

# PRECEDENT AND PREFERENCES ON THE U.S. SUPREME COURT

## *ABSTRACT*

Precedent is a central component of the legal model of judicial decision making. Its influence in the U.S. Supreme Court has been much debated, but there is little systematic evidence that it regularly affects the policies of the justices. Employing a form of network analysis, we offer one test of the impact of precedent on decision making in the Court. Specifically, we examine the utilization of precedent—whether it is cited and followed—in First Amendment cases decided between the 1974 and 1996 terms. The results show that the justices’ policymaking is governed by both their policy preferences and precedent. Interestingly enough, these two forces appear to work completely independent of one another. So, while the justices strategically follow those precedents that are ideologically compatible, they will often adhere to *stare decisis*, irrespective of their ideological dispositions.

## *I. INTRODUCTION*

As an explanatory variable, the law has not fared well in studies of decision making on the U.S. Supreme Court. Testing the legal model in various ways, scholars have found that such considerations as literalism and original intent do little to distinguish the behavior of the justices (see, e.g., Gates and Phelps 1996; Phelps and Gates, 1991). Among these legal factors, the one that has received the closest attention has been precedent. Indeed, in recent years, adherence to the norm of *stare decisis* has been the subject of a good deal of empirical scrutiny. For the most part, this work has concluded that prior decisions do not have a substantial influence on the justices (Brenner and Spaeth 1995; Spaeth and Segal 1999; Segal and Howard 2000). To be sure, there are those who find evidence that the members of the Court are attentive to the dictates of *stare decisis* (Brenner and Stier 1996; Songer and Lindquist 1996), but these analyses have been open to serious criticism (Spaeth and Segal 1999, 26).

Such disparate findings arise, at least in part, from disagreement over how best to operationalize adherence to precedent. What constitutes support for doctrine and which decisions to include in analyses are not immediately obvious. A further frustration stems from the sheer volume of prior cases. With a wealth of precedent from which to draw, the justices can routinely couch virtually any decision in the

language of stare decisis (Spaeth and Segal 1999). In fact, doctrine dominates most opinions written by members of the Court (Gate and Phelps 1996).

To overcome some of these problems, we consider an alternative strategy by analyzing the determinants of citations to precedent. Given a wide-ranging choice of precedents, why do the members of the Court rely upon the cases that they do in their written opinions? Do the justices merely cite cases that conveniently approximate their policy tastes, or do they seek conscientiously to abide by established rulings? In this paper, we employ network analysis to explain citation patterns across majority opinions in the Court. Tracing the transmission of legal doctrine, we construct models that test for both ideological and doctrinal effects in the Court's decision making. We conclude that the decision to cite precedent—and more importantly, the decision to follow it—are driven to a substantial degree by ideological considerations. At the same time, we also find strong evidence of conformity to precedent; that is, holding constant the preferences of the justices, the Court is not only cognizant of its established doctrines, but seeks to adhere to them, as well.

## *II. THE SUPREME COURT AND THE TRADITION OF STARE DECISIS*

One of the principal tenets of the judicial craft is adherence to the legal rules that are formulated in previous cases. According to this standard, the law should have consistency; it should apply in a predictable fashion across similar cases. In making decisions, therefore, judges are obligated to weigh the relevant circumstances and evaluate them in light of the policies already established in comparable cases. It is, according to its traditional definition, “reasoning by example. It is reasoning from case to case. It is a...process described by the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law and then applied to a next similar situation” (Levi 1949, 1). Judge-made laws thereby become a primary set of guidelines along which courts can pattern their decisions.

To be sure, both the written law and the intent of those who drafted it are surely relevant considerations. At the same, however, these modes of interpretation can scarcely anticipate the varying

circumstances to which the established law must be applied, a confounding factor that looms especially large in appellate litigation (Monaghan 1988). By proceeding in this fashion—by resolving like cases in a consistent manner—judges serve to dissolve legal ambiguities and ensure that clear rules are applied, irrespective of the litigants and the policies they pursue (Bobbitt 1982, 41). Naturally, judges might disagree over the application of specific precedents or the rules past cases have established, but judicial decision makers are generally obligated to respect the principle embodied in a precedent (Goodhart 1930).

Historically speaking, constraining judicial decision making through the rules of prior cases is one of the most venerated traditions of legal analysis.<sup>1</sup> Indeed, the notion that judges are bound by the doctrine of stare decisis is as old as the republic. In one of its earliest incarnations, Blackstone's *Commentaries* argued that judicial interpretation of the law must be a binding force in the resolution of legal conflicts. "For it is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule..." (1765-1769, 69).

Adapting this Anglo tradition to the American context, the Founding Fathers envisioned legal interpretation being informed by similar principles under the new Constitution. Thus, for example, Alexander Hamilton argued that the members of the U.S. Supreme Court, like all federal judges, would ensure uniformity in the law by adherence to stare decisis. "To avoid an arbitrary discretion in the courts," he noted in Federalist No.78, "it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them" (p.471). Under this vision of the Constitution, the justices would establish general principles that would then become the basis for their resolution of subsequent cases that posed comparable questions. Expressing similar sentiments, James Madison advocated obedience to precedent "[b]ecause it is a reasonable and established axiom, that the good of society requires that the rules of conduct of its

members should be certain and known, which would not be the case if any judge, disregarding the decision of his predecessors, should vary the rule of law according to his individual interpretation of it...” (quoted in Lee 1999, 665). For some of the principal architects of the Constitution, then, respect for precedent was a standard by which members of the federal judiciary were expected to abide.

Since then, the Supreme Court has operated on the assumption that stare decisis is at the core of the judicial function. Various justices, in language oft-quoted, have vigorously advocated faithfulness to this doctrine. As Justice Brandeis explained, “Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right.” (*Burnet v. Coronado Oil & Gas Company* 1932, 406). Adherence to precedent is vital, argued Justice Powell (1990), because it “is necessary to have a predictable set of rules on which citizens may rely in shaping their behavior” (p.286). Otherwise, according to Justice Roberts, deviation from established principles “tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only” (*Smith v. Allwright* 1944, 669).

Legal scholars have likewise judged precedent to be a guiding force in the judicial process. Countless critical commentaries have evaluated the theoretical and practical import of stare decisis.<sup>2</sup> Among other things, this literature has concluded that the virtues of following precedent “include promoting certainty, respecting reliance on earlier decisions, honoring settled expectations, promoting efficient adjudication, affording uniform treatment to all litigants, and preserving the integrity of the courts in the public’s view” (Marshall 1989, 182; see also Macey 1989). When the Court adheres to this doctrine, such benefits are only magnified; by following their own precedents, the justices lend legitimacy to the constitutional system as well as to the Court and its use of judicial review (Monaghan 1988). Certainly, precedent is at the heart of the justices’ policy outputs, inasmuch as virtually all of their written

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<sup>1</sup> We depend on Lee (1999), who provides an exhaustive account of the roots of stare decisis in the United States.

<sup>2</sup> There are excellent reviews of this literature (see, e.g., Eskridge 1988; Gerhardt 199; Maltz 1988; Monaghan 1988).

opinions are framed and informed by their prior decisions (see, e.g., Phelps and Gates 1991). Not surprisingly, many regard *stare decisis* as “the great touchstone of judicial regularity,” manifesting itself in the justices’ disposition of similar cases and in their devising of solutions for novel legal issues (Murphy 1964, 22). “One will not find in the text of the Constitution the phrases ‘two-tier review’ or ‘original package’ or any of the other necessary and ephemeral modes of analysis by which the Constitution is adapted to the common law case method, yet these doctrines are every bit as potent as those phrases originally printed in Philadelphia” (Bobbitt 1982, 7). By this logic, the standards that are enunciated by the Supreme Court have become as much a part of the legal lexicon as the written law itself.

