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***Majority Rule or Minority Will: Adherence to Precedent on the US Supreme Court*** by Harold J. Spaeth and Jeffrey A. Segal

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an excellent case study in this area. Nevertheless, policy analysts who want to understand the development of communications policy will find the historical data useful.

Despite its shortcomings, Shipan's book offers very important theoretical arguments about the interactions of various political institutions. An especially useful insight is the evidence presented that interest groups understand the importance of procedural provisions sometimes hidden away in complex legislation. The rational choice framework also reminds us that interest groups want to influence future policy choices as well as current policy decisions. The argument that Congress anticipates future judicial decisions during the deliberation of initial legislation is also useful. Attempting to tie together Congress, the agencies, the courts, and interest groups is a difficult task, but Shipan has done a good job of increasing our understanding of the interactions among these political actors. More work needs to be done along these lines.

**Presidential-Congressional Relations: Policy and Time Approaches.** By Steven A. Shull. Ann Arbor: University of Michigan Press, 1997. 178p. \$42.50.

Cary R. Covington, *University of Iowa*

Steven Shull, in collaboration with chapter coauthors Johnny Goldfinger (chap. 2), Thomas C. Shaw (chap. 5), and Brad T. Gomez (chap. 7), provides an extensive compilation of analyses of various measures of presidential activity, success, and support on roll-call votes, as well as executive orders, for presidents Eisenhower through Clinton. Shull's fundamental insight and premise is that differences in the types of policies on which members vote, and differences in the time during a presidential term that members cast their votes, can help us understand why presidents succeed and why members support them. These are promising lines of inquiry, and Shull's book offers a useful first foray.

In the first three chapters, Shull lays out the foundations for his analysis. Chapter 1 traces the development of studies that address (1) the relative importance of presidents and Congress in the legislative process and (2) the implications that differences in the substance of the policies being considered for enactment have on the prospects for presidential leadership. Based on his review of these literatures, Shull lays out his plan for studying the effect that policy types and the time during a president's term in which they arise have on presidential success and support. Chapter 2 presents the rationale for employing three frameworks for distinguishing among types of policies: (1) the common "two presidencies" (foreign versus domestic) distinction; (2) Lowi's four functional policy types (Theodore J. Lowi, "Four Systems of Policy, Politics, and Choice," *Public Administration Review* 32 [1972]: 298-310); and (3) a multiple policy framework developed by Gary King and Lyn Ragsdale (*The Elusive Executive: Discovering Statistical Patterns in the Presidency*, 1988). In chapter 3, Shull discusses the methodological issues that arise regarding the measurement and meaning of his variables. In addition, he lays out in abbreviated form his expectations for how differences in policy types and timing in a presidential term should relate to presidential success and support.

In chapters 4-8, Shull presents the results of his inquiries. His observations are too numerous to summarize, but it is helpful to identify the dependent variables Shull employs in each chapter. Chapter 4 notes variations across presidents in the frequency with which they take positions on roll-call votes. Shull looks for patterns according to policy types and the year in the presidential terms in which the votes took

place. Chapter 5 describes patterns in different measures of the level of controversy that presidents experience on legislative activity. Chapter 6 identifies patterns in the mean percentage of members who support the president. Chapter 7 shifts the focus to executive orders, again looking for patterns in their use according to policy type and timing in the president's term. Chapter 8 provides Shull's summary and conclusions.

Shull is to be commended for the prodigious effort he and his coauthors have made in pushing the boundaries of the analysis of presidential-congressional relations in new directions. Most of these chapters begin the process of understanding what was heretofore relatively uncharted territory. Shull has a thorough understanding and appreciation of the strengths and limitations of the variables he analyzes, and he brings out the nuances of meaning and differences in the meanings attached to each.

Not surprisingly, this book has some of the limitations that often come when undertaking this sort of charting expedition, most of which Shull acknowledges. He relies almost exclusively on various bivariate analyses. As a result, he is largely unable to control for the effects of possibly confounding variables. He also employs relatively simple analytical techniques, relying on means and percentages to describe the effects of the parameters of policy types and timing on the dependent variables. Ultimately, the reader wants some sort of comprehensive, integrative analysis that pulls the various threads presented in the various chapters into a cohesive whole and evaluates their relative merits and effects on presidential involvement in the legislative process. Shull emphasizes broad patterns in the data, at the expense of providing only a sketchy theoretical foundation to explain the patterns he finds. The bases for his expectations would have benefited from a more extended treatment in chapter 3.

This book is a useful pioneering effort. Shull and his coauthors do not provide the last or definitive word on how policy types or timing affect presidential success and support. Rather, they lay out some interesting lines of research and present some intriguing findings that may prove to be the beginning of an ongoing investigation into the factors that shape a president's relations with Congress.

**Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court.** By Harold J. Spaeth and Jeffrey A. Segal. Cambridge: Cambridge University Press, 1999. 315p. \$59.95.

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This book examines the influence of precedent versus the influence of personal ideological values on the behavior of justices throughout the Supreme Court's history. The authors, in a very straightforward manner, expand the analysis in their recent journal article (Jeffrey A. Segal and Harold J. Spaeth, "The Influence of *Stare Decisis* on the Votes of United States Supreme Court Justices," *American Journal of Political Science* 40 [November 1996]: 971-1004). Rather than the limited period in the article, the entire history of the Court, from 1787 to 1995, is covered in the book.

The article generated spirited controversy among judicial scholars about the role of precedent in the decisions of the Court. The November 1996 issue of the *American Journal of Political Science* contained four articles critical of the Segal and Spaeth approach and a response to these critics. One might expect that the book would represent "round 2," with the authors further developing the evidence and arguments in support of their position, but Spaeth and Segal restate

their position vigorously and virtually ignore the arguments of their critics.

