The Relative (Un)Importance of Rehnquist Court Decisions

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The Rehnquist Court took conservative positions more often than its immediate predecessors. Less clear, however, is the degree to which its decisions actually impacted the legal framework. Given studies that suggest that ideological heterogeneity within Supreme Court majority coalitions and systematic trends of “institutional thickening” hinder the creation of legally important decisions, I hypothesize that the decisions of the Rehnquist Court should be less legally important relative to prior courts, and should create more important liberal legal decisions than expected. Employing measures of legal importance developed through the network analysis of Supreme Court precedent, I find that Rehnquist Court decisions are less legally important than decisions from prior eras. Furthermore, I find that in the most salient legal subject areas, the Rehnquist Court’s liberal and conservative decisions are of roughly equal importance. Given these findings, the Rehnquist Court’s ideological impact on precedent is more modest than its critics charge.

Keywords: Judicial Politics, Supreme Court, Rehnquist Court, Constitutional Law.

La Corte de Rehnquist tomó posiciones conservadoras más a menudo que sus predecesores inmediatos. Sin embargo, el grado en el que sus decisiones en realidad impactaron el marco legal es menos claro. Determinados estudios que sugieren que la heterogeneidad ideológica dentro de las coaliciones de mayoría de la Suprema Corte y las tendencias sistemáticas de “robustecimiento institucional” dificultan la formulación de decisiones legalmente importantes, planteo que las decisiones de la Corte de Rehnquist serán legalmente menos importantes en comparación con cortes previas, y formularán decisiones legales liberales más importantes de lo esperado. Utilizando medidas de la importancia legal desarrolladas a través del análisis de red de los precedentes de la Suprema Corte, descubro que las decisiones de la Corte de Rehnquist son legalmente menos importantes que las decisiones de las eras previas. Además, encuentro que en las áreas legales más importantes, las decisiones liberales y conservadoras de la Corte de Rehnquist son aproximadamente de una importancia similar.
Dado estos hallazgos, el impacto ideológico de la Corte de Rehnquist sobre precedente es mucho más modesto de lo que sus críticos la acusan.

Nominees for the federal courts are expected to possess superb legal qualifications. It is equally clear, however, that their appointments are also guided by patronage, politics, and policy goals (Goldman 1999). These additional criteria are particularly relevant at the Supreme Court, where legal policy concerns are often paramount given the court’s status as a tribunal of last resort. From the point of view of the executive branch, the Supreme Court may be reasonably viewed as an autonomous bureaucratic agency that the president hopes will advance his legal policy goals (Gillman 2002). It is no accident, for example, that John Roberts and Samuel Alito—like the president who appointed them—generally support the conservative position in constitutional arguments. Over time, consistent partisan success should translate to not only predictable patterns of decision outcomes but also substantive ideological change in the nation’s legal framework.

As of 2010, Republican presidents had appointed twelve of the last 15 Supreme Court justices. For conservatives, these nominees were a potential vehicle for advancing conservative legal policy goals, such as overturning Roe v. Wade (1973), limiting the Warren Court’s criminal procedure decisions, or advancing a vision of federalism that curbs federal power (Clayton and Pickerill 2004, 2006). And indeed, if one refers to the proportion of cases where the conservative position prevailed on the merits, the Rehnquist Court was a marked shift from both the predominately liberal rulings of the late-era Warren Court and the wild ideological variation of the Burger Court (Baum 1988). Multiple analyses of decision outcomes have come to the same conclusion: whether one examines ideological evaluations of the justices prior to their nomination (Segal and Cover 1989), derives individual ideology scores for the justices from their votes (Martin and Quinn 2002), examines how often justices decided cases in a conservative direction (Clayton and Pickerill 2004, 2006; Segal and Spaeth 2002), or simply reads rulings carefully (Keck 2004), the ideological direction of the court’s decisions became more conservative during the tenure of Chief Justice Rehnquist.

Examining case outcomes, however, only tells part of the story. Conservatives, as well as legal scholars and political scientists, should be concerned not only with wins and losses but also with the degree to which Supreme Court decisions impact the web of precedent. One might assume that a pattern of more conservative decision outcomes would have a commensurate conservative impact on Supreme Court precedent. However, that assumption only holds if one treats every decision as being roughly equal in its legal importance. This assumption is not warranted—Rehnquist Court decisions might indeed be comparable in importance to decisions produced by prior courts or might instead be lesser works that largely failed to supplant the liberal landmark decisions that conservatives oppose.
In fact, there is little consensus on the degree to which the Rehnquist Court promulgated significant conservative constitutional change. To its critics, the Rehnquist Court was the vanguard in a conservative counterrevolution that overturned or emasculated key liberal precedents (Balkin and Levinson 2001; Sunstein 2005), creating a legal framework where conservative decisions have become central to the precedential framework. To others, the Rehnquist Court brought change more evolutionary than revolutionary (Tushnet 2000; Yarbrough 2000), limited by divisions within its conservative cohort over both the nature of its goals and the proper means of achieving them (Tushnet 2005). Under this view, the most important cases in the Supreme Court’s precedential network remain liberal ones, with conservative change mostly at the margins. Which of these views better captures the truth?

In this article, I use a cutting-edge metric of legal importance to examine this question, supplementing qualitative discussions of case importance. I begin by noting that studies in relevant quantitative and historical literatures suggest that the Rehnquist Court largely lacked the political and legal environment that enables the creation of important legal opinions. Internally, recent scholarly work has suggested a positive correlation between the ideological homogeneity of a majority coalition and its likelihood of producing consequential Supreme Court decisions (Epstein, Friedman, and Staudt 2008; Staudt, Epstein, and Friedman 2007). The inability of Republicans to create a stable homogenous majority coalition on the court may thus have impeded the creation of important conservative precedent. Externally, the Rehnquist Court was indirectly subject to the same institutional thickening that has made major policy change and political reconstruction more difficult over time (Skowronek 1997). The rise of interest groups and the increasing fragmentation of the political system (Rauch 1994), divided government, and a more polarized nomination process (Epstein, Segal, and Westerland 2008) have all made it more difficult to create an ideologically homogenous majority coalition on the court. Moreover, the court may produce more legally important doctrine when it shares common goals with the president and Congress (Klarman 2006; Powe 2000). Divided government, however, has made such interbranch unity increasingly rare. This combination of thickening and division may increase the court’s autonomy, protecting its increasingly expansive conceptions of judicial supremacy by ensuring it can always find someone to defend its controversial decisions (Whittington 2007). However, such fragmentation also weakens the court’s power, leading to decreased institutional coherence, vision, and resources for legal change.

Given this literature, I hypothesize that the Rehnquist Court should have (1) produced a corpus of legal decisions less important on average than that generated by its immediate predecessors; and (2) produced important conservative decisions at a lower rate (relative to its rate of producing important liberal decisions) than one might expect. If the Rehnquist Court’s “conservative turn” impacted the law in the revolutionary way its critics sometimes describe,
we should expect to see it write opinions whose case importance was at least comparable with the output of prior regimes, as well as write conservative opinions whose case importance was noticeably greater than its liberal decisions. If we see the opposite, by contrast, then the Rehnquist Court’s impact on precedent is less significant than its critics charge.