For as much as *stare decisis* has been enshrined in analyses of the Supreme Court, it has also acquired an equal measure of skepticism. Among contemporary judges and legal observers, few dispute its relevance, but many certainly question the capacity of the Court to apply this doctrine conscientiously in its resolution of cases (see, e.g., Alexander 1989; Note 1986; Schauer 1987). While some have merely acknowledged that precedent need not be an inflexible rule on the Court (Eskridge 1988), others have gone so far as to suggest that “[t]oday’s Justices cast their votes just as if prior cases did not exist...” (Easterbrook 1988, 429; see also Maltz 1994).

Such doubts are easily fueled by the lack of empirical inquiry into the role of precedent. “Precedents commonly are regarded as a traditional source of constitutional decisionmaking,” notes one scholar, “despite the absence of any clear evidence that they ever have forced the Court into making a decision contrary to what it would rather have decided” (Gerhardt 1991, 76). Without data and formal tests of hypotheses, the relevance of *stare decisis* has remained largely an open question. In the next section, we examine the extent of systematic knowledge regarding precedent in the Court and propose a set of statistical tests to consider its influence.

### *III. A STATISTICAL MODEL OF RELIANCE UPON PRECEDENT*

In the abstract, the concept of stare decisis is intuitive and straightforward. A judicial decision announces a principle of law, and subsequent cases that involve similar circumstances are resolved in a manner consistent with the original principle. Accordingly, if the members of the Court follow precedent, they compare the facts of the present case to the facts of any prior cases that encompass the same issue; to the extent that the two cases correspond, the justices should decide the instant case in the same fashion as the previous case. Simple though it may seem, translating this practice into a testable model is a problematic task. For the most part, stare decisis on the Court has not readily yielded to quantitative tests.

#### **Framing the Problem**

How might one model adherence to precedent in the U.S. Supreme Court? Several studies provide some initial guidance. One plausible indicator of faithfulness to stare decisis lies in the use of case facts to predict case outcomes. Drawing upon pertinent characteristics across cases within an issue area, predictive models demonstrate a high degree of statistical consistency in the Court's responsiveness to what are presumably legally-relevant stimuli. Thus, for example, in resolving disputes over the death penalty and search and seizure, the Court's decisions can largely be explained by various fact-patterns that exist across the respective policy domains (see, e.g., George and Epstein 1992; Segal 1984). By these lights, the justices are demonstrating legal consistency by treating comparable cases in like fashion.<sup>3</sup>

This might be evidence of stare decisis; holding constant the policy preferences of the Court, its members are resolving similar cases in comparable ways. At the same time, though, these stimuli can themselves be located in ideological space. (Upholding a search without a warrant is a more conservative policy than upholding a similar search performed under judicial authorization, for instance.) It is entirely

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<sup>3</sup> This approach has also been used to illuminate the ability of the U.S. Supreme Court to guide the decisions of lower courts (i.e., vertical stare decisis). Here the evidence is quite strong that lower courts follow the judicial hierarchy, taking take their cues from the justices in resolving cases (Songer, Segal, and Cameron 1994).

possible, therefore, that the case characteristics merely mark positions along an attitudinal dimension (see Baum 1997, 75-76; Segal and Spaeth 1993, 229-231). Seen in this way, fact-patterns are merely a component of attitudinal voting, and the causal case for precedent is only illusory.

An alternative approach examines the alteration of precedent, analyzing when and why the Supreme Court overturns its past policies. If stare decisis genuinely constrained the members of the Court, then they should be unwilling to reconsider precedents, even those with which they may personally disagree. It turns out, however, that precedents are quite vulnerable, especially those that conflict with the policy dispositions of the justices (see, e.g., Brenner and Spaeth 1995; Segal and Howard 2000). Again, the evidence supports the attitudinal, rather than the legal model.

No doubt the best evidence on the importance of stare decisis measures the degree to which justices who oppose a newly established precedent modify their behavior by accepting the authority of that precedent in subsequent cases (Spaeth and Segal 1999). In landmark decisions (i.e., cases for which there are no genuine precedents), the members of the Court are not bound by the dictates of stare decisis and are free to follow their preferences. If the justices were truly affected by precedent, then they would adjust accordingly, supporting the application of that new precedent in later litigation. By this standard, precedent does not exert much influence; it turns out that, across the Court's entire history, the justices have rarely modified their behavior after the Court adopts new policies with which they disagree. This is quite powerful; it convincingly demonstrates that individual justices see little need to support the decisions of their brethren, even when there are strong legal reasons for doing so. Given the choice between a disagreeable principle and their own attitudinal inclinations, most members of the Court simply stand by their preferences.

In sum, the weight of the scholarly evidences suggests that, on the U.S. Supreme Court, the legal doctrine of stare decisis is influenced heavily by the attitudes of its members: fact-patterns can be readily construed as ideological stimuli; votes to overturn precedents are easily explained by personal policy preferences; justices rarely support existing precedents with which they originally disagreed.

Telling as these findings are, they leave open a number of important questions, not the least of which is why the Court, as a matter of formal policy, follows precedent in some cases but not in others. This is surely as critical as gauging the voting patterns of individual justices; after all, the essence of stare decisis is the decision of a majority to resolve existing conflicts in accordance with the principles established in past cases. That the justices individually ignore the dictates of stare decisis does not necessarily mean that their aggregate policies also fail to adhere to precedent. Even if each justice rejects a certain segment of the Court's doctrines, it is still quite possible that the collective votes on the bench add up to some measure of stare decisis.

### **The Dependent Variable**

In our view, studies of stare decisis ought to aim at answering a basic question: Did the Supreme Court follow precedent? That is, in a given case, did the Court make a decision consistent with the principles established in prior cases? Straightforward as it may seem, answering this question is problematic, given the wide range of competing precedents. No matter what the legal policy, it is easily justified in terms of doctrine (Phelps and Gates 1991). From the justices' perspective, "[r]eliance upon precedent presents difficult problems...especially since the question to be resolved comes, normally speaking, to a *choice* of precedents. Precedents abound and not all precedents are of equal rank" (Abraham 1998, 361). Accordingly, our analytic strategy is to model that choice. That is, we seek to develop a statistical account of adherence to stare decisis by comparing the characteristics of a case against the characteristics of all other potentially relevant precedents. The logic is simple enough; given a wide range of prior decisions, the justices should follow the principles laid down in the most applicable cases.

To operationalize this logic, we construct our dependent variable through a series of dyads, matching the Court's current decision against all past precedents and determining whether the Court used each precedent in justifying that decision. We begin by turning first to the *U.S. Supreme Court Judicial Database* to identify both a sample of the Court's caseload and past cases that might be used as precedent

within that sample. For each decision by the Court, we then create a set of observations in which that decision is paired, in turn, with each preceding decision. In effect, we ask, “In resolving this case, did the Court rely upon Precedent<sub>1</sub>, Precedent<sub>2</sub>, Precedent<sub>3</sub>, Precedent<sub>4</sub>, Precedent<sub>5</sub>,...Precedent<sub>N</sub>?”<sup>4</sup>

If the Supreme Court adheres to stare decisis, then it should certainly cite relevant precedents and, more importantly, formally follow their established principles. Across these pairs of cases, simple citations are easy enough to identify, but gauging whether the Court actually follows a precedent is far more open to interpretation. Rather than rely upon our own subjective judgments, we employ data from *Shepard’s Citations*, the leading research service that surveys the use of legal authorities in judicial opinions. We are in good company here; in addition to identifying reliance upon precedent (Landes and Posner 1976; Manz 1995; Spriggs and Hansford 1999), citation analyses have also been used to assess, among other things, the relative influence of members of the Supreme Court (Kosma 1998) and lower federal courts (Klein and Morrisroe 1999; Landes, Lessig, and Solimine 1998), as well.