The primary focus of *Majority Rule* is an empirical test of whether the votes of Supreme Court justices are determined by the Court's own precedent or reflect their ideological preferences. "Does precedent actually cause justices to reach decisions that they otherwise would not have made" (p. 7)? The authors conceptualize this question as involving a dichotomous choice. They assume that a vote is determined solely by either precedent or judicial ideology. They do not attempt to test whether, and do not even allow the possibility that, the votes and policies adopted by the justices can be jointly influenced by both.

Analysis centers on the behavior of justices in cases labelled the "progeny" of earlier cases that set precedent. The assumption is that, if the Legal Model is accurate, votes in these progeny cases should be controlled by the parent case. Only the progeny votes of justices who dissented in the precedent case are examined, as one can make no firm conclusions about the motivations of the justices who were part of the majority in the precedent. In the case of those who dissented in the precedent, it may objectively be determined that the precedent was contrary to their ideological preferences. Thus, their votes in the progeny can be classified "objectively" as supporting either precedent or their preferences.

Spaeth and Segal examine all the votes of the dissenters in all the orally argued progeny of the universe of a list of the "landmark" decisions of the Court and a sample of the nonunanimous "ordinary" decisions of the Court. In all, 2,425 votes cast by 77 justices in the 1,206 progeny of 341 precedential cases are examined. The conclusions of the authors are unambiguous and can be easily summarized: "The justices are rarely influenced by *stare decisis*" (p. 288). In only 11.9% of the votes did Spaeth and Segal find any evidence that the justices were influenced by precedent. Moreover, the domination of precedent by the ideological preferences of the justices was found in every era of the Court's history and characterized voting in the progeny of both the landmark and the ordinary cases.

The major new contribution of this study is the systematic, careful manner in which Spaeth and Segal extend analyses premised on the Attitudinal Model to the entire history of the Court. Too often, theories in public law are based on snapshots gleaned from the cross-sectional analyses of brief periods of the Court's history. Truly rigorous empirical studies of nineteenth-century judicial behavior are virtually nonexistent, and even systematic longitudinal studies of the past century are rare. Even those who reject the methodological assumptions, and thus the conclusions, of Spaeth and Segal will find their application of a consistent theoretical perspective and a common mode of analysis to the entire history of the Court to be of great value. The analysis provides additional strong evidence that the ideological values of justices do frequently influence their votes and that this role of ideology has been at work consistently throughout the history of the Court. The evidence that many of the votes of justices from every era of the Court are consistent with their ideological preferences is persuasive. Thus, the analysis does much to discredit previous arguments that the Court in recent years or a relatively small number of recent "activist" justices are unique in their tendency to vote according to ideological preferences.

While the evidence that the ideological values of the justices influence their votes is compelling, the conclusion that precedent does not matter will continue to be controversial, and it is unlikely that this latest defense will convert

any former critics. The key points of disagreement will center on the conceptual and operational definitions of "progeny" and on the decision rules used to evaluate the decisions of justices in those progeny cases. A case is generally considered a progeny of a given precedent if the syllabus of the progeny indicates that the majority relied on the precedent case.

This strategy undoubtedly produces a list of cases for which the identified precedent is relevant, but many who engage in traditional legal analysis or who teach constitutional law will question whether these precedents preclude, as a matter of law, the positions that Spaeth and Segal classify as opposed to precedent. Instead, many of the progeny will be viewed by other scholars as involving questions of law that are related to the issues resolved in the precedent but which were not answered in any definitive way by those cases. I suspect, for example, that most scholars who have taught constitutional law would not consider that the decision of the Court in *Schick v. Reed* (1974) to deny relief to a petitioner whose death sentence had been commuted to life in prison was contrary to the precedent set in *Furman v. Georgia* (1972). Similarly, I doubt that most would consider the majority decision in *Gregg v. Georgia* (1976), which adopted a death penalty scheme that was patterned closely on the plurality opinions of Stewart and White in *Furman v. Georgia* (1972), to be contrary to the precedent set in *Furman*. Thus, while Spaeth and Segal have attempted to devise an "objective" test of whether the votes of justices follow precedent, the validity of their judgments will continue to be a source of controversy within the field.

Curiously, most scholars who have studied the certiorari process from the perspective of the Attitudinal Model at least implicitly reject the Spaeth and Segal conception of progeny. Such studies suggest that justices select cases in order to make new policy, that is, they deliberately select cases in which precedent provides no clear answer so that they can create new precedent that moves policy in either a liberal or conservative direction. Potential progeny for which clear precedent exists are typically denied certiorari.

Perhaps the most controversial aspect of the Spaeth and Segal analysis will be their decision to rule out—by definition rather than by empirical examination—the possibility of joint influence from precedent and ideology. They deny, without investigating, the possibility that precedent may exert a "gravitational" pull on the behavior of justices that may limit and constrain the expression of their ideological preferences without dictating a precise policy to adopt. If precedent does exert such a pull, then justices with different ideological preferences may all still seek to maximize the attainment of their policy goals within the parameters set by precedent. In fact, even if precedent exerts a gravitational pull on all decisions of all justices, one still might expect that their votes would scale and that their behavior in progeny cases would approximate the behavior discovered by Spaeth and Segal.

In summary, this book is likely to be evaluated as providing additional strong evidence that the ideological preferences of justices have frequently influenced their decisions throughout our history, but it will not resolve the controversy over whether precedent also influences those votes.

**Understanding State Constitutions.** By G. Alan Tarr. Princeton, NJ: Princeton University Press, 1998. 247p. \$35.00.

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Many Americans are not aware that their state of residence has its own constitution, even though they may be asked to vote regularly on its amendments and even though the state