I test these hypotheses using rankings of legal importance developed by Fowler and others (2007), which dynamically score Supreme Court decisions using a network analysis of case citations. Citation and network analysis have been previously employed in empirical analyses of both the federal courts (Klein 2002; Landes, Lessig, and Solimine 1998; Sirico 2000) and the Rehnquist Court in particular (Cross, Smith, and Tomarchio 2007). The network measures used here, however, provide a cutting-edge, valid, and dynamic way of evaluating the relative precedential importance of cases, adding to and improving on prior studies. Examining a data set of Supreme Court rulings decided between 1953 and 2005, I first compare the relative legal importance of Rehnquist Court decisions with those decided by the Burger and Warren Courts. While cross-historical comparisons should be approached with caution, my evidence suggests that given similar time frames for growth, Rehnquist Court decisions do not, on average, reach the importance of cases decided by prior court regimes. This finding in turn suggests a lessened impact on precedent. I next compare the relative importance of the Rehnquist Court’s liberal and conservative decisions in several issue areas, finding that with the exception of federalism and noncriminal due process cases, its liberal and conservative rulings are, perhaps surprisingly, of roughly equal average importance. The combined import of these analyses suggests that the Rehnquist Court is better viewed as a brake on liberal change rather than the architect of a conservative doctrinal counterrevolution.

Supreme Court Decision Making and Case Importance

As the federal appellate court of last resort, the Supreme Court has the final say on difficult statutory or constitutional questions. Given the importance of such questions to the political process, presidents select justices not only for their legal credentials but also for their ideology and likely positions on legal issues important to the appointing president and his party. Rather than being solely neutral arbitrers of legal disputes, then, the federal courts, and particularly the U.S. Supreme Court, are a vital component of a partisan regime (Clayton and Pickerill 2004; Gillman 2002).

Given this framework, I assume that federal judges are goal-oriented actors (Baum 1997), with the advancement of sincere legal policy preferences high among these goals (Segal and Spaeth 2002). I additionally assume that for a majority of constitutional and statutory issues, the ideological preferences of judges can be meaningfully placed along a single liberal-conservative dimension (Poole 2003). In particular, the positions in salient constitutional disputes often
mirror (and perhaps themselves construct) partisan political positions, in what Jack Balkin and Sanford Levinson refer to as “high politics” (Balkin and Levinson 2001). While there are clearly individual cases where this assumption does not hold, voting patterns in recent decades strongly suggest that a justice who regularly supports the conservative position in one area will also support it in others (Segal and Spaeth 2002).

These assumptions are strongest at the Supreme Court level, where, except in rare circumstances, institutional insulation prevents substantive reprisal from the public or the other branches in response to particular rulings, and where the justices lack meaningful career advancement opportunities or oversight by higher courts that might constrain their true preferences (Segal and Spaeth 2002, 92-6). Moreover, I assume that a Supreme Court majority coalition will normally ignore the preferences of the president or Congress in the instant case (Bergara, Richman, and Spiller 2003; Sala and Spriggs 2004; Segal and Westerland 2005; Spriggs and Hansford 2001), although the justices may engage in strategic bargaining among themselves to secure a majority (Wahlbeck, Spriggs, and Maltzman 1998). However, since the justices are politically appointed, we should expect ideological congruence between the court and the other federal branches to be the norm, except during times of partisan transition.

Given these assumptions, partisan electoral success should, over time, translate to systematic ideological changes in Supreme Court doctrine. In recent decades, the Republican Party’s electoral success, spurred on by an increasingly conservative electorate, should have reasonably been expected to create conservative changes in the network of precedent. In particular, a conservative court was expected to fulfill the goals of the “New Right,” those conservatives who gained control of the Republican Party following the collapse of the New Deal coalition (Clayton and Pickerill 2004, 2006; Keck 2004). The New Right desired to overturn or repudiate liberal decisions they found objectionable, as well as reconstruct judicial limits on federal power shattered during the New Deal or the Warren years (Teles 2008). President Nixon had the chance to implement several of these goals with his four Supreme Court appointments. While Nixon supported several proposals (such as price controls) that would today be solely the province of liberal Democrats, he hit distinctly “New Right” notes on issues, such as criminal procedure and school integration. Although Nixon succeeded in shifting the Supreme Court to the right, the Burger Court was something of a disappointment to conservatives, being just as likely to affirm past liberal decisions or even create new liberal rulings, such as Roe v. Wade (1973) as it was to lead a successful “counterrevolution” against New Deal and Warren Court doctrine (Blasi 1983; Lindquist, Smith, and Cross 2007; Schwartz 1998).

The Rehnquist Court, by contrast, has been described as more consistently conservative in its makeup, aims, and decision outcomes. For example, it attempted to limit the scope of the Commerce Clause in United States v. Lopez.

There is little question that the Rehnquist Court advanced conservative goals if one measures the ideology of decision outcomes. However, the successful implementation of conservative legal policy goals requires not only a higher win rate but also the creation of legally important conservative precedent. Patterns of decision outcomes tell us a great deal about the success of particular litigants but are less useful in describing the degree to which decisions and opinions are legally important relative to other cases. Supreme Court majority coalitions do not only decide who wins in a particular case but also have significant discretion over the scope, clarity, impact, and coherence of the legal doctrine they create, modify, or uphold to resolve the conflict before them. The Warren Court, for example, went beyond simply deciding cases in a more liberal direction, as it transformed precedential frameworks in areas, such as equal protection, criminal procedure, redistricting, and the First Amendment, deciding several landmark cases in each area.

Here the success of the Rehnquist Court in advancing New Right goals is less clear. Did the Rehnquist Court succeed in substantially altering the constitutional framework? Or did they leave the liberal structure—namely the economic precedent of the Franklin D. Roosevelt (FDR) era and the rights and liberties precedent of the Warren Court—largely intact, making conservative alterations mainly at the margins? For example, a case such as *United States v. Lopez* (1995) was certainly deemed important in the short term, but did it reshape the commerce clause framework to the same degree as *United States v. Darby* (1941)? Are the Rehnquist Court’s most notable decisions more symbolic than substantive? There is little consensus on this question. Some scholars, particularly liberal critics of the Rehnquist Court, have argued that the Rehnquist era ushered in a jurisprudential counterrevolution, noting cases such as those listed above. Given these changes, the election of George W. Bush

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1 In the U.S. Supreme Court Database, rights and liberties decisions are coded as “conservative” when the court finds for the government rather than the individual (Spaeth *et al.* 2010). In economics cases, by contrast, a conservative decision sides against the government. Spaeth has altered his framework for issues, such as eminent domain that do not fit this coding, but in general, the framework holds true throughout.
even led two prominent liberal legal scholars to worry that an emboldened conservative majority would additionally limit congressional use of the Commerce Clause, remove diversity as a constitutional justification for affirmative action, reject constitutional protections for homosexuals, and undo the right to privacy (Balkin and Levinson 2001, 1060-1). Cass Sunstein (2005) voiced similar fears in the Rehnquist Court’s waning years, labeling New Right conservatives, such as Justice Thomas, judicial “fundamentalists” who desired to uproot long-standing constitutional paradigms in the name of originalism.