To be sure, some may question a blanket reliance upon *Shepard’s* and supplement its judgments with further refinements (see, e.g., Spaeth and Segal 1999). Taken on its own terms, though, *Shepard’s* is still a valid barometer of the Court’s behavior (Spriggs and Hansford N.d.). As a matter of research design, we believe it important to stand by the evaluations of *Shepard’s Citations*. After all, the very purpose of this index is to classify—as authoritatively as possible for other members of the legal community—how the Supreme Court treats the doctrines it has established in earlier cases. Its staff has no bias towards supporting or defeating the hypotheses we test in our statistical model—at least so far as we know.

In comparing citations across cases, one might simply sample from the Court’s entire docket. Because of the complex assortment of cases that come before the justices, however, this strategy would understate the incidence of reliance upon precedent. Given the multitude of precedents, it seem unlikely that the justices would have need—either legally or strategically—to follow doctrines that are far afield

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<sup>4</sup> Obviously, we exclude all impossible pairs (i.e., those in which a case might cite a precedent before it is

from a case's subject matter. We could, for example, collect data on whether the Court adheres to voting rights precedents in cases involving federal regulation of nuclear power, but we would be unlikely to gain much analytical leverage by such an exercise. Alternatively, we could restrict our sample to a single issue area, but such a sample might well overstate the impact of stare decisis. We would expect, after all, that in making decisions involving search and seizure the Court would cite other Fourth Amendment cases. Likewise, cases dealing with affirmative action would generate citations to other affirmative action cases, and so on.

To temper these two tendencies, we elect to sample First Amendment cases. The legal issues that arise under its umbrella are numerous and well litigated, crisscrossing questions of speech, association, press, and religion. This tactic provides enough substantive variation to measure meaningful cross-pollination between issue areas. At the same time, these legal concerns are sufficiently compact that we do not excessively sample wholly unrelated pairs of cases. No less significant, First Amendment cases are among the most salient on the Court's docket. This is important because decisions involving high-profile issues show less evidence of stare decisis (Spaeth and Segal 1999). Thus by this sampling strategy, we reduce the likelihood of overstating the impact of precedent. Relying on the *Supreme Court Database*, we gathered data on all formally decided First Amendment cases over roughly a quarter century (1974-96), creating a matrix of dyads by matching each case with every subsequent case to generate a set of 26,371 pairs.<sup>5</sup> In each instance, we determined through *Shepard's Citations* whether the Court's decision was cited and followed in one of the later decisions in that same sample.<sup>6</sup> By this

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decided).

<sup>5</sup> Specifically, we selected formally decided cases, on the basis of case citation, where at least one of the issues fell under the broad heading of the First Amendment ( $N = 229$ ). We have allowed each case to be matched with all other cases decided within the same year. This may seem problematic—it is difficult to cite decisions within the same year as many will not have been finished. However, the potential for problems is minimized by the fact that the probability of a citation from a case in the same year as opposed to a previous year is nearly the same.

<sup>6</sup> While Spriggs and Hansford's (N.d.) model of legal change proceeds in a related fashion, we differ in one important respect. Whereas their analysis of the 1991 and 1995 terms used the merits briefs in individual cases to specify which precedents might be followed or rejected, we allow for the justices to cite *any* prior First Amendment case in our sample, regardless of whether it was mentioned in the parties briefs.

method, we established not only which precedents were merely mentioned in the Court's opinions (i.e., cited) but also which precedents were the more formal patterns for the justices' policymaking (i.e., followed).

Our measures of reliance upon precedent, then, are two-fold. First, as a simple indicator, we code as 1 those cases where *Shepard's* lists a precedent as having been cited by the Court, 0 otherwise. For example, in declaring in *Rosenberger v. University of Virginia* (1995) that a public university's selective funding of campus groups violated the right to free expression, the majority opinion cited the decision of *R.A.V. v. St. Paul* (1992), which struck down a selective prohibition of fighting words. Second, to assess whether the Supreme Court actually adhered to the principle of a prior decision, we determined whether *Shepard's* listed a precedent as having been followed.<sup>7</sup> In those instances, our dependent variable is coded as 1, otherwise 0. *Shepard's* indicates, for instance, that in *Board of Directors of Rotary International v. Rotary Club of Duarte* (1987), the Court followed the decision in *Roberts v. United States Jaycees* (1984). In the *Roberts* opinion, the justices found that the right of association of the all-male Jaycees was not abridged by a state requirement that its organization admit women. In similar fashion, the Court subsequently concluded that there was no First Amendment barrier to a state's requirement that Rotary clubs open their doors to women, as well.

This method of paired comparisons allows us to locate the legal linkages that exist between cases. We turn next to building our explanatory models to account for those linkages.

### **Theoretical Expectations**

What would explain the connections between precedents and their progeny? As a general matter, the ties that bind together any social structure can be subsumed under the broad heading of social networks. Indeed, network analysis is ideally suited to illuminating behavior that is based on the

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<sup>7</sup> There are, of course, other possibilities under *Shepard's* editorial analysis, such as whether a precedent was distinguished, criticized, overruled, and the like. Because our interest lies in testing stare decisis in the strictest sense, we restrict this dependent variable to measuring only whether the Court followed a precedent.

relationships that exist between political phenomena (Knoke and Kuklinski 1982). Employing this research tradition, scholars have examined such diverse linkages as personal associations among legislators (Caldeira and Patterson 1987), relationships within the community of Washington representatives (Heinz et al. 1990), citation patterns across state supreme courts (Caldeira 1985), political communications among citizens (Huckfeldt et al. 1995) and military conflict between nations (Oneal and Russett 1997), to name but a few. Since we have a similar concern—accounting for the linkages that exist between Supreme Court policies—we think that this approach is especially well-suited to our analytic enterprise, as well.

We begin with the assumption that, all else being equal, the justices are not compelled to cite any precedents in their written opinions. To the extent that they do cite precedents, neither are the justices compelled to spell out, either explicitly or in so many words, that they are adhering to stare decisis. Thus, we take the appearance of a citation in the Court’s opinion to be an indicator of its relevance for resolving a case.

Absent other information, the source of its relevance is something about which we can offer no judgments. If a case appears in the Court’s written opinions, it is because one or more justices believed that it advanced their goals. Included among these goals might be the desire to adhere to stare decisis. Under the banner of the legal model, the Court could well be constrained by the principles established in prior decisions. At the same time, formally following appropriate precedents might simply be a mask for ideological behavior; if there really is a choice of precedents to follow, then the majority might rely strategically upon those decisions that are most compatible with its policy ambitions. Thus, the attitudinal model posits that the justices make decisions based largely upon their preferences.

Thus, two competing theories guide our modeling strategy. By comparing both the legal and extralegal characteristics of a case against the same factors from earlier decisions, we should be able to sort out the relative effects of precedents and preferences on the U.S. Supreme Court.

**Legal model.** In order to capture the potential effects of stare decisis, we employ predictors that assess the legal comparability that exists between a precedent and a subsequent decision. A number of

subjective indicators could certainly be generated, but we choose the reliable information contained within the *Supreme Court Database*. To be sure, a detailed analysis of stare decisis might well include more specific case facts, in addition to the shared characteristics of laws and issues we analyze here. For the sake of parsimony, though, we draw our measure from existing data, confident that aggregating case comparisons at this level will only understate any statistical impact stemming from precedent.

