

Statutory Constraint and the Federal Judiciary

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One of the fundamental tenets of separation-of-powers and democratic theory involves the relationships between the branches of government; the legislative branch is responsible for making laws, the executive for enforcing laws, and the judicial for interpreting laws. While this simple concept may conjure images of governmental cooperation, contemporary relationships are much less harmonious. Corwin (1957, 71) argues that the constitutional structure of government creates an “invitation to struggle” among the branches as each vies to increase its sphere of authority. One of the most dynamic struggles involves the competition between branches to define the meaning of the law. As Ferejohn and Weingast (1992, 568) note, “Democratic rule requires that the legislature be able to direct the conduct of government through the use of statutory commands.” However, many scholars claim the judiciary acts as a counter-majoritarian institution (Caldeira 1986; Mishler and Sheehan 1993; Flemming and Wood 1997), through the power of judicial review. Thus, a “continuing colloquy” exists between Congress and the courts over the meaning of the law (Paschal 1992).

This paper examines the struggle between the legislative and judicial branches from a different perspective by focusing specifically on attempts by Congress to constrain the behavior of federal judges. Previous research into the legislative-judicial relationship focuses primarily on the nomination process (Segal, Cameron and Cover 1992; Allison 1996; Barrow, Zuk and Gryski 1996; Goldman 1997; Moraski and Shipan 1999) or congressional overrides of judicial decisions (Stumpf 1965; Henschen 1983; Eskridge 1991a, 1991b; Segal 1997, 1998; Hettinger and Zorn 1999). Yet, these two aspects involve only a fraction of the interactions between the two branches. A large portion of exchanges between Congress and the judiciary occurs after confirmation of judges and before attempts at overrides; namely, the initial interpretation of

statutes by courts. Though questions over nominations and overrides are significant, their importance is built upon a foundation based on the “continuing colloquy” over the meaning of the law and the discretion to which federal judges interpret congressional statutes.

Our paper focuses on this tension by examining how Congress attempts to use the language of statutes to control judicial decision making. We argue that Congress may constrain individual judicial behavior by passing statutes containing detailed language. To test this thesis we borrow from the bureaucratic politics literature to introduce and test a new measure of statutory constraint. This continuous measure provides for a rigorous examination of the relationship between legal constraint and judicial preferences. Using data from the U.S. Courts of Appeals we find that Congress successfully constrains appellate court behavior through statutory language, although this constraint is asymmetric across individual ideology. Our results demonstrate that Congress should be included as a hierarchical principal in models of court behavior. By including congressional influences – through the measure of statutory constraint – our results demonstrate the existence of an important dynamic between the ideological preferences of judges and legal constraint. These findings have implications for both the theory of judicial decision making and the assumptions of the principal-agent model.

PREVIOUS RESEARCH ON LEGISLATIVE-JUDICIAL INTERACTIONS

Previous research on legislative-judicial interactions has been conducted in two separate and almost distinct literatures. On the one hand, some scholars have approached their research more from the legislative side, often relying on separation-of-powers (SOP) models to test various hypotheses (Eskridge 1991a, 1991b; Ferejohn and Weingast 1992; Shepsle 1992; McNollgast 1995). These models begin with the assumption that both institutions possess policy

preferences and seek to enact outcomes as close to those preferences as possible.¹ The powerful insights generated by SOP models allow researchers to determine the extent to which policy outcomes reflect the competing preferences of various institutions.

Yet, there remains one area which SOP models tend to neglect, and that is the specificity with which legislative policy outcomes are dictated. Though “Congress enacts statutes and the courts interpret them, Congress is not always silent on how its actions are to be interpreted” Ferejohn and Weingast (1992, 567). By initially modeling legislative policy outcomes as status quo points – and examining the proximity of these points to the ideal points of the courts and subsequent congresses – SOP models overlook the fact that policy outcomes are arrived at through a myriad of statutory details. These details may describe policy outcomes in vague terms, leaving the courts with large amounts of discretion to interpret statutes according to their ideal points; or, the policy outcomes may be the result of extremely specific statutory language which constrains the abilities of judges to alter the status quo points based on their individual ideological preferences.

