin. "Does Public Opinion Influence the Supreme Court

Possibly Yes (But We're Not Sure Why)." *U. Pa. J. Const. L.* 13 (2010): 263.

Epstein, Lee, et al. "Ideology and the study of judicial behavior." 2012. https://deepblue.lib.umich.edu/bitstream/handle/2027.42/116253/IdPsychLaw.pdf?sequence=1&isAllowed=y

Epstein, Lee, et al. "Ideological Drift among Supreme Court Justices: Who, When, and How Important." Northwestern University Law Review, vol. 101, no. 4, 2007, p. 1483-1542.

FAQ General Information. Home - Supreme Court of the United States. (n.d.). Retrieved April 4, 2022, from https://www.supremecourt.gov/about/faq_general.aspx

Gideon v. Wainwright. background - landmarkcases.org. (n.d.). Retrieved April 4, 2022, from https://www.landmarkcases.org/assets/site_18/files/gideon_v_wainwright/teacher/pdf/background_level_3_gideon_teacher.pdf

Ginsburg. (1996, June 26). *United States v. Virginia et al., 518 U.S. 515 (1996)*. Legal Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supct/html/94-1941.ZO.html

Greenhouse, L. (2019, July 17). *Supreme Court justice John Paul Stevens, who led liberal wing, dies at 99*. The New York Times. Retrieved April 4, 2022, from https://www.nytimes.com/2019/07/16/us/john-paul-stevens-dead.html

Gregg v. Georgia. (n.d.). *Oyez*. Retrieved April 4, 2022, from https://www.oyez.org/cases/1975/74-6257

Griswold v. Connecticut, 381 U.S. 479 (1965). Justia Law. (n.d.). Retrieved April 4, 2022, from

https://supreme.justia.com/cases/federal/us/381/479/

Hugo L. Black. (n.d.). *Oyez*. Retrieved March 12, 2022, from https://www.oyez.org/justices/hugo_l_black

John Paul Stevens. (n.d.). *Oyez*. Retrieved March 12, 2022, from https://www.oyez.org/justices/john_paul_stevens

Kastenberg, J. E. (2019). *The campaign to impeach justice William O. Douglas: Nixon, Vietnam, and the Conservative attack on Judicial Independence*. University Press of Kansas.

Khan Academy. (n.d.). *Legitimacy of the judicial branch: Lesson Overview (article)*. Khan Academy. Retrieved April 4, 2022, from https://www.khanacademy.org/humanities/us-government-and-civics/us-gov-interactions-among-branches/us-gov-legitimacy-of-the-judicial-branch/a/legitimacy-of-the-judicial-branch-lesson-overview

Ledbetter v. Goodyear Tire and Rubber Company. (n.d.). *Oyez*. Retrieved April 2, 2022, from https://www.oyez.org/cases/2006/05-1074

Legal Information Institute. (n.d.). *Adamson v. People of State of California.* Legal Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supremecourt/text/332/46

Legal Information Institute. (n.d.). *John Dalmer Benton, petitioner, V. State of Maryland.* Legal

Information Institute. Retrieved April 4, 2022, from https://www.law.cornell.edu/supremecourt/text/395/784

Lim, Youngsik. “An Empirical Analysis of Supreme Court Justices' Decision Making.” *The Journal of Legal Studies*, vol. 29, no. 2, 2000, pp. 721–752. *JSTOR,* www.jstor.org/stable/10.1086/468091.

Mark V. Tushnet, The Supreme Court and Race Discrimination, 1967-1991: The View from the Marshall Papers, 36 Wm. & Mary L. Rev. 473 (1995), https://scholarship.law.wm.edu/wmlr/ vol36/iss2/4

Martin, Andrew D., and Kevin M. Quinn. "Can Ideal Point Estimates be Used as Explanatory Variables?", *Washington University in St. Louis. Unpublished Manuscript* (2005).

Mart*in-Quinn Scores*, https://mqscores.lsa.umich.edu/index.php

Mencimer, S. (2020, October 23). *Amy Coney Barrett is the least experienced Supreme Court nominee in 30 Years*. Mother Jones. Retrieved April 4, 2022, from https://www.motherjones.com/politics/2020/10/amy-coney-barrett-is-the-least-experienced-supreme-court-nominee-in-30-years/

Miller, Eric J. "Judicial Preference." *Houston Law Review,* vol. 44, no. 5, Winter 2008, p. 1275 1336. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/hulr44&i=1283.

Obergefell v. Hodges. (n.d.). *Oyez*. Retrieved April 2, 2022, from https://www.oyez.org/cases/2014/14-556

Owens, Ryan J. and Wedeking, Justin, Predicting Drift on Politically Insulated Institutions: A Study of Ideological Drift on the United States Supreme Court (December 29, 2010). https://ssrn.com/abstract=1738309

PGA TOUR, Inc. v. Martin. (n.d.). *Oyez*. Retrieved April 1, 2022, from https://www.oyez.org/cases/2000/00-24

Robenalt, J. D. (2022, March 29). *Gerald Ford tried to impeach a Supreme Court justice - and failed*. The Washington Post. Retrieved April 4, 2022, from https://www.washingtonpost.com/history/2022/03/29/gerald-ford-william-douglas-impeachment/

Roe v. Wade. (n.d.). *Oyez*. Retrieved March 14, 2022, from https://www.oyez.org/cases/1971/70-18

Ruger, Theodore W. "Justice Harry Blackmun and the Phenomenon of Judicial Preference Change." *Missouri Law Review,* vol. 70, no. 4, Fall 2005, p. 1209-1230. *HeinOnline,* https://heinonline.org/HOL/P?h=hein.journals/molr70&i=1219.

Ruth Bader Ginsburg. (n.d.). *Oyez*. Retrieved March 12, 2022, from https://www.oyez.org/justices/ruth_bader_ginsburg

Smentkowski, B. P. (2022, January 20). *Thurgood Marshall*. *Encyclopedia Britannica*. https://www.britannica.com/biography/Thurgood-Marshall

Stone, W. J., & Simas, E. N. (2010). Candidate Valence and Ideological Positions in U.S. House

Elections. *American Journal of Political Science*, *54*(2), 371–388. http://www.jstor.org/stable/25652212

"The Court as an Institution." *Home - Supreme Court of the United States*, https://www.supremecourt.gov/about/institution.aspx.

Thurgood Marshall. (n.d.). *Oyez*. Retrieved March 12, 2022, from https://www.oyez.org/justices/thurgood_marshall

Whole Woman's Health v. Hellerstedt. (n.d.). *Oyez*. Retrieved April 2, 2022, from https://www.oyez.org/cases/2015/15-274

William O. Douglas. (n.d.). *Oyez*. Retrieved March 12, 2022, from https://www.oyez.org/justices/william_o_douglas