

Priming Ideology?
Electoral Cycles Without Electoral Incentives
Among U.S. Judges

Carlos Berdejo & Daniel L. Chen

June 17, 2015

Behavioral Judging

Quintet

- Priming
- Gambler's Fallacy
- Extraneous Events
- Voice
- Peer Effects

⇒ Formation of Normative Commitments

Outline

① Introduction

Motivation/Relevance

Institution, Model, and Data

② Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

③ Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

Wartime

④ Conclusion

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

Motivation

Research Framework

Group Polarization has received increasing attention since 9/11.

- Growing body of lab studies prime group identity to document the causal link between group identity and
 - social preferences (Fong and Luttmer 2009)
 - economic decisions (Benjamin et al. 2010)
 - charitable decisions (Fong and Luttmer 2009)
 - public opinion (Gerber et al. 2010)
- This study examines the causal link between group identity and ideology and does so in the field.
 - Market pressures may drive savings and risk preferences towards the rational model (List 2003) and drive out other forms and sources of ideological bias, such as media slant (Gentzkow and Shapiro 2010).
 - Behavioral anomalies in judicial decision-making can have more permanent consequences (Gennaioli and Shleifer 2007).

Introduction

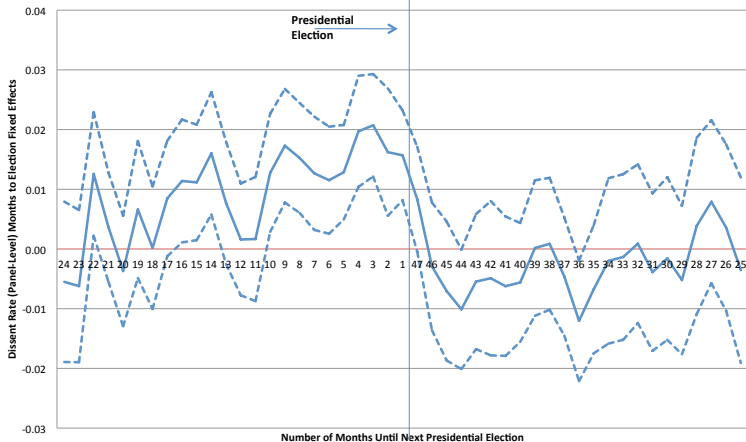
Open Question

Most U.S. judges believe there is no evidence for ideological bias.

- “only a small fraction of cases are legally indeterminate”
- Large literature contesting the idea that judges are impartial
 - Demographic characteristics predict judicial decision-making
 - Lab studies suggest self-serving bias (Babcock et al. 1995)
 - Yet, is partisan voting simply legal philosophy rather than bias?
 - If bias, is it cognitive (unconscious) or motivational (conscious)?
- We identify a channel for judicial partisanship that appears neither based on legal philosophy nor completely conscious.
 - Using the 5% detailed random sample from 1925-2002 and the 100% sample from 1950-2007, we show that judicial decision-making is affected by the presidential election cycle even though they (and their legal philosophy) should be immune from electoral incentives.

Basic Results

Figure 1C: Dissent Rate across the Political Cycle (Monthly)
100% Sample (1950-2007)



- Dissent rates, partisan voting, and setting precedent reflecting the political views of judge's party of appointment, all double.

Incentives or Priming?

Behavioral Mechanism

We evaluate a number of incentive-based reasons for these patterns.

- Re-election, Higher office aspirations, Getting out the vote, Collegiality, Reputational capital, Legacy concerns

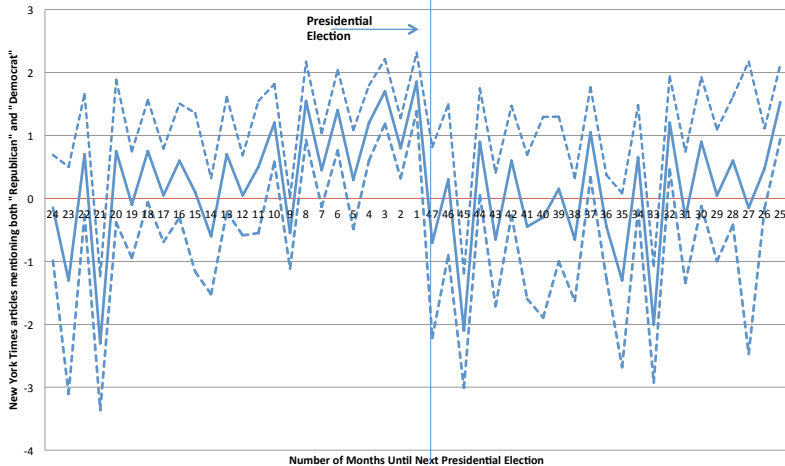
Natural Experiment in Priming

Priming is an implicit memory effect in which exposure to a stimulus influences a response to a later stimulus.