On the other hand, scholars of the judiciary often examine legislative-judicial interactions as a dynamic conflict between the legal model and the attitudinal model (Segal and Spaeth 2002; Segal 1997, 1998; Spaeth and Segal 1999). Employing concepts such as plain meaning, legislative intent and precedent, the analyses provide empirical evidence to demonstrate the significant influence of individual ideology on judicial behavior.² While these analyses offer important insights to our understanding of the judiciary, one common limitation is the

¹ From here the models diverge along many aspects: whether to model the legislature as a single chamber or bicamerally; whether to include gatekeeping committee preferences or multiple veto points (such as the President); whether to model policy preferences unidimensionally or multidimensionally; whether to include uncertainty or model the game with perfect information; and, whether to include transaction costs for the various actors (see Segal 1997, 1998).

² From here scholars diverge along several aspects such as the extent to which judges act strategically; whether the structure of the judicial hierarchy influences decision making; and the impact of past caselaw to the decision calculus (see Baum 1997).

operationalization of the legal model. As Songer and Haire (1992, 979) acknowledge, “few studies have been undertaken by empirically oriented scholars to examine the effects of traditional legal concepts on case outcomes or judicial votes.”

Admittedly, empirically operationalizing the legal model is extremely difficult (Brisbin 1996). Scholars often employ strategies which examine progeny cases from landmark decisions (Songer and Sheehan 1990; Knight and Epstein 1996; Segal and Spaeth 1996; Songer and Lindquist 1996) or rely on a series of dummy variables to capture specific case facts or aspects of legal doctrine (Segal 1984; George and Epstein 1992; Songer and Haire 1992; Songer, Segal and Cameron 1994). We argue that a more continuous measure, grounded within an applicable theoretical framework is essential to understanding the potential legal constraints judges encounter when adjudicating disputes.

Our analysis attempts to fill the gap in these literatures by developing a more nuanced measure of legal constraint, based on specific details included within congressional statutes. In so doing, we borrow from the literature on principal agent theory and adopt a measure of statutory constraint initially developed by Huber, Shipan and Pfahler (2001) to measure discretion within the bureaucracy. As we discuss in the next section, the measure is also useful for understanding the theoretical relationships between Congress and the federal judiciary.

PRINCIPAL AGENT THEORY AND STATUTORY CONSTRAINT

The fundamental premise behind principal agent theory is that the principal seeks to produce results according to his or her personal preferences but, due to a lack of resources, the principal cannot review every aspect of a particular policy arena.³ Therefore, the principal delegates some authority to an agent who is bound (either formally or informally) by a contract

³ See Brehm and Gates (1997) for a more detailed explanation of the principal agent model.

to represent the principal's interests (Perrow 1986; Eggertsson 1990). The tension within this relationship arises because the agent also seeks to produce results according to his personal preferences, which may not be similar to those of the principal. The difficulty for the principal involves establishing substantial controls, inducements or other enforcement mechanisms to ensure that the agent does not deviate from the principal's preferences (Shepsle and Bonchek 1997), but because a principal cannot develop perfect enforcement mechanisms or monitoring capabilities, and due to information asymmetries between the principal and the agent, it is always possible for the agent to "shirk."

Scholars initially examining principal agent relationships in political science tended to focus on congressional attempts to control the bureaucracy (Weingast and Moran 1983; Wood and Waterman 1994). Huber and Shipan (2002, 31) argue, "...legislation is potentially the most definitive set of instructions that can be given to bureaucrats with respect to the actions they must take during policy implementation."⁴ While these studies demonstrate that legislators enact legislation because they seek to control their bureaucratic agents, there is no theoretical reason to believe that legislators also do not consider the effects of legislation on judicial behavior.⁵ Since Congress, as the principal, cannot develop perfect enforcement mechanisms over judges (i.e., limited threat of impeachment, cannot revoke life tenure or reduce salary of judges), "the incentives to design control mechanisms ex ante are heightened" (Shipan 1997, 9).⁶ The logic behind this assertion is straightforward: since legislative policy outcomes are the result of

⁴ For an examination of the determinants of legislative delegation also see Bawn (1995) and Epstein and O'Halloran (1996, 1999).