On the other hand, more skeptical observers have responded that the Rehnquist Court embodied evolutionary, not revolutionary, change; as Keith Whittington (2001, 519) pithily summarized, “the Lopez Court is not the Lochner Court.” By this account, the Rehnquist Court was opportunistic, attacking prior liberal constitutional commitments only when their political support softened (Tushnet 2003). The court certainly turned more conservative during the Rehnquist era, according to this school of thought, but it largely failed to move Supreme Court precedent in a conservative direction.

I believe there are two good reasons to suspect that the Rehnquist Court had a more modest impact on Supreme Court doctrine than its critics feared and was more centrist than its critics charged. First, the creation of legally influential conservative decisions was hindered by the court’s internal dynamics. Admittedly, we know less about the factors that shape case importance than we do about those that shape decision outcomes. What studies exist, however, suggest that decision importance is in part a function of the ideological homogeneity of the majority coalition (Epstein, Segal, and Westerland 2008; Staudt, Epstein, and Friedman 2007). As the ideological heterogeneity of the deciding coalition increases, coalition members must increasingly bargain over substantive legal disagreements, decreasing the coherence, clarity, and legal impact of the written opinion (Schwartz 1992). An ideologically homogenous majority coalition, by contrast, is more likely to agree on a particular course of action, leading to, for example, a stronger, clearer holding more likely to significantly change existing legal policies. Court terms whose average majorities are more homogeneous should thus produce more important legal doctrine over time.

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2 These predictions were surprisingly wrong. Moreover, Martin–Quinn judicial ideology scores (Martin and Quinn 2002) show that the Rehnquist Court’s median justice drifted to the left between 2000 and 2005.

3 The dispersion of ideology in majority coalitions in such studies is calculated using Martin–Quinn scores, a common method of measuring judicial ideology in quantitative studies of judicial behavior (Martin and Quinn 2002). Specifically, the studies use the standard deviation of the Martin–Quinn ideology scores within a particular coalition as a measure of its ideological homogeneity.
Figure 1 presents the mean heterogeneity within the majority coalition—as measured by the standard deviation of the Martin–Quinn scores (Martin and Quinn 2002) of the justices who make up those coalitions—in each term between 1953 and 2004.

Notably, the dramatic decrease in average heterogeneity during the second half of the Warren Court era correlates with the period where it decided many landmark decisions. Conversely, if the relationship between heterogeneity and case importance is real, the increase in average heterogeneity over time suggests a secular decline in the importance of Supreme Court decisions.

This theory also accords with a common-sense understanding of what a president, or more broadly a partisan regime, wants to achieve with its Supreme Court nominations, namely a stable bloc of like-minded justices who will work

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**Figure 1.**
Mean Ideological Heterogeneity of Majority Coalitions by Term, 1953-2004

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*Notes:* This figure shows the degree to which the mean majority coalition in a given term was heterogeneous, as measured by the standard deviation of the Martin–Quinn scores of the justices within that coalition (Staudt, Epstein, and Friedman 2007). The graph uses a spline function to draw the line. Larger numbers indicate that the average majority coalition was more heterogeneous. The data for this figure come from the Spaeth Supreme Court database (Spaeth *et al.* 2010), selecting for case citations (ANALU = 0) and standard decision types (DEC_TYPE = 1, 2, 4, 6, 7).
together to advance a desired set of legal commitments. The problem for New Right Republicans, however, is that despite an overwhelming advantage in appointment opportunities, they failed to do this. Whether because New Right politicians, such as Reagan, were less committed to the New Right agenda when selecting nominees, such as O’Connor (Keck 2004, 158-60), or because Republican presidents lacked the unified government or the political will to appoint justices more conservative than Kennedy and Souter (Greenburg 2007, 35-65), the New Right did not create an ideologically homogeneous bloc of five or more staunch conservatives.

By way of illustration, in Figure 2 I plot the Judicial Common Space (JCS) ideology scores of each justice who served in the Rehnquist Court.\(^4\)

Note that in 1991, seven of the nine justices sit on the conservative side of the scale, suggesting at least the possibility of forming a reasonably homogenous conservative majority on any particular issue. Having seven rather than five conservative justices undoubtedly decreased the bargaining and accommodation needed to maintain a majority, in turn increasing the probability of creating a coherent, legally important rule. As soon as 1994, however, there are only five justices who one might expect to take the conservative position, and two of those are quite clearly moderates. Indeed, the ideological heterogeneity of any majority coalition that included both Thomas and O’Connor illustrates the difficulties conservatives should have expected in the Rehnquist Court’s ability to write opinions that were not only conservative but also broad in scope and legal impact.

Beyond its internal constraints, the Rehnquist Court also faced an institutional landscape increasingly resistant to revolutionary change. Stephen Skowronek (1997) has famously argued that American presidents who lead new partisan regimes, such as Jackson, Lincoln, FDR, or Reagan, revolutionize the rules of normal politics and often upset constitutional frameworks in order to achieve their policy goals. Skowronek worries, however, that the very institutions and tools created by presidents to aid their reconstructive efforts leave behind a kind of institutional sediment, successively narrowing the transformative potential of future regimes. President Reagan, in other words, should have had a harder time reconstructing politics than did FDR, who in turn should have had a harder time than Lincoln, and so on. The historical evidence appears to bear out this claim (Skowronek 1997; Whittington 2007).

\(^4\) JCS scores place the Supreme Court, lower federal justices, members of Congress, and the president on the same single ideological liberal-conservative axis, allowing direct comparisons between institutions (Epstein et al. 2007b). Supreme Court JCS scores are transformations of Martin-Quinn scores, which in turn utilize a Bayesian dynamic response model to generate ideological measures for justices based on their own votes. Martin-Quinn scores have the advantage of changing over time, accounting for the tendency of some Supreme Court justices to drift in a liberal or conservative direction during their tenure (Epstein et al. 2007a). The scores are available online at Martin and Quinn (2010).
Figure 2.
Judicial Common Space Ideology Scores for Supreme Court Justices in the Rehnquist Court

Notes: This figure shows the Judicial Common Space (JCS) ideology scores for the justices who served in the Rehnquist Court. JCS scores place federal district judges, federal appellate judges, Supreme Court justices, the president, and members of Congress in a common one-dimensional liberal-conservative framework. Positive scores indicate a conservative ideology. Justices with white markers are those commonly regarded as conservative; justices with gray markers are those regarded as moderates; and justices with black markers are those regarded—at least during the majority of their Rehnquist years—as members of the court’s liberal wing. JCS scores may be downloaded at Epstein (2010).
How might institutional thickening affect the court? Some scholars claim the court should be largely unaffected by such changes. Ronald Kahn (2006) has argued that because the court is insulated from electoral accountability and does not depend on fragile legislative coalitions to exercise power, its power will be largely unaffected. Moreover, given that party coalitions use the court to entrench particular commitments or manage divisive issues (Whittington 2007), increasing fragmentation might actually increase the court’s power by increasing the universe of potential defenders for any particular stance it takes. Such formulations, however, confuse autonomy with impact. In a weakened and divided political system, it becomes increasingly difficult for a partisan majority to create a successful, coherent constitutional vision and construct a court majority that can reliably implement that vision. Lacking both a strong partisan coalition with which it could collaborate (Powe 2000) and a majority that shared a common constitutional philosophy, the Rehnquist Court was more likely to “drift” right rather than revolutionize the web of Supreme Court precedent (Tushnet 2006).