- Economists have incorporated cognitive effects into models (Laibson 2001; Bernheim and Rangel 2004).
- Yet, priming based on laboratory research has come under criticism (Kahneman 2012).
- Difficult to measure priming effects in the field (List 2012).
 - Ideal empirical strategy follows individual behavior tracked over time as well as individual demographic characteristics to see if groups diverge in behavior after the prime. Detailed data allows us to study priming effects and whether the contexts and characteristics that make individuals more susceptible to priming in the lab are also found in the field.

News Cycle

Figure 2B: Political News Articles across Political Cycle (Monthly)
New York Times 1900-2007



Media and political persuasion (DellaVigna and Gentzkow 2010, Snyder and Stromberg 2010).

Results in Nutshell

- *Across states*: Changes in behavior are concentrated among judges sitting in electorally pivotal states and in media markets where campaign advertisements are greatest.
- *Across time*: Dissents by judges coincide with the monthly increase of campaign advertisements in their states of residence, *across elections*, with the closeness of the state's popular vote when that state has more electoral votes.
- *Across judges*: Ideologically polarized environments and inexperience magnify the effect of proximity to presidential elections, while wartime has a unifying effect, especially in polarized environments and among inexperienced judges.
- *Magnitudes*: The electoral cycles we document are significantly larger and more robust than previously-documented electoral cycles by politicians with electoral incentives.
- We provide a formal model of priming.

Conscious or subconscious?

Cognitive Mechanism

Influence may be subconscious.

- Campaign messages can activate chronic identities (Ansolabehere and Iyengar 1997).
- People do not recall the stimulus in EEG studies of political priming (Morris et al 2003).
- Neurocorrelates of behavioral change in individuals are activated by advertisements that affect population behavior, even when individuals do not believe these advertisements to be effective at changing behavior (Falk et al. 2012).
 - Vignette studies suggest that unconscious heuristics play a large role in judicial decision-making.
- Prior political priming effects studies have been re-interpreted to be simply about learning (Lenz 2009)
 - Judges are not supposed to be learning from elections.
 - If learning, then changes in behavior should persist.

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

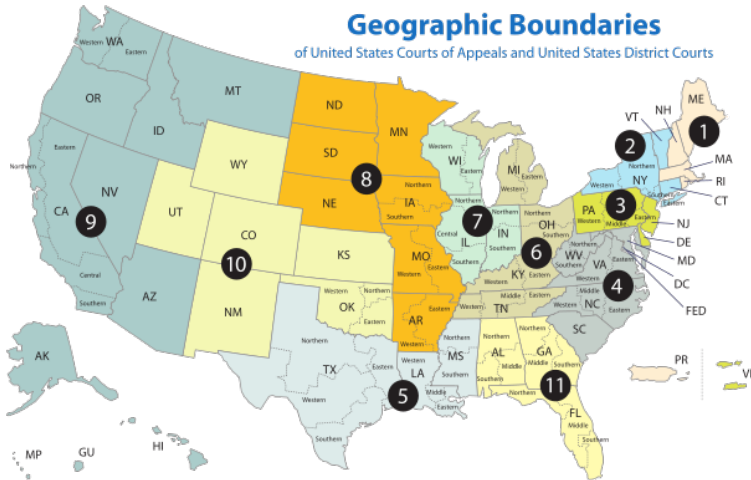
Wartime

4 Conclusion

U.S. Federal Court System

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



- Professional Norms and Institutional Mechanisms are designed to limit the influence of non-relevant criteria (such as priming).
- Appointed for life, 3 judges randomly drawn per case

Model

- Ideology Baseline: $Q_{0,i}$, $i \in \{1, 2, 3\}$
- Unidimensional Ideology: $Q_{0,i}$, $Q_{G,i} \in \mathbb{R}$, \mathbb{R}^- (political left), \mathbb{R}^+ (political right).
- Moderate Judges: $|Q_{G,i}| > |Q_{0,i}|$
- Priming of Identity: $Q_i = (1 - s_i) Q_{0,i} + s_i Q_{G,i}$
- Potential Dissenter is Distant Judge i : $|Q_i - Q_j| + |Q_i - Q_k| \geq \max[|Q_j - Q_i| + |Q_j - Q_k|, |Q_k - Q_i| + |Q_k - Q_j|]$
- Simplified Majority Rule: $\bar{Q} = \frac{Q_j + Q_k}{2}$
- Calculation to Dissent: $\min \left[c, (Q - \bar{Q})^2 \right]$
- $$\begin{cases} \text{Dissents} & \text{if } (Q - \bar{Q})^2 \geq c \\ \text{Does not dissent} & \text{if } (Q - \bar{Q})^2 < c \end{cases}$$
- Integrate over all possible panel compositions ($\bar{Q} \sim N(0, 1)$):
 $P(\text{Dissent}) = 1 - \Phi(Q + \sqrt{c}) + \Phi(Q - \sqrt{c})$