⁵ Several scholars successfully employ principal agent models to examine hierarchical relationships between the Supreme Court and lower courts within the judiciary (see Songer, Segal and Cameron 1994; Benesh 2002; Benesh and Martinek 2002).

⁶ Katzmann (1992, 668) notes that while legislative activity, in general, is not driven by precise calculations over manipulating lower courts, "some legislation and legislative history is created with an eye toward judicial consumption."

Congressional preferences written into statutes,⁷ legislators have significant incentives to craft the language of statutes in such a way as to minimize the discretion of judges when the courts interpret these statutes.

To examine the effects of statutory constraint on judicial behavior we borrow from the research of Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002). In examining the influence of statutory constraint on the bureaucracy, they discover that “Legislative statutes are blueprints for policymaking. In some cases, legislatures provide very detailed blueprints that allow little room for other actors... to create policy on their own. In other cases, legislatures take a different approach and write statutes that provide only the broad outlines of policy, which gives bureaucrats the opportunity to design and implement policy” (2002, 76). Thus, more ambiguous statutory language provides more discretion to other actors (including judges) to alter policy according to their ideological preferences. Such a statement is not new to scholars of the judiciary who have consistently agreed that in times of high ambiguity, judges will be freer to make decisions based on their own preferences (Rowland and Carp 1980).⁸ We therefore hypothesize that higher degrees of statutory constraint will lead to less discretion for judges and consequently decrease their ability to adjudicate disputes according to their ideological preferences.

⁷ We acknowledge that statutes are the result of bargaining within the legislature and also must be signed by the President and implemented by the bureaucracy. While these additional aspects affect the policy outcomes, examining the role of these other actors is beyond the scope of our analysis.

⁸ Similar effects are demonstrated by Songer, Segal and Cameron (1994) in their examination of appellate judges and the ability of these judges to “shirk” in relation to the Supreme Court.

RESEARCH DESIGN AND METHODOLOGY

Data for this analysis come from the U.S. Courts of Appeals Database, compiled by Donald R. Songer.⁹ Though the original data contain a random sample of cases from 1925-1996, we limit our analysis to those cases which include the interpretation of a congressional statute.¹⁰ Consequently, we analyze 2908 cases from 1961-1996. Since we are interested in the behavior of individual judges, we transposed the data to make our unit of analysis focus on individual judges which subsequently changed the number of observations to 8298 judge votes.

The dependent variable for the analysis is the ideological directionality of a judge's vote. We code the variable '1' if a judge rules in a liberal manner and '0' if the vote is conservative. We should also note that in the construction of the dataset we eliminated those cases where a clear ideological decision did not exist. Thus, the 8298 judge vote observations all include an identifiable ideological directionality.

The primary independent variable *Statutory Constraint* is borrowed from Huber, Shipan and Pfahler (2001) and Huber and Shipan (2002). As they indicate,

The proxy that we use is the length of statutes. Our qualitative and quantitative investigation of a huge number of statutes suggests that the more words a legislature puts into legislation on the same issue, the more it constrains other actors who will implement policy on that issue. Similarly, the fewer words it writes, the more discretion it gives to other actors (2002, 73).

Their analyses reveal a significant relationship between this measure and the degree of bureaucratic discretion. To measure the length of statutes we relied on information in the Songer database to identify the statute in question, and subsequently employed Lexis-Nexis and the 'word count' feature in Microsoft Word. While this strategy provided an exact count of the

⁹ This database is archived at the S. Sidney Ulmer Project for Research in Law and Judicial Politics at the University of Kentucky (www.as.uky.edu/polisci/ulmerproject).