Even beyond the appointment process, institutional thickening may have weakened the court’s ability to create important precedent. Without exhausting the possibilities, these changes could include the rise of interest groups who can defend their entrenched legal interests within a large government (Keck 2006; Rauch 1994); the increasing number of amicus briefs, whose arguments foster additional uncertainty among the justices and perhaps weaken the quality and influence of Supreme Court opinions (Collins 2008); and the increasing politicization of judicial nomination battles in the Senate, which may force the president to appoint more moderate justices or judges than he would otherwise prefer (Epstein, Segal, and Westerland 2008). Under this view, the weakness of the Rehnquist Court (and the heterogeneity of its conservative majority) is part of a longer narrative of institutional thickening rather than just the function of idiosyncratic political weakness at the key moments when Supreme Court seats come open.

If proponents of the evolutionary view of the Rehnquist Court are correct, we would expect to find a court whose decisions are, on average, less legally important than those produced by, for example, the Warren Court, whose decisions are generally recognized to be of a more revolutionary character.5

5 Dividing Supreme Court history into eras by chief justice is admittedly arbitrary, obscures important differences that occur within these eras (such as the difference between the “early” and “late” periods of the Warren Court), and ignores the more nuanced division of partisan “regimes” sometimes offered by historical institutionalists (Clayton and Pickerill 2004; Gillman 2002; Orren and Skowronek 1998; Skowronek 1997; Whittington 2007). That said, discussions, comparisons, and contrasts of the Warren, Burger, Rehnquist, and now Roberts Court are commonplace in the media and academia alike, and capture the common-sense understanding that the priorities and ideology of court majorities generally differ under particular chief justices. To talk of the Rehnquist Court as a coherent phase in Supreme Court history may lack some degree of rigor (a problem with any periodization scheme), but it does correspond to the way these labels are commonly used.
Moreover, if the Rehnquist Court produced revolutionary or even significant conservative changes in the legal framework, one would expect its conservative decisions to be more legally important, on average, than its liberal decisions. By contrast, given a court that both possesses a swing-vote dynamic and sits within a fractured political system, a more idiosyncratic pattern might emerge, in which the importance of liberal and conservative decisions over time is surprisingly balanced. I formalize these hypotheses as follows:

Hypothesis 1: After controlling for precedential age and docket imbalances, the Rehnquist Court’s decisions will be less legally important, on average, than the decisions of its recent predecessors.

Hypothesis 2: The average importance of the Rehnquist Court’s liberal decisions will be roughly comparable with the average importance of its conservative decisions.

To be clear, this article does not make a formal causal argument connecting either increased coalition heterogeneity or institutional thickening to a lower rate of important cases; such a task must wait for a multivariable or deep historical analysis that overcomes the difficulties of dealing with dependent variables that are not statistically independent, as well as the problems of *post hoc* theorizing and omitted variable bias.6 I do believe, however, that this literature provides reasonable grounds for expecting the Rehnquist Court to have been more evolutionary than revolutionary in its promulgation of conservative legal change. In any case, even if it is premature to engage in formal causal analysis, descriptive data on the relative importance of Rehnquist Court cases is substantively interesting and a necessary building block for future study.

**Measures of Case Importance and Data**

Testing these hypotheses requires both a definition of and a measure for “case importance.” Case importance might be measured in terms of pure policy impact—e.g., the effect of *Brown v. Board of Education* (1954) on public school integration. However, policy impact is a nebulous concept that defies easy measurement and ready aggregation across multiple legal areas. By contrast, the concept of legal relevance—or how useful legal actors deem a particular decision in resolving judicial conflicts—is capable of both measurement and

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6 First, the measures of case importance employed in this article are clearly not statistically independent of one another; it is unclear whether simply using robust standard errors will alleviate the problems this characteristic creates. Other measures of importance, such as the case salience variables developed by Epstein and Segal (2000), do not suffer from this particular difficulty but are less valid as measures of case importance and can not account for changes over time. Second, measures of case importance are undoubtedly affected by variables, such as whether or not a particular decision overturns a federal law, upholds a facial versus applied challenge, and so on. However, since such variables are not prior to the decision to write an opinion or join it, including them in a multivariate model may violate principles of causal inference.
aggregation. Essentially, such a measure quantifies the likelihood that a judge will cite case A rather than case B or C (and so on) in justifying a particular decision. In this study, I rely on a measure of legal relevance developed by James Fowler and others (2007), which employs the network analysis of Supreme Court citations to rank decisions. As the authors note in describing the measure,

[a] citation analysis is an ideal way to tap “case importance,” which we here define as the legal relevance of a case for the network of law at the Supreme Court. One can think of a citation to a precedent as a latent judgment by a judge regarding the relevance of the case for helping to resolve a legal dispute. (325-6)

Network analysis treats each Supreme Court decision as a node and citations as connections between those nodes. Each citation can be viewed as an *inward citation* to the case it cites and an *outward citation* from the citing case. Each case in the network can thus be ranked according to its *indegree*—how many cases cite it—and its *outdegree*—how many cases it cites. Relying on advances in Internet search theory (Kleinberg 1999), Fowler and others (2007) simultaneously generate *outward relevance* and *inward relevance* scores for each Supreme Court decision in each year. A case that has high *outward relevance* cites many cases, while a case that garners many citations has a high *inward relevance* score. Using simultaneous estimation, the authors not only track which rulings are most cited but also control for the *outward relevance* of those citing cases. Citations from cases heavily steeped in precedent thus count more toward *inward relevance* than citations from cases at the outskirts of the precedential network. The actual value of inward relevance scores is arbitrary, with the invariance coming from their ranks. Inward relevance scores can either rise or fall in each successive year but tend to follow predictable patterns of growth and decline (Fowler and Jeon 2008, 25-7). As such, these scores provide a useful measure for comparing relative legal importance over time.