Within these data, a good starting point for assessing the legal relevance of case law is whether both the precedent and potential progeny involve the interpretation of parallel provisions of law. If the Court is genuinely concerned with maintaining consistency in the meaning of federal law, then prior decisions ought to have their greatest relevance in cases that relate to the same legal provisions. Irrespective of whether two cases involve the interpretation of a constitutional provision (e.g., the free exercise or establishment clauses of the First Amendment) or the more specific details contained in a statutory or regulatory scheme (e.g., the Federal Election Campaign Act or the Internal Revenue Code), we expect the subsequent case to derive its rationale from the prior decision. If any of the provisions of law interpreted by the Court in the precedent were the same as any of those involved in the subsequent decision, this variable (*Same Law*) is coded as 1; 0 otherwise.

In some instances, however, the data indicate that the Court construed only the First Amendment, without reference to any of its explicit guarantees. Because these residual cases are defined by the data set to include the broad liberties of speech, press, and assembly, we seek to minimize our reliance upon those instances where the legal provisions matched only along this fairly sweeping category. To that end, we code an additional variable (*Same Specific Law*) as 1 when the legal provisions are the same across pairs of cases—except those cases whose sole similarity is reliance upon the First Amendment; in this latter instance, as well as all remaining cases, we code this variable as 0. This variable is, in effect, a subset of the previous measure, denoting only those instances where the Court, in both precedent and subsequent case, interpreted identifiably specific components of the law. In this way, we capture the legal particulars and compare them across cases. If they correspond, we expect, as before, that the justices will rely upon the precedent in its opinion.

Naturally, the substantive laws involved in a case can generate a great many different legal issues for the Court to consider. Libel and obscenity, for example, provide some of the contexts in which the justices consider freedom of the press. Questions of free speech occur in various guises, including commercial speech, campaign expression, and public protests. Public aid to parochial schools as well as religious requirements in the public schools are both specific manifestations of the general prohibition against government establishing religion. Before making a decision on any of these issues, the justices should divine the legal rules embodied in the Court's doctrine and apply those principles accordingly. If stare decisis works as it should, then past rulings on specific issues should serve as a guide for decision making in the present. We anticipate, therefore, that any previous case dealing with the same legal questions will be more likely to be incorporated into the Court's current policy than cases dealing with other issues. When one or more legal issues are the same in both the precedent and the instant case, this variable is coded as 1; otherwise, 0.

Even a conscientious Court set on following stare decisis cannot be expected to weigh all precedents equally (Abraham 1998, 361). The sheer volume of prior cases makes sifting through any body of appellate law an unwieldy task. Landmark cases—decisions whose substantive impact is wide-ranging and sustained long after they are issued—are distinctive, however, in that they generate substantial political and legal conflict. For their part, the members of the Court devote particular time and attention to formulating significant new doctrine (Epstein and Knight 1998). Hence, “major cases are most likely to be cited as precedents” (Spaeth and Segal 1999, 24). To assess the special relevance of landmark cases, we code *Landmark Decision* as 1 for any precedent in our sample that is listed among the major decisions of the Court in *Congressional Quarterly's Guide to the U.S. Supreme Court* (Biskupic and Witt 1997). All remaining cases are coded as 0. Our expectation here is obvious enough; the rules established in landmark cases should be more closely adhered to than those established in less prominent cases.

**Preference model.** Quite apart from any considerations of stare decisis, the justices should rely upon precedents that are consistent with their personal preferences. The attitudes of the justices are the

primary determinant of their decisions on the merits, so it is quite likely that precedent will often serve merely to provide intellectual buttress to a decision based upon the justices' policy orientations (Spaeth and Segal 1999). Certainly, strategic justices who want to secure political support for their policies might be inclined to cite liberally those precedents that will help to project an aura of legitimacy on their opinions. Citing and following ideologically compatible precedents certainly advances such a goal.

Our measure of *Ideological Distance* between precedent and potential progeny is straightforward. Relying upon widely used indicators of the justices' attitudes (Segal et al. 1995), we generate an aggregate measure of the Court's preferences in each case by computing the mean ideological score of the justices in the majority coalition. We then calculate the absolute difference between these two preference measures. As this variable decreases—that is, as the policy adopted in the precedent approximates the policy adopted in the present case—the likelihood of the Court relying upon the prior case should increase.

Whatever the independent impact of the ideological congruity between cases, we expect its effects to be magnified when the precedent and its prospective progeny relate to the same legal issue. For ideological reasons, the justices may variously rely upon precedents that crisscross different policy domains. When a majority has available a precedent that happily corresponds to both legal and attitudinal considerations simultaneously, the Court should be particularly prone to draw strength from such a case. To pick up these potential effects, we create a multiplicative term that is equal to the ideological distance between cases times the presence of a match on the substantive issues at stake. Quite simply, when the justices have an agreeable precedent that covers the same legal ground, it should quite likely to be referenced in a written opinion.

On a more practical level, the potential for precedents to lose their relevance over time might also factor into the Court's calculus. Laws and their bearing upon contemporary circumstance vary substantially with changes in the social, economic, and political environment. Consequently, precedents that at one time had substantial connections to existing legal conflicts may decay and lose their significance. At the extreme, outdated doctrine is actually overruled, and aged precedents are more likely

to fall than younger ones (Brenner and Spaeth 1995, 29-33). Even if the Court does not formally abandon outmoded cases, the demand for creative solutions to novel legal questions may well diminish their relevance. Taking this into account, we develop a simple measure of the age of a precedent (*Age of Preceding Case*) by calculating the difference in the volume numbers of the *U.S. Reports* in which the precedent and later case are reported. By this reckoning, the older the precedent, the less likely it should be to figure into the Court's decision making by being cited or followed.

We use these variables as tools for explaining precedential behavior in the Supreme Court. What they reveal about the relative influence of law and policy is explained below.

#### IV. ANALYSIS

Before we begin, a brief overview of the evidence is in order. Since we are interested in the legal linkages that exist between cases, it is worth describing the overall rate of reliance upon precedent across cases. Once a case is decided, just how often is it invoked in subsequent cases? Across our matrix of dyads, it is technically possible that each could cite all previous cases—though of course this does not occur. In fact, of the 26,371 possible instances, there were some 1,488 citations, or 5.6 percent of the total. Whether that is a large or small number depends on expectations, of course. But this is to say that any opinion is likely to cite one in twenty of all possible opinions (in the domain of the First Amendment cases).<sup>8</sup> Of those citations, the Court formally followed the precedent in 114 instances (7.7 percent of the time).<sup>9</sup>

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<sup>8</sup> Not exactly, of course. The citation rate is 5.6 percent is of the cases that we have analyzed over the 23 year period—not all opinions ever issued. Incidentally, the 229 cases that we have examined generated 2527 subsequent citations. Of those, 1488 were within the First Amendment domain and 1039 were *outside* the domain. That is to say, 41 percent of the subsequent citations were by opinions issued in areas outside the formal First Amendment area. Clearly, there is some “cross-pollination” of legal precedent in the court's evolution of the law.

<sup>9</sup> Although we are only interested in adherence to stare decisis, not deviations from it, we note in passing that the Court explicitly disagreed or otherwise criticized precedent in 143 instances (9.6 percent of the time).