¹⁰ We also exclude cases before 1961 because the Songer database reduces the random sample to 15 cases per circuit per year from 1925-1960, and we wanted to keep the sample size consistent throughout our analysis.

number of words for each statute, we argue that it is the general length of statutes that is important. Therefore, we take the natural log of each statute's word count as our operationalization of *Statutory Constraint*.¹¹ As we hypothesize, when statutory constraint increases (i.e., as the natural log of the number of words increases), the likelihood of judges ruling according to their personal ideological preferences should decrease.¹² Consequently, as constraint increases liberal judges should be more likely to rule conservatively and vice versa for conservative judges. Therefore, a negative relationship should exist for liberal judges and a positive relationship for conservative judges.

As the attitudinal model indicates, judicial decision making is also the result of individual ideological preferences (Segal and Spaeth 2002). Since this theory was initially developed for the U.S. Supreme Court, and because of its unique institutional characteristics, several refined measures of ideology exist (Segal and Cover 1989; Martin and Quinn 2002). Unfortunately, comparable measures of ideology for appellate judges are not as refined. However, several scholars demonstrate the validity of the ideological preferences of an appellate judge's appointing president as a reliable surrogate for judicial ideology.¹³ In this vein, we rely on the Segal, Timpone and Howard (2000) measure for our variable *Individual Ideology*. These scores represent a continuous measure of presidential liberalism in areas of social policy. As the authors demonstrate in their article, substituting the appropriate percent liberal score – based on a judge's appointing president – offers a suitable surrogate for judicial ideology. Thus, judges appointed by more liberal presidents will possess more liberal ideology scores. Consequently, we

¹¹ The natural log ranges from a minimum of 4.34 to a maximum of 12.64, with a mean of 10.48 and standard deviation of 1.63.

¹² We recognize that judges encounter situations where only portions of a statute are challenged. In these situations we argue that the entire statute remains relevant as an indicator of constraint both because specific clauses may follow the general trends of the entire statute in terms of constraining language (*ceteris paribus*) and because the general statute may provide legal contexts for the judges. Thus, our measure remains a reliable indicator of legislative constraint.

¹³ See Pinello (1999) for a survey of research relying on this surrogate.

hypothesize more liberal judges will be more likely to render liberal decisions. A positive relationship should therefore exist between our variable *Individual Ideology* and the dependent variable.

In addition to the two primary independent variables, our model includes several other variables to control for various relevant factors. The first, *Lower Court Directionality* measures the case disposition by the court conducting the initial trial. The variable is coded '1' if the lower court ruled in a conservative manner, '2' if the court rendered a mixed decision, and '3' if the court ruled liberally. Theoretical expectations indicate the Courts of Appeals will be more likely to affirm a District Court ruling (Songer and Sheehan 1992; Songer, Sheehan and Haire 2000), and we therefore hypothesize a positive relationship.

The second set of control variables measure the impact of specific challenges to legislation. The variable *Constitutional Challenge* tracks whether litigants ask the appeals courts to interpret a statute based on a provision of the U.S. Constitution. The variable *Procedural Challenge* measures whether statutory interpretation is based on a procedural matter. Both are dummy variables, coded '1' if the appropriate challenge is present.

The final set of control variables measure the influence of specific issue areas on the decision calculus. *Criminal Issue* is a dummy variable which is coded '1' if the case involves the interpretation of a criminal statute. *Civil Liberties Issue* measures the presence of a civil rights or liberties case and *Economic Issue* tracks litigation involving economic rights or governmental regulation of the economy.

EMPIRICAL RESULTS

Since the dependent variable is dichotomous, we employ a series of probit models to evaluate the empirical specification. The first model examines the entire dataset. As seen in Table 1, the model performs well, correctly predicting 65.4% of the variance which translates into a 15.2% reduction of error.¹⁴

Insert Table 1 about Here

According to Table 1, our two primary variables of interest – *Statutory Constraint* and *Individual Ideology* – are statistically significant. The measure of judicial preferences is positive and leads to the conclusion that judges appointed by more liberal presidents are significantly more likely to vote in a liberal manner. Conversely, judges appointed by more conservative presidents are more likely to vote conservatively. The variable *Statutory Constraint* is negative which indicates that more detailed language in statutes increases the likelihood that judges will rule in a conservative fashion.¹⁵