Furthermore, inward relevance scores are valid and outperform competing measures. As Fowler and Jeon (2008, 22-3) demonstrate, the scores generate annual rankings with considerable facial validity. Moreover, these scores not only highly correlate with existing measures of importance (21-4), such as *The Oxford Guide to United States Supreme Court Decisions* (Hall 2001) or Epstein and Segal’s (2000) *New York Times* measure of case salience, but actually

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7 Traditional qualitative measures of case importance, such as *The Oxford Guide to United States Supreme Court Decisions* (Hall 2001), measure case importance in multiple dimensions and have high facial validity. However, they are highly subjective in their selection criteria, provide little information on the relative importance of listed cases, and provide no information on the importance of excluded cases. The “New York Times” (NYT) salience measure codes whether a particular decision leads to a story on the front page of *The New York Times* the following day. Although the NYT measure of case importance is reliably coded and valid, it retains the lack of variation that plagues all dichotomous measures. Moreover, the NYT measure is a snapshot of political salience at the time a case is passed rather than a dynamic measure of legal importance, limiting its usefulness for dynamic comparisons.
better predict the likelihood that the Supreme Court and other courts will cite a case in a given year (Fowler et al. 2007, 336-43). Finally, these scores employ judges rather than outside observers to determine which cases are legally important. While this measure clearly does not capture all facets of case importance, it does provide a relevant avenue for exploring relative legal importance over time. A court that produces many landmark decisions can be expected to see those cases cited, raising the average legal relevance of its output. By contrast, a court that decides less transformative decisions can expect fewer reactions, less feedback, and fewer future citations, lowering the legal relevance of its decisions.

Using citations to score legal relevance does present one drawback: the scores do not distinguish citation for authority from negative or cursory citations. If *Plessy v. Ferguson* (1896) continues to be cited as a negative example in post-*Brown v. Board of Education* equal protection cases, is its high ranking substantively meaningful? Legal importance as measured by inward relevance thus imperfectly tracks the actual authority or precedential vitality of a ruling (Hansford and Spriggs 2006). Fowler and Jeon (2008, 18) concede this fault, defending the measure by arguing that *Plessy’s* score is justified by its continued importance to legal reasoning (as a negative example), as well as being far more relevant to contemporary law than other cases decided in 1896. Despite this shortcoming, inward relevance scores remain useful proxies for case importance, helpful both as control variables in empirical models (Spriggs and Black 2008) and for the quantitative analysis of legal history (Fowler and Jeon 2008, 26-8).

Armed with a useful metric for legal importance, we now need a suitable data set. Here I merge the Fowler rankings with the Spaeth Supreme Court Database. This merged database has 6,085 separate decisions running from 1953 to 2005. The merged data set makes it relatively easy to compare case importance over time, as well as to sort cases by issue area, ideological direction, or chief justice, all of which are important for the following analyses.

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8 The Spaeth ALLCOURT database is available for download at Spaeth and others (2010). The merged database includes those Spaeth records coded as case citations (ANALU = 0), leading to a total of 6,085 cases decided between 1953 and 2005. The network rankings from Fowler and others (2007) draw on signed or per curiam opinions published in the *United States Reports* between 1791 and 2005. The tool the authors use to draw these opinions, the U.S. Supreme Court’s website’s “Case Citation Finder,” excludes “back of the book” material from the Federal Reporter. The authors also exclude decisions that were not authored by the Supreme Court, in-chambers opinions, and all nonorally argued per curiam opinions that appear in the *United States Reports* between 1957 and 1970 (during which time every final disposition was printed in each volume). Fowler and others (2007) track their cases using *United States Reports* citations as well as citations from LexisNexis, while Spaeth now relies on *Lawyer’s Edition* citations. Additional coding was thus required to merge the two databases. My thanks to James Fowler and Jim Spriggs for their generous decision to share these data.
Comparing Courts

Given both the increasing average ideological heterogeneity of the Rehnquist Court’s majority coalitions and the increasing fragmentation in the broader political system, my first hypothesis expects the Rehnquist Court to have decided fewer important cases on average than its most recent predecessors. Simplistically, this would mean that the average inward relevance of cases from the Rehnquist years is lower than the average scores of Burger and Warren Court cases. However, simply comparing the average importance of cases from different court eras at a given year’s rankings is inappropriate. As inward relevance ranks rest on citation by the court in future cases, case importance tends to follow a cycle of growth toward a peak level of legal relevance (at an average of 25 years) and then decline thereafter (Fowler and Jeon 2008, 25-6). Comparing the absolute average importance of Rehnquist and Burger Court cases in 2005, for example, would be invalid, as Rehnquist Court cases would have yet to reach their theoretical maximum importance.

A fairer comparison thus requires evaluating average case importance within a common temporal framework. A straightforward way of doing this compares relative average case importance at fixed temporal benchmarks. In other words, how important on average are decisions from each court era $\times$ years after they were decided? Figure 3 shows the average inward relevance scores (as of 2005) for Warren, Burger, and Rehnquist Court decisions at both five and ten-year benchmarks (necessarily omitting Rehnquist Court cases younger than five and ten years, respectively).

One might question whether differences in the duration of each era make such comparisons viable. For example, it might appear unsound to compare the “average” importance of all cases decided during the Vinson Court’s six-year tenure with the average importance of all cases decided during the Fuller Court’s 22-year tenure. However, there is no clear correlation between tenure length and the average importance of the cases produced. To be sure, the Marshall and Fuller Courts ranked first and third in tenure length and produced a disproportionate number of important cases with high inward relevance scores. However, the second longest-serving court, the Taney Court, did not produce cases with an importance commensurate with its length of almost 30 years, while the Waite Court issued many more important decisions in its twelve years. In any case, the Rehnquist Court has the fourth-longest tenure of any court in U.S. history and the longest tenure of any court in the twentieth century, and any bias from a longer tenure thus works in favor of the hypotheses.

Hansford and Spriggs (2006), who create a measure of precedential authority using Shepard’s citations, find a similar dynamic.

Medians are often the preferred measures of central tendency, as they are not overly influenced by extreme outliers. Here, however, I believe that the inclusion of extreme outliers is mandated. Hypothetically, I assume that a Supreme Court majority that wishes to implement its legal policy goals would prefer ten tremendously important rulings and 90 trivial ones to 100 decisions that are modestly important. The former court, I contend, would be more influential than the latter, but using medians would capture this less well than using means.
The average scores for both the Warren and Burger Court benchmarks are indeed comparable. The mean scores for the Rehnquist Court, by contrast, are substantially lower at both benchmarks. Admittedly, the fixed benchmark comparison necessarily omits rulings that came after 1995 or 2000, respectively, and it may be that the Rehnquist Court’s most important cases will ultimately come in its latter years. Given the current discrepancy shown in Figure 3, a future rise to parity with the Warren and Burger Court remains unlikely, although not impossible.