## Citations

Our first question is what determines the Court's choices of citations. Does the majority cite precedent simply on the basis of legal principle—choosing prior opinions on the basis of shared law or legal issue and ignoring completely the ideological content? Or does the majority simply choose precedent that agrees with its current preferences? Or is it some combination of the two?

We get a hint of the answer by looking at the simple bivariate relationships between our explanatory concepts and the Court's citation decision. Figure 1 illustrates the data by showing the probability that one opinion will cite a previous opinion as a function of the legal relationship between the two opinions. Note first that the overall rate of citation is .056—this number *seems* small simply because, of course, opinions cite only a relatively small portion of all prior law. But the differences here do matter—they indicate what *does* get cited as opposed to what is ignored.

The first row shows how the citation decision varies when the two opinions share a basis in Law—that is, when they are rooted in the same statute (say, the Selective Service Act) or in the First Amendment itself (say, the Establishment Clause). This does make a real difference: when the precedent is based on the *Same Law* as the Court's current opinion the probability of a citation rises from .02 to .10. Even more markedly, when the prior opinion reflects the *Same Specific Law* (other than the general basis of the First Amendment) the probability of being cited rockets to .36. Thus, clearly, Law matters enormously.

Insert Figure 1 about here

Further, we can see that citations also depend on the cases' dealing with the *Same Issue* (say libel, obscenity, campaign spending, protest demonstrations, religious freedom, and so on). The bottom left panel of Figure 1 shows that when the cases deal with the same substantive issues, the probability of citation rises from .04 to .14. Finally, we expect and find that Landmark cases are much more likely to be cited as well. The citation rate for Landmark cases is about double that for the "garden variety" cases, rising from .05 to .10.

Thus, we see that ordinary legal matters are important for the Court's decision to cite prior law. But this may not surprise—after all it would be a shock to discover that the Court ignores legal principle when it grounds its decisions in precedent. The theoretical controversy before us is whether the mobilization of prior law is driven mainly by preferences, not whether law matters at all.

A first glance at the importance of preferences is provided in Figure 2. Here we see how the probability of citation varies with the fundamental ideological stances of the Court's majority. Again, *Ideological Distance* is the difference between the mean ideological preference of both the original and the citing Court majorities, with a higher score reflecting ideological incompatibility.<sup>10</sup>

Insert Figure 2 about here

The pattern looks reasonable—opinions seem slightly more likely to cite prior precedents issued by justices with similar preferences. But the differences here are very small: the probability of citing an ideologically congruent opinion is .06 and the probability of citing a maximally opposed opinion is .05. For our purposes, we must conclude that ideological preferences are relatively unimportant for citation decisions.

These bivariate relationships, however, may mislead. We obtain firmer statistical inferences when we construct a multivariate model that includes each of the components side by side. Accordingly, we estimated a logistic regression model of the Court's citation decisions, contrasting and combining the Legal and the Preference models. The pattern is shown in Table 1.<sup>11</sup>

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<sup>10</sup> The mean ideological preference is merely the preferences of the individual justices voting in the majority and then taking the average. (For example, Scalia, Rehnquist, Thomas, Kennedy and O'Connor represents a conservative majority and Kennedy, Souter, Stevens, Ginsberg, and Breyer, a moderate one) The (absolute value of) the difference between these two majorities is as large as it gets in the current Court. A smaller ideological distance between opinions would obtain if the two opinions were issued by the first conservative majority and the precedent issued by a majority of the same justices joined by Souter (say a prior majority of 6-3 rather than the current 5-4).

<sup>11</sup> In the following tables, we present the coefficients and standard errors from ordinary logistic regressions. Technically, our estimated standard errors may be underestimated because we do not really have 26,371 independent observations. Each originating decision appears multiple times (once for each subsequent decision) and each citing decision appears multiple times (once for each prior decision). It is possible that there is an unmodeled commonality within the observations that derives from characteristics of either the originating or the

Insert Table 1 about here

Look first at column one which represents the Legal model. Here we include indicators of whether the potential citation pair (the current opinion and the prior opinion) share bases in the *Same Law* and the *Same Issue*. We also include markers for whether the prior case was a *Landmark Decision* and the *Age of the Precedent*.

This bare-bones Legal model works well enough. All the variables are important and statistically identifiable—the prior bivariate relationships are replicated here in the more rigorous statistical analysis. The estimates confirm that what is especially important is that the precedents share the same roots in law (statutory or constitutional). Again, this is no surprise. Confirming our impressions from the graphs, column two shows that the impact of preferences on citation decisions is minimal. The logistic regression coefficient (-.31) is rather modest and statistically indiscernible from zero.<sup>12</sup>

Putting the two models together, combining the Legal and Preference models, yields column 3. Here, we see that the individual components are sufficiently independent of one another that the coefficients and inferences remain essentially the same. Law matters enormously, Preferences hardly at all.

We might not be surprised to see that Preferences matter little *when taken by themselves*. After all, we should hardly expect even the most preference-driven justices to cite prior cases unless they were legally relevant. The linear term here tests such a proposition and it fails.

Happily, our multivariate framework allows us to test a more subtle formulation. We initially asked whether the determinations of citations were Law, Preferences, or some combination of the two.

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citing case. Accordingly, we have re-estimated the logistic regression coefficients appearing in Tables 1 and 2 while employing the Huber-White estimates of the standard errors—to produce more robust estimates. Not knowing whether the commonality within originating or within citing cases was more important, we re-estimated all equations allowing for either possibility. In fact, the ordinary logistic standard errors are probably slightly underestimated. But in all cases, our inferences based on ordinary logistic regressions are sustained. That is to say, the lack of independence of our paired observations does not threaten the statistical power of our conclusions.

<sup>12</sup> Here we use the  $p < .01$  level of statistical scrutiny. We want to be cautious because we are dealing with a large  $N$ —the 26,371 paired comparisons—so we want to be careful about claiming theoretical confirmation for

Here we model the “combination of the two” in the following manner. We expect that Preference will matter when justices choose among those precedents that share the same Law and Issues. Accordingly, we construct a multiplicative interaction term to test the idea—thus modeling the impact of Law given a match or mismatch on Preferences.<sup>13</sup> The interaction terms are crucial for this test.

Unhappily for subtlety, the test fails. In column four we see the relevant logistic regression that demonstrates that the *Law x Preference* and *Issue x Preference* interactions are unimportant. (We leave out the coefficients to save space.<sup>14</sup>) Given the large number of observations, statistical “insignificance” here is telling.

So we are left with an entirely “Legal” model of Supreme Court citations. When the Court decides to ground its arguments in the existing case law, it selects precedents on the basis of their being rooted in the same fundamental law and their being concerned with the same substantive issues. The Court does not much consider the ideological outcomes of the prior opinions. In this sense, the flow of law through the citation mechanism—where legal argument transfers from one precedent to the next—seems entirely independent of the Court’s policy preferences. If we stopped here, however, we would fundamentally misunderstand the Court’s decision-making process.

## Following Precedent

We are particularly interested in precedent when the Court explicitly *follows* that precedent. The pattern of *citations* matters enormously as it forms the cross-referencing propagation system of legal reasoning. But in our counting of citations, we include references that merely point to previous law

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effects that are minimal but faintly discernible due only to the large number of observations. Note that the Ideological Distance coefficient of  $-.31$  is statistically significant at the  $p < .05$  level.

<sup>13</sup> Thus we have the linear terms for *Law*, *Ideological Distance*, and the multiplicative product *Law x Ideological Distance*. The latter term reflects the added citation impetus of *Law* when *Ideological Distance* is small or large.