While these initial results are encouraging, they do not directly test our primary hypothesis: that increased statutory constraint will induce liberal judges to vote conservatively and vice versa for conservative judges. Implicit in this statement is the premise that not all agents are equal. Stated another way, principals may seek only to constrain certain agents whose preferences diverge, while allowing agents with similar preferences greater discretion. Therefore, to test our hypothesis appropriately we run two additional models, one which examines judges appointed by Democratic presidents (Model 2) and the other which focuses on Republican

¹⁴ The reduction of error statistic is calculated using the formula provided in Hagle and Mitchell (1992):

$$\text{ROE (\%)} = 100 \times \left[\frac{\% \text{ correctly predicted} - \% \text{ in modal category}}{100\% - \% \text{ in modal category}} \right]$$

¹⁵ Other independent variables are also statistically significant: *Lower Court Directionality*, *Procedural Challenge*, and *Criminal Issue*. However, because they are not germane to our primary analysis, we omit a discussion of their impact. The remaining independent variables: *Constitutional Challenge*, *Civil Liberties Issue*, and *Economic Issue* do not exert a significant impact on voting behavior.

appointees (Model 3). Table 1 reveals that both models perform well. Model 2, focusing on Democratic appointees, correctly predicts 64.7% of the variance, and offers a 20% reduction of error. The model focusing on Republican appointees correctly predicts 66.1% of the variance which translates into an 11.5% reduction of error.

Examining the parameter estimates in each model separately reveals that not all appellate judges behave similarly. The data in Model 2 indicate that Democratic appointees are significantly influenced by *Statutory Constraint*. As the natural log of a statute's word count increases, judges appointed by Democratic presidents are significantly more likely to cast conservative votes (contrary to their ideological preferences). Additionally, the variable *Individual Ideology* is no longer significant, indicating Democratic appointees are not influenced by ideological preferences when one controls for statutory constraint. The empirical results displayed for Model 3 depict a different pattern. According to the data, Republican appointees are not influenced by *Statutory Constraint*; the variable loses statistical significance. Yet, these judges remain significantly influenced by *Individual Ideology*. The positive coefficient for this variable indicates that judges appointed by moderate Republican presidents are more likely to cast liberal votes than are their more conservative colleagues.

These findings are important for several reasons. First, our findings with regard to liberal judges empirically demonstrate, as Rowland and Carp (1980) hypothesize, that there is a tradeoff between the ideological preferences of judges and legal constraint. Our results suggest liberal judges are more likely to render liberal decisions, but only in lieu of statutory constraint. As the level of constraint increases, liberal judges are less likely to rule based on their preferences. Consequently, these judges have less latitude or discretion to vote ideologically. Without a

measure of statutory constraint in the model, we would miss an important dynamic of the judicial decision making process.

Second, with regard to conservative judges, our findings also are interesting. If liberal judges are constrained by congressional statutes, one could logically expect conservative judges to be equally constrained. Yet, our findings indicate conservative judges are not influenced by statutory constraints. Rather, they continue to rule according to ideological preferences. One possible explanation for this phenomenon could involve the ideological component of the statute. It is possible that the statutory language supports, rather than constrains, conservative behavior by judges. If we acknowledge the political motivations behind congressional behavior (motivations which are consistently demonstrated in the congressional literature), then we should acknowledge the potential for agents with similar ideological preferences to rely on statutory language to reinforce their ideological proclivities.

