

Models of Judicial Decision-Making: The Attitudinal Model

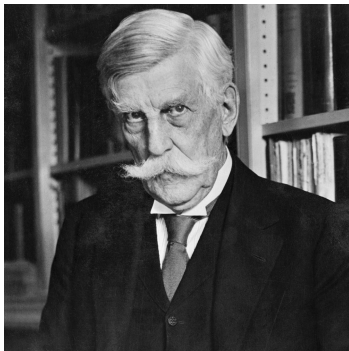


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Background

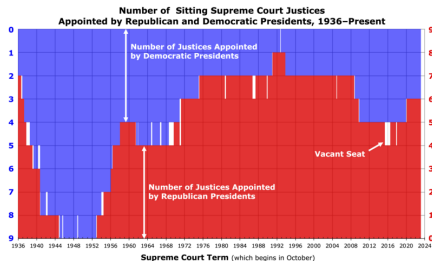
- Legal realism
- Behavioral influence
- Rational choice influence



Oliver Wendell Holmes, Jr. (1841-1935)

What are judicial attitudes?

- Ideology, basically
- Attitude objects (parties to a case)
- Attitude situations (case facts)



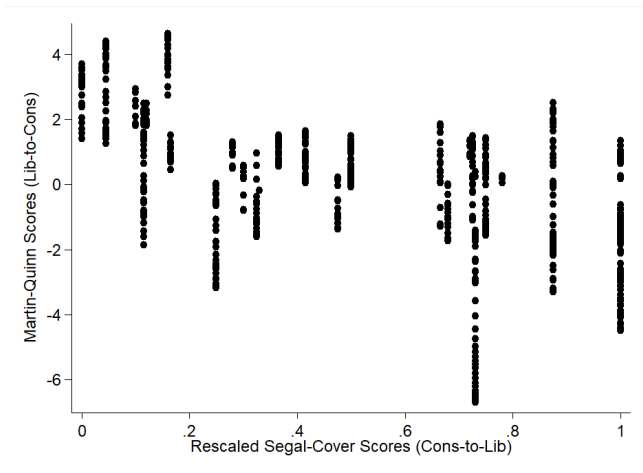
Measuring judicial attitudes

- Pritchett (1949)
- Segal and Cover (1989)
- Martin and Quinn (2002)
- Epstein et al. (2007)

TABLE II

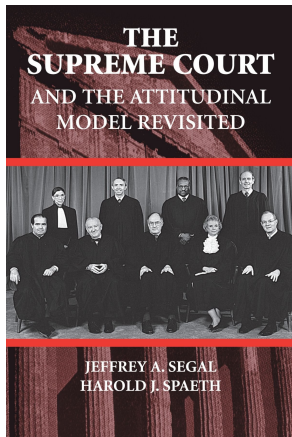
1931-1935 TERMS	Stone	Cardozo	Brandeis	Hughes	Roberts	VanDe- vanter	Suther- land	Butler	McReyn- olds
No. Dissents	67	55	57	15	15	17	23	36	33
Stone	(4)	51	53	12	6			1	
Cardozo	51	(3)	40	12	2	1		1	
Brandeis	53	40	(1)	10	8		1	3	
Hughes	12	12	10	(2)	1	1			
Roberts	6	2	8	1	(1)				
VanDevanter		1		1			5	7	3
Sutherland			1			(1)	13	13	11
Butler	1	1	3		5	13	(1)	19	13
McReynolds					7	13	19	(5)	17
					3	11	13	17	(13)

Segal-Cover vs. Martin-Quinn Scores



The attitudinal model in action

- Segal and Cover (1989)
- Segal and Spaeth (2002)
- Gibson (1987)



Critiquing the attitudinal model

- No constraints whatsoever?
- Is it a tautology? Are attitudes fixed?
- Where's the law?



Conclusion

- The attitudinal model, though critiqued for over-simplifying what the Supreme Court does, was probably necessary to establish the fact that, “Yes, ideology matters.”
- The law and courts literature, however, from here needed to back up and caveat a lot of what the attitudinal model posited.
- To this end, we will next turn to the strategic model of judicial behavior.