A fuller comparison of inward relevance scores using the dynamic nature of the scores to its advantage also shows Rehnquist Court decisions to be less legally important over time. Here I compare the running average of a court era’s inward relevance scores in each year, placing the Warren, Burger, and Rehnquist Courts in a common temporal framework. While an improvement over the former comparison, this method still raises two potential concerns. First, the nature of network dynamics might downwardly bias the scores of the

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**Notes:** Data for this figure come from a database that merges the case importance rankings created by Fowler and others (2007) with the Spaeth Supreme Court database (Spaeth et al. 2010) (ANALU = 0). The case importance score of each decision five and ten years after it was decided was tabulated and then averaged across the court era. The data set for the five-year benchmark contains U.S. Supreme Court decisions from 1953 to 2000, with \( n = 5,701 \). The data set for the ten-year benchmark contains cases from 1953 to 1995, with \( n = 5,330 \).
most recent cases, as the average importance of cases might decrease over time in relation to the overall network.\textsuperscript{12} This in turn might artificially deflate the scores of newer cases. However, after controlling for the size of the precedential network, I found little evidence of such effects.\textsuperscript{13}

A second challenge in comparing court eras lies in the shrinking docket of the Rehnquist Court. Perhaps surprisingly, the raw number of decisions a court produces per year has no clear relation to the degree to which it produced important cases in the historical data.\textsuperscript{14} Nevertheless, as inward relevance scores are based on the future citation of particular cases, case importance may be affected not only by how legally useful a particular majority finds past decisions but also by the total number of future citation opportunities a case possesses prior to a right-censored measurement. Further complicating matters, it is unclear whether the size of the court’s docket is truly exogenous. On one hand, the modern Supreme Court is fairly autonomous in choosing cases from its own discuss list, and if a particular natural court decides to hear fewer cases, it may have implicitly chosen to decrease its impact on precedent (Cross, Smith, and Tomarchio 2007, 6-16). On the other hand, while the court is technically free to take cases for certiorari as it wishes, it is certainly expected to hear cases when there are serious conflicts between the circuits, when the Solicitor General so requests, or when large numbers of amicae signal that a case is important (Caldeira and Wright 1990). Since these and other factors may vary independently of the court’s preferences, straight comparisons of regimes’ averages may be inappropriate.\textsuperscript{15}

Given this second set of concerns, I present comparisons both with and without a control for future citation opportunities. Figure 4 presents the running average of inward relevance scores for the Warren, Burger, and Rehnquist Courts, setting them in a common temporal frame that begins at the court’s first year. In the top of Figure 4, I compare the unadjusted mean of inward relevance scores for each court era over time. In the bottom half of Figure 4, I control for potential bias against future citation opportunities.

\textsuperscript{12} This may be the result of continually adding cases to the network that are never cited. The network average does drop dramatically over time until around 1890 and then fluctuates between .0015 and .002 thereafter. However, since the average is consistently lower during the Rehnquist Court than in preceding court eras, testing for the possible bias of network growth seemed appropriate.

\textsuperscript{13} Specifically, I divided the running average inward relevance score for the decisions of each court era in a given term by the average score of the entire network in that term, graphing the ratio of the two. This graph of ratios was visually indistinguishable from the top half of Figure 4.

\textsuperscript{14} For example, the White Court’s high rate of output (an average of 230 cases a year in the merged database) did not lead to a corresponding number of highly ranked cases (i.e., the number of decisions ranked in the top 100 cases in any given year), while the Warren Court’s much lower rate (111 cases a year) was not an impediment to its recent dominance in the rankings.

\textsuperscript{15} The drop in cases granted certiorari by the Rehnquist Court might also result from decreased congressional output, in turn leading to fewer conflicts of statutory interpretation (Clemente 2007).
Figure 4.
Mean Inward Relevance Scores of Court Decisions over Time, from Court Era's First Year

Unadjusted Mean of Inward Relevance Scores

Mean Inward Relevance Scores Controlling for Citation Opportunities

Notes: Figure 4 was generated from a database that merges the case importance rankings created by Fowler and others (2007) with the Spaeth Supreme Court database (Spaeth et al. 2010). The top figure shows the running average inward relevance score for all decisions in the database for each court era in each year. The comparisons are set in a common time frame, beginning at the first full year for each era (e.g., 1953 for the Warren Court). For the Rehnquist Court, the data are right censored at 2005 (at 20 years). To control for the effect of docket size and future citation opportunities, the bottom figure shows the running average for each era in each year divided by a citation control figure, which consists of the total number of remaining citation opportunities divided by the total number of years prior to 2005. Rehnquist Court cases, for example, were divided by a lower citation control than Burger Court cases, as the former set of cases had fewer citation opportunities because of a reduced docket.
dividing each regime’s running average by a citation control variable that accounts for the right-censored nature of the data.¹⁶

Notably, the trajectory of the Warren Court’s average importance matches what one would expect to see if ideological homogeneity is related to case importance, as the dramatic drop in the average ideological heterogeneity in Figure 1 occurs at the same time one sees strong growth in average case importance. There is also tentative support for the relationship between coalition homogeneity and case importance in the Rehnquist Court averages; in the top half of Figure 4, for example, much of the Rehnquist Court’s growth comes in its early to middle years, when its average coalition homogeneity was relatively low. As the average ideological heterogeneity of its majority coalitions grows over time, however, the rate of growth levels off. These correlations are more suggestive than conclusive, as they do not control for other variables, but they remain interesting findings and support the findings of prior research on case importance and ideological homogeneity (Epstein, Friedman, and Staudt 2008; Staudt, Epstein, and Friedman 2007).

More importantly, both halves of Figure 4 show Rehnquist Court cases as less important on average than Warren and Burger Courts in a similar time frame. Admittedly, the degree to which the Rehnquist Court fares poorly against its predecessors depends on whether or not one controls for citation opportunities. The top half of Figure 4 shows a Rehnquist Court whose average case importance is considerably less important than its predecessors at year 20 and presents a flat trajectory for future growth. The adjusted comparison at the bottom of the figure, by contrast, displays a Rehnquist Court whose average importance is ultimately less than the Warren and Burger Courts at year 20, but by a smaller amount, and with a higher trajectory for future growth. Which comparison better captures the relative “unimportance” of the Rehnquist Court depends on the degree to which one believes its reduced docket is a function of its decreased aspirations, as opposed to exogenous changes over which it has little control.

The combined import of these comparisons is that Rehnquist Court decisions have lower legal relevance than rulings authored in previous eras. Rehnquist Court precedents still might enter a late renaissance under the Roberts or future courts. Given what we know now, however, these results suggest that the Rehnquist Court has indeed had less impact on the web of precedent.

¹⁶ The citation control consists of the total number of future citation opportunities remaining for a particular case divided by the remaining number of years it could be cited, ending at 2005. I then divide the running average for each regime in each year by the appropriate control figure. For example, in 1954 there were a total of 6,025 future citation opportunities over a period of 51 years. The citation control for the Warren Court in 1954 would thus be 118.14. In the bottom of Figure 4, the running average inward relevance score of Warren Court decisions in 1954 would be divided by this figure.
How Conservative Are the Rehnquist Court’s Important Decisions?