<sup>14</sup> For the record, the coefficients and their standard errors are: *Same Law x Ideological Distance* .07 (.36), *Same Law\_Not 1<sup>st</sup> Amendment x Ideological Distance* .50 (.40), and *Issue x Ideological Distance* .09 (.29). All are statistically insignificant, individually and as a group.

(perhaps in “string” citations) and others that distinguish the current case from previous policies. To focus more clearly on precedent that shapes decisions, we now turn to instances in which *Shepard’s Citations* indicates that the Court explicitly *followed* the precedent. While surely many of the less explicit citation references shape and constrain decision-making and explication, the “follow” cases provide direct and clear evidence that the prior opinions matter.

In order to proceed, we start with the observation that in order for the Court to *follow* a precedent, the case must have already passed the filtering criteria that makes the opinion worthy of *citation*. We move forward by modeling the process by which the Court decides, from among the cases it cites, those it wishes to follow. Thus, we shall analyze the 1,488 cited cases to see what marks them as worthy of being followed.

We again pose the two “theoretical” components, a Legal model and a Preference model. The elementary bivariate relationships are illustrated in Figures 3 and 4. These bar charts carry the same sort of interpretation as the previous Figures—though we need recall that we are looking at the effects of Laws, Issue, and Ideological Distance on the choice of *following* precedents among those already cited rather than *citing* cases out of all available decisions.

Insert Figures 3 and 4 about here

Notice that this time the formal bases in Law matters very little. The impact of sharing legal roots increases the chances of following precedent only from .06 to .08 and the impact of sharing non-1<sup>st</sup> Amendment roots is equally modest—unlike the case for *citations*. However, the importance of policy-issue relevance stands up: when the prior case deals with the same issues its chances of being followed double in magnitude, rising from .05 to .11.

In addition, note that Landmark cases are not especially likely to be followed—there is no difference in the probabilities for Landmark and ordinary cases. They are indeed likely to be cited, but those citations are not particularly likely to be compelling.

In further contrast to the citation process, the selection of precedent to follow looks much more in tune with the justices’ preferences. In Figure 4 we see that the probabilities of following precedents is

clearly related to the ideological proximity of precedent's majority to the current majority. Opinions written by ideologically similar majorities are followed 12 percent of the time while those written by opponents only about 5 percent of the time. It seems that the directional implications of prior opinions matter enormously for a precedent's power.

When we formalize the statistical analysis, we confirm our visual impressions. Table 2 repeats the logistic regressions, this time of the probability of the Court's *following* a precedent once the precedent has been cited.<sup>15</sup>

Insert Table 2 about here

The Legal model confirms that Issues matter. They matter for getting a precedent cited and, even thereafter, they matter for the precedent's being followed. Otherwise, though, the remaining parts of the Legal model—parts that did so much for shaping the Court's citation behavior—fall by the wayside. Formal Legal roots and Landmark decisions make no difference when the Court decides which precedents to follow.

The formal statistical model in column two also confirms that Preferences matter for precedential choice. The Court clearly is inclined to follow precedents that agree with their preferences. Perhaps this is no surprise.<sup>16</sup> Moreover, note that all remains the same when we put the two parts together in column 3. Here we eliminate the inconsequential Legal components to present a cleaner Legal plus Preferences model of following precedent. Both parts matter and they matter about equally.

Finally, we may again test the idea that the power of law and preference are mutually interdependent. We should naturally expect that when the Court decides to *follow* precedent it would choose prior opinions that were jointly relevant and congenial to their own preferences. That is to say, we

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<sup>15</sup> For these equations we have eliminated the Age of the precedent—to clear out clutter. We estimated its effects in similar equations to discover that it was nowhere significant for the decision to follow precedent.

<sup>16</sup> Incidentally, we tested the proposition that it is the preferences of the opinions' authors (rather than the majorities) that matter. The proposition is not sustained. While we certainly have not explored the matter in any detail, this result is consistent with the idea that it is the collective majority that carries the political weight, not the individual author who, after all, must use legal argument (and precedent) to maintain the majority.

should find a statistical interaction between the Legal and Preference measures. In fact, finding no interaction would imply two things: (1) that the impact of law is independent of whether that prior law supported the current Court or not and (2) that the Court is able to find compelling precedent independent of whether that precedent is immediately relevant.

The decisive test lies in column 4 of Table 2—where we see that the Interaction of the Legal and Preference model carries a coefficient of  $-.33$  with a standard error of  $1.12$ . This is decidedly small and statistically insignificant. We are again pushed to the inference that the operation of the Legal and Preference components are entirely independent. The failure of the interaction term to pass muster tells us something important about how the Court operates—in making its strategic choices, the Court clearly weighs heavily *both* the constraints of prior legal reasoning and the impetus of their own preferences.

In substantive terms, this means that the justices have a facility for following recognized legal doctrine, even if that doctrine is established in other issue areas. To take one example from our data, a majority of the Supreme Court held in *O’Lone v. Shabazz* (1987) that restrictive prison regulations did not infringe upon the rights of Muslim inmates to exercise their faith, even if those regulations prevented the inmates from attending a compulsory religious service. Formally following this precedent two years later, a comparable lineup of justices in *Thornburgh v. Abbott* (1989) upheld the right of prison officials to censor selectively the publications sent to prisoners. That the majority would deploy a precedent limiting one constitutional right (i.e., free exercise) to justify limits placed on another (i.e., free expression) nicely illustrates the strategic behavior of the justices: Leaving aside the justices’ almost universal condemnation of government censors,<sup>17</sup> a more liberal Court had decided a quite comparable case in 1974, ruling in *Procunier v. Martinez* that the censoring of prison mail did, in fact, violate the First Amendment. Rather than adhere to the liberal teaching of *Procunier*, a conservative coalition elected instead to overturn that precedent. In short, faced with a prior decision that was a virtual carbon copy of a

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<sup>17</sup> See, e.g., *Freedman v. Maryland* (1965); *Times Film Corp. v. City of Chicago* (1961); *Vance v. Universal Amusement* (1980).

current case, a group of justices opted to level the precedent that did not reflect its preferences and ground its decision elsewhere.

At the same time, our results also imply that the Supreme Court makes an effort to follow legally relevant precedents, quite apart from ideological considerations. So, attitudinally akin majorities readily follow related precedents—the same set of justices who ruled a state flag desecration statute unconstitutional in *Texas v. Johnson* (1989), for instance, readily applied that case’s rationale to invalidate the federal government’s flag protection law in *U.S. v. Eichman* (1990). But so too do the justices respect the doctrine of less like-minded brethren—after the Burger Court, in *Central Hudson Gas & Electric v. Public Service Commission* (1980), protected commercial speech by overturning a ban on promotional advertising by utility companies, in like fashion the more conservative Rehnquist Court, in *Cincinnati v. Discovery Network, Inc.* (1993), struck down a city’s ban on the use of newsracks to distribute commercial information. These cases illustrate what our results tell us happens more generally: Holding constant the Court’s preferences, the legal principles that are transmitted across cases are also a relevant force in judicial policymaking.

Insert Table 3 about here

Quantitatively, we get a better feel for the relative impact of the Legal and Preference models when we see the estimated probabilities of the Court’s following precedent. Table 3 provides the calculated values for a change in either of the two components. First, it compares the expected probabilities when the precedent concerns the same issue as the current case and when it does not. Here we see that the chances of being followed rises from .04 to .10 when there is a coincidence of issues.<sup>18</sup> Similarly, when the prior opinion is supported by a congenial majority (within the nearest quartile of majorities) the probability of its being followed is .09, while an opinion from a distant court might have only a .05 chance of being followed. Given the character of these measures, the magnitudes of the effects

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<sup>18</sup> In both cases, we calculate these predicted probabilities holding the values of the other variable constant at its mean.

are very similar. Satisfying either the Legal or the Preference model approximately *doubles* the chances that a prior precedent will be followed.