An example of this is found in specific issue areas adjudicated by appellate judges. As revealed in Table 1, the data indicate that the variable *Criminal Issue* is significant and in the negative direction for all three models. Thus, judges (regardless of ideology) are more likely to cast conservative votes when they encounter criminal appeals. While previous analyses indicate the potential prevalence of frivolous criminal appeals to explain this finding, an alternative explanation may also exist. A subsequent analysis (not reported in the table) of cases involving criminal appeals confirms the continued significance of the variable *Statutory Constraint* for Democratic appointees (but not for their Republican colleagues), indicating substantial congressional control over liberal judges in criminal law. This discovery is not surprising if one recalls the ongoing debate over criminal statutes (including federal sentencing guidelines) between Congress and the judiciary. Numerous examples exist pointing to the political rhetoric

that judges possess too much discretion over criminal cases.¹⁶ The fundamental tenor of this debate involves the liberal tendencies of judges and, subsequently, their support of criminal defendants. Responding to these concerns, Congress has therefore constructed statutes so as to minimize the discretion afforded federal judges; in essence, to induce judges to adopt more conservative positions and rulings. And, in so doing, conservative judges encounter legislative statutes which reinforce their ability to rule ideologically.

Further evidence for the asymmetrical effect of statutory constraint is found in Table 1. As can be seen in models 2 and 3 the measure for *Procedural Challenge* is significant for Democratic appointees, but not for their Republican colleagues. The positive coefficient indicates that liberal judges use procedural challenges to render more liberal decisions. One explanation for this finding is that judges appointed by Democratic presidents, already having been constrained statutorily by Congress, look for alternative strategies to minimize the impact of constraint, allowing the judges to cast votes closer to their ideological preferences. Hence, procedural concerns allow these otherwise constrained judges to ‘chip away’ at the statutory restrictions. Conservative judges, on the other hand, who are not subject to statutory constraint (as model 3 indicates), already vote ideologically and consequently do not need procedural challenges to support their decisions. In a similar vein, since *Constitutional Challenges* are rare and judges seem hesitant to subject many federal statutes to constitutional review, they provide less opportunity for Democratic appointees to minimize the impact of statutory constraint. And, conservative judges do not need additional constitutional support to reinforce their ideological voting patterns which already are reinforced by statutory language.

¹⁶ Examples include California’s ‘three strikes and you’re out’ provisions, the failed 1988 presidential campaign of Michael Dukakis, and the recent decision of the Supreme Court in *Blakely v. Washington* (2004).

These findings suggest a theoretically important way of thinking about judicial decision making. Not only is there a tradeoff between legal constraint and ideology, as Rowland and Carp (1980) hypothesize, but there is also a differential impact of constraint that is affected by certain non-ideological factors. Thus, we present a much more dynamic model than traditionally is presented in the literature. As Brisbin (1996) argues, the legal model often has been reduced to nothing more than a straw man. Our analysis demonstrates that we can now conceptualize judges as not only being constrained by various legal factors, but also as having incentives and opportunities to choose other factors which minimize the impact of legal constraint. Without understanding how judges react to legal constraint it is difficult to truly understand how they employ their political attitudes into the decision calculus. The task of future research then will be to include additional measures of legal constraint (such as precedent) into a model.

CONCLUSIONS

The tension between Congress and the courts caused by the ‘continuing colloquy’ over the meaning of the rule of law has profound implications for democratic theory since each institution impacts social policy largely through the statutory-medium (creating statutes for Congress and interpreting statutes for the courts). While scholars have examined whether courts rule against congressional preferences, and, consequently, whether Congress can successfully override court decisions, our analysis focuses on Congress’ ability to constrain federal judges by passing legislation containing detailed language. Borrowing a continuous measure of constraint from the bureaucratic politics literature, and testing it with data on the U.S. Courts of Appeals, we discover several conclusions.

First, Congress is successful in constraining federal judges. The measure of statutory constraint reveals that more detailed language (resulting in statutes with higher word counts) in legislation significantly limits the discretion afforded to appellate judges to rule according to their ideological preferences. Thus, Congress can operate as a viable principal to federal judges if the legislators decide to craft unambiguous statutes. This conclusion therefore parallels principal-agent models within the judicial literature which demonstrate the effectiveness of the Supreme Court as principal to lower courts. Future examinations should account for the effects of both Congress and the Supreme Court on the decision-making processes of lower court judges.