While Hypothesis 1 addresses direct comparisons between the Rehnquist Court and its immediate predecessors, Hypothesis 2 examines the Rehnquist Court’s internal dynamics. Given increasing internal heterogeneity within the putative conservative majority over time, the second hypothesis suggests that the Rehnquist Court should offer a higher than expected number of important liberal rulings (e.g., Lawrence v. Texas [2003]) alongside its more numerous conservative decisions.

In this section, I seek to quantify the degree to which the Rehnquist Court actually advanced New Right goals by contrasting the average importance of its liberal decisions with the average importance of its conservative ones. Specifically, I examine five categories of decisions—criminal procedure, civil rights, “right to privacy,” noncriminal due process, and federalism cases—where presidents, such as Nixon and Reagan, promised a shift toward conservative values. In the realm of criminal justice, for example, New Right politicians hoped to appoint justices who would limit or reverse the transformative Warren Court decisions of the 1960s. Nixon emphasized “law and order” in his 1968 campaign, lambasting judicial activism and promising to appoint judges who would respect, in his own words, “the forgotten civil right” of public safety (Clayton and Pickerill 2006, 1385-404). If one assumes that a conservative majority would seek to maximize the importance of conservative decisions while minimizing the importance of liberal rulings (in cases, for example, where a liberal legal result is clearly warranted and there is little support for overturning precedent), we would expect to see the average importance of conservative decisions outrank the importance of liberal ones.

In Figures 5 through 7, I subtract the running average inward relevance of liberal decisions in the Rehnquist Court from the running average inward relevance of conservative decisions using the combined Fowler and Spaeth database employed in the preceding section. A positive score for a given term indicates that in a given year, the court’s conservative decisions in a particular issue area were more important on average than its liberal decisions. To provide

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17 While I also examined the relative importance of liberal and conservative First Amendment decisions, I exclude them here. The First Amendment is a legal area in which conservative justices have been increasingly likely to defend the “liberal” position on free speech cases (Epstein and Segal 2006). Since empirical legal studies generally code First Amendment rulings that side with individuals against the state as “liberal,” even if such coding is contrary to the more common partisan understanding of such labels—e.g., campaign finance or free association rulings—one would expect higher inward relevance scores for “liberal” Rehnquist Court First Amendment decisions. Indeed, the Rehnquist Court has produced “liberal” First Amendment decisions that are more important than its conservative ones—but it becomes quite difficult in the aggregate to tease out which portion of those “liberal” rulings had conservative policy implications. By contrast, this problem is less troubling in other issue areas, where the Spaeth coding (Spaeth et al. 2010) still correlates with more common understandings of what constitutes “liberal” and “conservative” positions.
Figure 5.
Mean Importance of Liberal and Conservative Decisions, Criminal Procedure and Civil Rights Cases

Notes: Figure 5 was generated from a database that merges the case importance rankings created by Fowler and others (2007) with the Spaeth Supreme Court database (Spaeth et al. 2010). The cases were first sorted by chief justice (CHIEF) to select cases for the Warren, Burger, and Rehnquist Courts. Next, the selected cases were sorted as criminal procedure (VALUE = 1) or civil rights (VALUE = 2) cases. Finally, the cases were sorted according to whether they were decided in a liberal or conservative direction, as coded by the ideological direction of decision (DIR) variable. Liberal values for DIR in the realm of criminal procedure meant siding with the criminal defendant, while liberal values of DIR in civil rights cases indicate the court sided with the individual alleging a civil rights violation. For each period, negative scores indicate that an era’s liberal decisions are more important on average in that year than conservative ones. The codebook for Spaeth’s variables is available at Spaeth and others (2010).
points of comparison, I place the Rehnquist Court figures alongside similar analyses of the Burger and Warren Courts. Each court regime is again placed a common time frame, beginning from their respective first year.

Taken together, these figures present a strong case that the Rehnquist Court was more centrist than conservative. In the three arguably most salient issue areas—criminal procedure, civil rights, and privacy cases—the average importance of the Rehnquist Court’s liberal decisions was roughly equal to the average importance of its conservative ones. In the top of Figure 5, for example, the inward relevance of conservative criminal procedure decisions, such as *Teague v. Lane* (1989) or *Payne v. Tennessee* (1991), is balanced out by liberal

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**Notes:** Figure 6 was generated from a database that merges the case importance rankings created by Fowler and others (2007) with the Spaeth Supreme Court database (Spaeth et al. 2010). The cases were first sorted by chief justice (CHIEF) to select cases for the Burger and Rehnquist Courts. Next, the selected cases were sorted as involving privacy (VALUE = 5) issues. Finally, the cases were sorted according to whether they were decided in a liberal or conservative direction, as coded by the ideological direction of decision (DIR) variable. Liberal values for DIR in right-to-privacy cases meant siding with the litigant asserting a right under substantive due process. For each period, negative scores indicate that liberal decisions are more important on average in that year than conservative ones. The codebook for Spaeth’s variables is available at Spaeth and others (2010).
Figure 7.
Mean Importance of Liberal and Conservative Decisions, Due Process, and Federalism Cases

Notes: Figure 7 was generated from a database that merges the case importance rankings created by Fowler and others (2007) with the Spaeth Supreme Court database (Spaeth et al. 2010). The cases were first sorted by chief justice (CHIEF) to select cases for the Warren, Burger, and Rehnquist Courts. Next, the selected cases were sorted as due process (VALUE = 4) or federalism (VALUE = 10) cases. Finally, the cases were sorted according to whether they were decided in a liberal or conservative direction, as coded by the ideological direction of decision (DIR) variable. Liberal values for DIR in the realm of due process meant siding with the individual alleging the due process violation, while liberal values of DIR for federalism cases meant siding with the federal government. For each period, negative scores indicate that liberal decisions are more important on average in that year than conservative ones. The codebook for Spaeth’s variables is available at Spaeth and others (2010).
decisions, such as *Hitchcock v. Dugger* (1987) or *Withrow v. Williams* (1993). Similarly, in the civil rights decisions tracked in the bottom of Figure 5, liberal decisions, such as *Tashjian v. Republican Party* (1986) and *United States v. Virginia* (1996), accrue almost as much legal importance as conservative cases, such as *Richmond v. J.A. Croson Co.* (1989) or *Shaw v. Reno* (1993). Figure 6, which examines right-to-privacy decisions, shows a similar pattern, as liberal decisions, such as *Planned Parenthood of Southeastern Pa. v. Casey* (1992), *Romer v. Evans* (1996), and *Stenberg v. Carhart* (2000), balance out conservative rulings, such as *Rust v. Sullivan* (1991), *Webster v. Reproductive Health Services* (1989), and *Washington v. Glucksberg* (1997). While these patterns are indeed different from the strong and consistent liberalism of the Warren Court, the Rehnquist Court’s impact on the legal framework in these three areas is more centrist than conservative.