## V. DISCUSSION

For some time, scholars of various methodological stripes have struggled to assess the role that precedent plays in the formulation of Supreme Court decisions. In this paper we have reported on an introductory investigation into the factors that cause the Court to use and follow precedent in writing its opinions.

To proceed, we have posited a two-stage process in which the Court first chooses among potential cases which to discuss and then chooses which precedents are sufficiently compelling to mandate following the case's guidance. Our evidence suggests that the strategic thinking is different in the selection of citations as opposed to the choice of governing precedent. The selection of citations—the filtering process by which law propagates—seems entirely based on the legal linkages that exist between cases. In contrast, the choice of directional guidance seems to reflect both issue relevance and policy preferences.

In the main, we have found that the ties between precedent and progeny are driven by both of the decision modes that analysts frequently posit. On the one hand, we see that the Court evinces a sensitivity to the standards of legal reasoning and *stare decisis*, both when it chooses to cite cases and when it decides to follow them. Especially when exercising judgment about what sorts of cases need discussion in an opinion, the Court seems to act in a most “textbook-like” fashion—guided by matters of legal foundation, issue relevance, and paying homage to landmark cases. Thus, in setting the screen of what is discussed and what is not, the Court pays little obvious heed to its own preferences over outcomes.

Yet, when it comes to choosing which precedents to *follow*, the Court leaves a trail that suggests that it is both constrained by legal norms *and* that it pursues its own policy preferences. Importantly, these two factors, issue relevance and ideological distance, operate independently of one another. We

understand that the importance of preferences does *not* depend on the relevance of the precedent (save its passing the citation filter). That is to say, the Court can find useful precedent to follow no matter what the broad features of the legal structure—it can find governing precedent to justify going its own way. Likewise, we understand that the importance of legal principle does *not* depend on ideological compatibility. The Court’s reliance on precedent represents much more than mere justification for following its own preferences.

For many, this storyline should be familiar. Indeed, these results paint a picture of a Supreme Court that follows its policy preferences while remaining sensitive to legal constraints. Not at all surprisingly, we find evidence that the justices are strategic actors, deploying precedent to justify and advance their policy goals. At the same time, though, these same justices seem acutely aware of the principles established in their prior cases, systematically following them irrespective of their ideological orientations.

Perhaps more surprising is that we document the impact of stare decisis within the realm of First Amendment cases. Others who have gauged the role of precedent have found its influence to be restricted to cases of low legal visibility (Spaeth and Segal 1999). By selecting a broad issue area that has a disproportionate share of landmark cases, we have set a fairly high threshold for the legal model to overcome. That we find precedent exercising a significant effect, even when holding constant the Court’s preferences, suggests that there are genuinely strong undercurrents of stare decisis running through the Court’s policies.<sup>19</sup>

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<sup>19</sup> To be sure, our evidence should be considered both generalizable as well as highly restricted. We have examined a wide-ranging collection of cases over a quarter century, not concentrating on a single legal principle or policy issue or on the most dramatic of cases. Our expanding the case-selection net gives us an ability to make inferences about the Court’s practices in a fairly general way. Yet, by focusing on what is systematic across cases without regard to their special characteristics, we have missed a good deal of subtlety in the ways the Court chooses to interpret, expand upon, or restrict, the power of previous rulings. Nevertheless, we believe that these sorts of efforts to systematize our understandings will complement the work of others who concentrate on the nuances of legal reasoning.

Thus, our results provide strong support for both the attitudinal and the legal models of decision-making. The Court follows both its own policy preferences and also the implications of legal precedent. In this pattern we find confirmation of the Court's peculiar blend of political and legal characteristics. On the one hand, the Court seems much like any other political institution—it produces policies in accord with its members' desires. On the other hand, the Court is constrained by the fabric of legal reasoning in a way that makes judicial politics so very distinct from the politics of legislatures and bureaucracies.

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**Table 1. Models of Supreme Court Citation Decisions  
Pairwise Comparison of First Amendment Cases,  
1974-1996**

	Dependent Variable:			
	Citations (Legal Model)	Citations (Preference Model)	Citations (Combined Model)	Citations (Combined Model plus Interactions)
Same Law	1.26* (.07)		1.25* (.07)	1.23* (.12)
Same Specific Law (other than General 1 <sup>st</sup> Amendment)	1.69* (.08)		1.69* (.08)	1.52* (.14)
Same Issue	.88* (.06)		.88* (.06)	.90* (.10)
Landmark Decision	.69* (.07)		.70* (.07)	.70* (.07)
Age of Precedent	-.0062* (.0012)		-.0059* (.0013)	-.0060* (.0013)
Ideological Distance		-.31 <sup>ns</sup> (.13)	-.28 <sup>ns</sup> (.14)	-.39 <sup>ns</sup> (.31)
Interactions of Legal and Ideological Model <sup>a</sup>				<sup>ns</sup>
Constant	-3.95* (.08)	-2.73* (.04)	-3.88* (.08)	-3.85* (.11)
Pseudo R-Square	.13	.00	.14	.14
Log Likelihood	-4951	-5720	-4948	-4947
P < Chi Sq	.00	.02	.00	.00
N	26,371	26,371	26,371	26,371

**Notes.** \*  $p < .01$ . <sup>ns</sup> Not Significant. Each column represents a separate logistic regression modeling the Court's decision to cite a preceding opinion.

<sup>a</sup> The multiplicative interactions include (Same Law x Ideological Distance), (Same Law-Not 1<sup>st</sup> Amendment x Ideological Distance), and (Same Issue x Ideological Distance). All terms, individually and jointly, are statistically indiscernible from zero.

**Table 2. Models of Supreme Court Decisions to Follow Precedent  
(Once the Precedent has been Cited)  
Pairwise Comparison of First Amendment Cases,  
1974-1996**

	Dependent Variable:			
	<i>Follow Precedent</i> (Legal Model)	<i>Follow Precedent</i> (Preference Model)	<i>Follow Precedent</i> (Combined Model)	<i>Follow Precedent</i> (Combined Model plus Interactions)
Same Law	.08 <sup>ns</sup> (.30)			
Same Specific Law (other than General 1 <sup>st</sup> Amendment)	.13 <sup>ns</sup> (.24)			
Same Issue	.91* (.21)		.93* (.20)	1.00* (.30)
Landmark Decision	.02 <sup>ns</sup> (.25)			
Ideological Distance		-2.09* (.54)	-2.09* (.54)	-1.88* <sub>s</sub> (.88)
Interaction of Legal and Preference Model <sup>a</sup>				-.33 <sup>ns</sup> (1.12)
Constant	-3.08* (.29)	-2.00* (.15)	-2.51* (.20)	-2.55* (.25)
Pseudo R-Square	.03	.02	.05	.05
Log Likelihood	-391	-393	-382	-383
<i>P</i> < Chi Sq	.00	.00	.00	.00
N	1488	1488	1488	1488

**Notes.** \*  $p < .01$ . <sup>ns</sup> Not Significant. Each column represents a separate logistic regression modeling the Court's decision to *follow* a preceding opinion—once the precedent has been cited.