Second, our results also have direct implications for principal-agent models. In addition to demonstrating that Congress is a hierarchical principal capable of influencing judicial decisions, our evidence indicates that agents are not all the same. Among federal judges, we discover substantial differences between Democratic and Republican appointees both in terms of statutory constraint and ideological voting. The data indicate judges appointed by Democratic presidents are not influenced significantly by ideological preferences but are constrained by statutory language. Conversely, Republican appointees are not constrained by statutes and consequently, continue to rule according to ideological preferences. This conclusion should caution scholars who employ principal agent models. Though many models differentiate between the type of principal involved (e.g., the president, Congress, the Supreme Court), few analyses (see Waterman and Meier 1998; Krause 1999; Waterman, Rouse and Wright 2004) emphasize the differential nature of agents. The tendency, at least implicitly, is to treat all agents as having the same preferences. Though it may be difficult to identify preferences of agents in the bureaucracy (short of conducting surveys), explicit measures of ideology exist for judges. Using these measures, our analysis shows that simply assuming agents react to a principal in a similar

manner may overlook the fact that the effects of constraint are asymmetric. The courts provide fertile ground to test anew the assumptions of the principal-agent model.

Third, our successful testing of the statutory constraint measure demonstrates its applicability as a continuous measure of one aspect of the legal model. Rather than only relying on a series of dummy variables to control for various case facts or legal principles, we offer a more nuanced measure of legal constraint. Additionally, this measure is generalizable across a variety of situations, including state legislatures and parliamentary democracies. Therefore, scholars of the judiciary can examine empirically legislative influences on judicial behavior in any setting where courts interpret legislative policy outputs. Indeed, future research should examine how statutory constraints interact with influences from court precedents. This is essential to determine precise effects of the legal model on judicial behavior.

Finally, our analysis suggests new theoretical ways to conceptualize judicial decision making. Not only is there evidence that different types of judges rely on different factors when rendering decisions, we also demonstrate the relationship between ideological attitudes and legal mechanisms, as well as the differential impact of the legal mechanisms themselves. Theoretically, this opens the door for a much more dynamic (and potentially interesting) model of judicial behavior. If everything else is held equal, judges will render decisions according to their ideological preferences. Yet, all things are not equal and the presence of legal factors, such as statutory constraint, limits the ability of some judges to rule ideologically. However, the story does not end here. In cases where legal factors constrain judges, they can search for additional non-ideological factors (e.g., procedural challenges) in an attempt to mitigate the apparent constraints. Based on this dynamic interaction between political attitudes and legal constraint, one should not think of the legal model as a set of forces that operate equally to contradict

ideological influences. Consequently, a more complete model of judicial decision making should include measures of both political preferences and legal constraints, as well as account for the differential impact of these measures.

TABLE 1: PROBIT ANALYSIS OF STATUTORY CONSTRAINT

	Model 1 Pooled Data	Model 2 Democratic Appointees Only	Model 3 Republican Appointees Only
Statutory Constraint	-.019* (.010)	-.026* (.015)	-.013 (.013)
Individual Ideology	.003*** (.001)	-.003 (.322)	.007*** (.001)
Lower Court Directionality	.344*** (.018)	.289*** (.026)	.388*** (.024)
Constitutional Challenge	-.089 (.046)	-.089 (.075)	-.077 (.060)
Procedural Challenge	.072** (.032)	.099** (.048)	.049 (.042)
Criminal Issue	-.708*** (.096)	-.795*** (.151)	-.638*** (.124)
Civil Liberties Issue	-.102 (.096)	-.054 (.721)	-.135 (.125)
Economic Issue	.008 (.091)	.099 (.317)	-.062 (.117)
N	7077	3030	4047
Log Likelihood	-4221.452	-1839.475	-2369.576
Wald χ^2	969.780	422.400	565.430
Prob > χ^2	.000	.000	.000
Pseudo R ²	.112	.111	.114
Null Model	40.8%	44.1%	38.3%
Correctly Predicted	65.4%	64.7%	66.1%
Reduction of Error	15.2%	20.0%	11.5%

Dependent Variable: ideological directionality of vote

Values represent parameter estimates with robust standard errors in parentheses

* p < .10 ** p < .05 *** p < .01

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