On the other hand, the Rehnquist Court has been more successful in creating important conservative rulings in the areas of due process and federalism. Figure 7 shows that in noncriminal due process, the Rehnquist Court’s conservative opinions were consistently more important than its liberal ones. Similarly, Figure 7 demonstrates that despite a surprisingly liberal early period,\(^\text{18}\) the Rehnquist Court’s conservative federalism rulings rose to be much more important on average than its liberal decisions. In these two areas, then, the Rehnquist Court’s important precedent was significantly more conservative than liberal.

The record of the Rehnquist Court in creating important conservative precedent is thus a mixed one. In the majority of rights and liberties case areas, the average importance of the court’s liberal cases are comparable with the legal relevance of its conservative rulings, supporting Thomas Keck’s (2004, 157) observation that the Rehnquist Court effectively reaffirmed “much of the [Warren] Court’s liberal activism.” In the realm of federalism, by contrast, the Rehnquist Court may have established a more lasting conservative paradigm, although one that has not truly displaced the order-shattering federalism decisions of the FDR Court.\(^\text{19}\)

If one could grade the Rehnquist Court’s status as an ally of political conservatives given these results, what mark would it receive? If the New Right wished simply to halt the expansion of liberalism, the Rehnquist Court should be

\(^{18}\) These early results are driven by liberal decisions, such as *South Dakota v. Dole* (1987), *South Carolina v. Baker* (1988), and *Pennsylvania v. Union Gas Co* (1989).

\(^{19}\) The inward relevance of Rehnquist federalism landmarks, such as *United States v. Lopez* (1995), pales in comparison with the landmark *N.L.R.B. v. Jones & Laughlin Steel Corp.* (1937) and *United States v. Darby* (1941) decisions. In 1947, *N.L.R.B. v. Laughlin Steel Corp.* was ranked the 188th most important case. As of 2005, it remains highly ranked at 247. *Darby* was ranked at 116 ten years after its inception and remains at 190 as of 2005. By contrast, while steadily climbing, *Lopez* has only risen to 1,091 ten years after it was decided. Of course, this discrepancy is driven in part by the fact that rights issues have replaced government power and economic concerns as the central locus of constitutional dispute.
deemed successful. If, by contrast, victory requires a marked shift to the right in the most salient case areas, there is little evidence of that here.

**Conclusion**

Naturally, comparing legal relevance averages in the aggregate will miss important exceptions to general patterns, as the real-world impact of a towering decision in a particular area of law might be lost in summation. Nor do comparisons of “liberal” and “conservative” decisions exhaust the manifold ways in which one might categorize Supreme Court decision making. The study also suffers from being left censored at 1953 and right censored at 2005—perhaps a longer historical analysis would either further confirm or refute what has been said here. In the longer view, for example, the relative legal importance of Rehnquist Court decisions might be a return to an earlier norm of importance rather than a negative deviation from the baseline. This analysis also can not account for those times where the Rehnquist Court played lip service to Warren Court precedent while actually undercutting its substantive meaning. Finally, I do not mean to suggest that this study firmly establishes formal causal relationships between the trends I describe and the decrease in the creation of important cases. While the analyses produce several noteworthy correlations, there is still a great deal that we do not know about the factors that affect case importance, and it may be that unknown factors omitted from this analysis play a confounding role. Still, given what these results show, the Rehnquist Court’s impact on precedent is better described as halting evolution in a conservative direction rather than conservative constitutional revolution. Within the time frame of the preceding analyses, many eventual landmark Warren or Burger Court decisions had already achieved extremely high inward relevance ranks. Absent the ultimate impact of its federalism decisions, the same can simply not be said of the highest-ranked Rehnquist Court rulings.

The results also suggest that additional research connecting internal coalition dynamics to the creation of important cases would be worthwhile. In many legal areas (as this article reinforces), the Rehnquist Court’s conservative bloc was not of one mind. Most obviously, Kennedy and O’Connor were far from reliable conservative votes on right-to-privacy or civil rights issues, often siding with the liberal plurality. In federalism cases, however, the positions of conservative justices appear to be more aligned; in case after case after 1991 the “Federalism Five” wrote opinions that used the 10th and 11th Amendment to limit the power of the federal government or exalt state sovereignty. The most accessible measures of judicial ideology (and thus measures of ideological homogeneity) are global rather than issue specific. It seems reasonable to assume, however, that the conservative bloc was more homogenous in its preferences regarding federalism than it was on civil rights or the right to privacy. Given this assumption, the results track what one might expect to see: in legal areas where the conservative justices were more homogenous in their preferences—e.g., federalism—the
Rehnquist Court produced a body of relatively more important decisions, and its more important decisions were much more conservative than liberal. Future work using area-specific ideology scores and controlling for other variables might explore such dynamics (although qualitative tests using the Fowler rankings as dependent variables will have to account for the fact that inward relevance scores are not statistically independent).

The general decrease in case importance for each successive court era also provides some support for the broader contention that the “thickening” of our political structure and the waning of political time (Skowronek 1997) weakens the court’s ability to write legally important opinions. The Rehnquist Court failed to create a constitutional counterrevolution in large part because Presidents Reagan and Bush failed to appoint sufficiently conservative justices. Focusing on issues such as abortion or civil rights, liberal interest groups and Democratic senators were twice able to pressure a Republican president into nominating someone less conservative than he would have preferred (Greenburg 2007). On such salient issues, an increasingly partisan nomination process should continue to make it difficult to build a majority coalition with strong homogenous preferences. By contrast, as Clayton and Pickerill (2004, 104-12) have shown, the nomination hearings of the last 25 years provide little evidence that Democratic senators were concerned by potential changes in federalism doctrine. Given this, it was surely far easier to appoint a justice who was strongly conservative on 10th Amendment issues but fairly moderate on social issues than the converse. When the Senate opposition is keyed in to particular salient issues, it may greatly hinder the president’s ability to nominate justices with strong (or open) ideological preferences on those issues. President Obama, for example, appears to have a preference for nominees who can not easily be characterized as ardent liberals.

Dramatic ideological changes in the network of precedent may thus occur more readily in nonsalient legal areas or in areas of precedent whose future salience is latent. President Eisenhower, for example, did not see how salient criminal justice issues would later become when appointing Justices Warren and Brennan, nor could he have reasonably been expected to do so. Perhaps some such cleavage still exists for future presidents to exploit (or blunder into). On the larger legal issues that currently command our attention, however, I suggest that changes in Supreme Court doctrine will continue their evolutionary trend. It seems likely that for Obama and future presidents, future nominees will be increasingly moderate, future court coalitions will be increasingly heterogeneous, and future court decisions will sit at lower importance ranks than decisions from the Warren years. If this prediction is correct, the coming years may herald a Supreme Court unable to enact the degree of consequential legal change found in earlier decades.
Appendix

Cases

Board of Trustees v. Garrett, 531 U.S. 356 (2001)
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937)
Plessy v. Ferguson, 163 U.S. 537 (1896)
Roe v. Wade, 410 U.S. 113 (1973)
United States v. Darby, 312 U.S. 100 (1941)

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