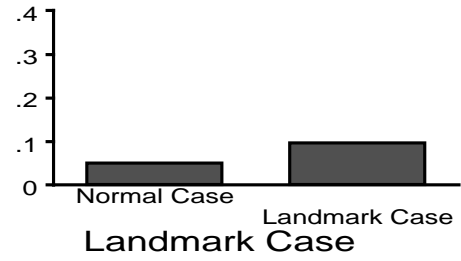
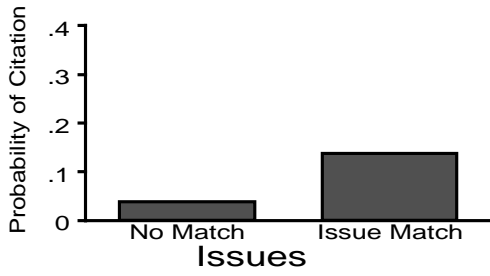
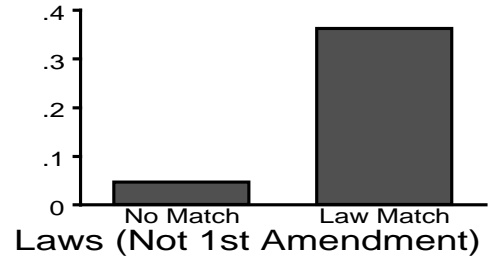
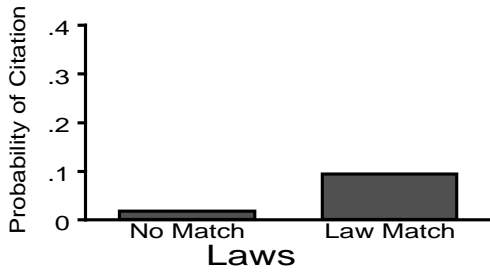
<sup>a</sup> The multiplicative interaction includes (Same Issue x Ideological Distance). All other interactions, not shown, are statistically insignificant as well.

**Table 3. Comparing the Importance of Issues and Preferences  
for the Court's Decision to Follow Precedent  
(Once the Precedent has been Cited)**

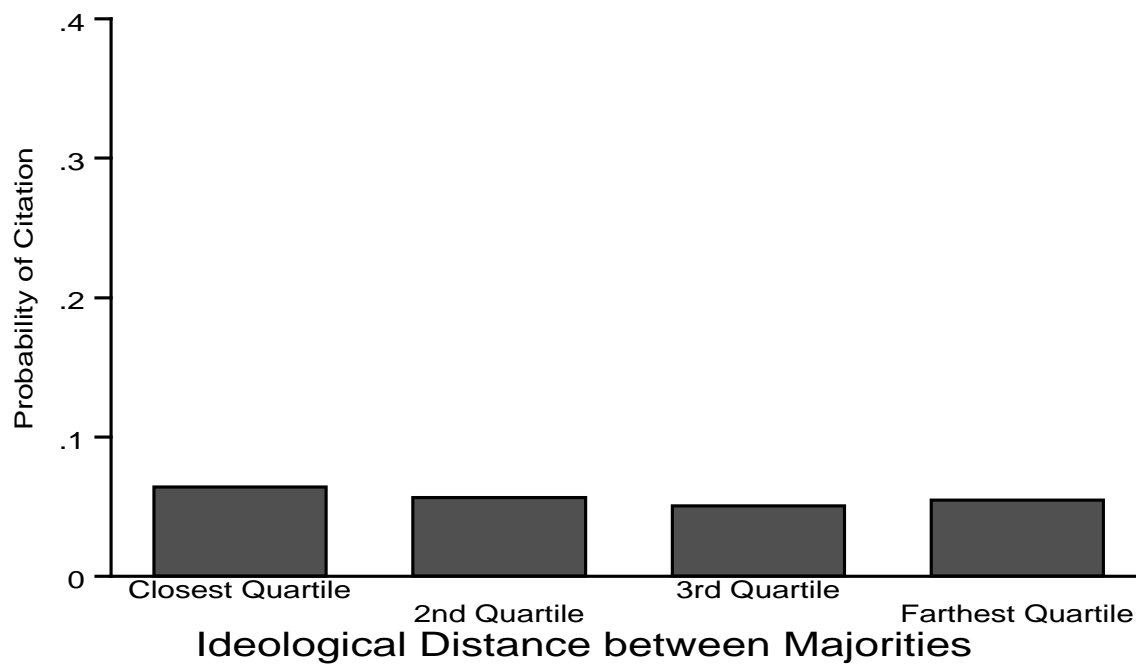
	Values of Variable	Predicted Probability of Following Precedent
Effect of Change in Issue	Dissimilar Issues (0)	.04
	Same Issue (1)	.10
Effect of Change in Ideological Proximity	Farthest Quartile of Majorities (.43)	.05
	Nearest Quartile of Majorities (.10)	.09

**Notes.** The predicted probabilities are the calculated values with the coefficients taken from the estimation equation in Table 2. In each case, the predicted change in probabilities holds the values of the other variable constant at its mean.

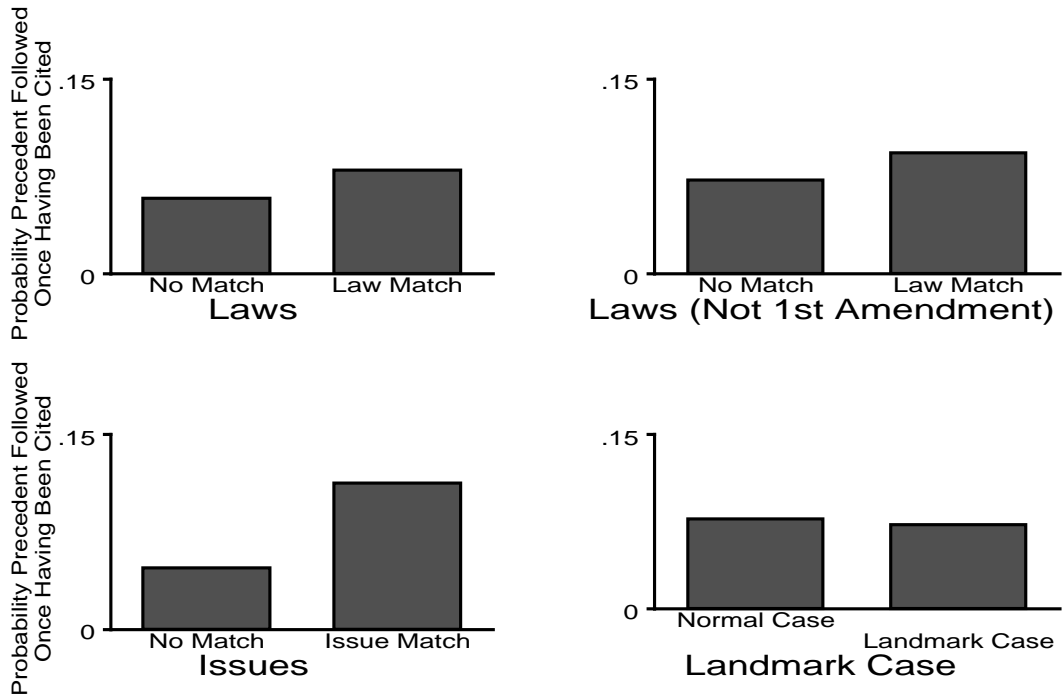
**Figure 1.**  
**Bivariate Relationships between Legal components and the Court's Choice to Cite Precedent.**



**Figure 2.**  
**Bivariate Relationship between Ideological Proximity and the Court's Choice to Cite Precedent.**



**Figure 3.**  
**Bivariate Relationships between Legal components and the Court's Choice to Follow Precedent (Once it is Cited).**



**Figure 4.**  
**Bivariate Relationship between Ideological Proximity**  
**and the Court's Choice to Follow Precedent (Once it is Cited).**