Comparative Statics

High costs dissents are less likely

$$\frac{\partial P(\text{Dissent})}{\partial c} \propto -\frac{1}{\sqrt{c}} \left[e^{-\frac{1}{2}((1-s)Q_0 + sQ_G + \sqrt{c})^2} + e^{-\frac{1}{2}((1-s)Q_0 + sQ_G - \sqrt{c})^2} \right] < 0$$

Priming increases dissents

$$\frac{\partial P(\text{Dissent})}{\partial s} \propto (Q_G - Q_0) \left(e^{\frac{1}{2}(Q + \sqrt{c})^2} - e^{\frac{1}{2}(Q - \sqrt{c})^2} \right) > 0$$

Behavioral response should increase with **distance** (divided panels, minority judges, and more distant majority judge), **# of primes** (midterm, close elections, recent period, swing states, campaign advertisements), **lack of conscious processing** (inexperience), **previous associative links** (former federal prosecutors), **polarization** ($|Q_R - Q_D|$).

Comparative Statics

What are high cost dissents vs. low cost dissents?

- Dissents on cases with *strong* legal precedent ($\varepsilon \rightarrow 0$), *no substantive* reason (and *unlikely* to change precedent) annoy colleagues.
 - $\min \left\{ \frac{\varepsilon}{\varepsilon}, (Q - \bar{Q})^2 \right\}$, where $\varepsilon \sim \text{Unif}(0, 1)$
 - Note: strong legal precedent still allow for panels to jointly follow partisan preferences.

If primed enough ($|Q| > \sqrt{c}$), then priming increases *high* cost more than low cost dissents

Intuition: Low cost dissents would occur either way.

$$\frac{\partial \left(\frac{\partial P(\text{Dissent})}{\partial s} \right)}{\partial c} > 0 \iff (Q_G - Q_0) \left[e^{-\frac{1}{2}(Q - \sqrt{c})^2} (Q - \sqrt{c}) + e^{-\frac{1}{2}(Q + \sqrt{c})^2} (Q + \sqrt{c}) \right] > 0$$

- Still holds if we relax $\bar{Q} \sim N(0, 1)$ via simulation.

[◀ Link](#)

Estimation

- $\Delta Q_{cit} = (\alpha_{02} - \alpha_{01})'F(t) + (\alpha_{12} - \alpha_{11})'\mathbf{Proximity}_t + (\alpha_{22} - \alpha_{21})'\mathbf{Z}_{cit} + \omega_{cit}$
- $Y_{cit} = F(t) + \beta_1'\mathbf{Proximity}_t + \beta_2'\mathbf{Z}_{cit} + \eta_{cit}$
- $Valence_{cit} = F(t) + \gamma_1'\mathbf{Proximity}_t + \gamma_2'\mathbf{Proximity}_t * Democrat_i + \gamma_3 Democrat_i + \gamma_4'\mathbf{Z}_{cit} + v_{cit}$
- $F(t)$ includes a set of year fixed effects
- $\mathbf{Proximity}_t$, our explanatory variable of interest, is the set of quarter-to-election fixed effects
- \mathbf{Z}_{cit} contains a dummy indicating whether the panel was divided, case controls, circuit fixed effects.
- Individual level regressions include judge fixed effects.
- Linear probability, probit (ordered probit)
- Cluster standard errors at quarter-year level

Data

- *Case Characteristics*: Appeals Court Database Project (1925-2002) (N = 18,686)
- *Biographies*: Attributes of Appeals Court Judges (1802-2004)
- *Legal Outcomes*: Shephardized Courts of Appeals Database
- *Case Timeline*: Administrative Office of the U.S. Courts
- *Political Environment*: CQ Voting and Elections Collection
- *Campaign Ads*: Wisconsin Ads Project (1996, 2004)
- *Ideology Scores*: Judicial Common Space Database
- *Media*: New York Times political articles (1900-2007)
- *Cases*: OpenJurist (1950-2007) (100% sample, N = 293,868)

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

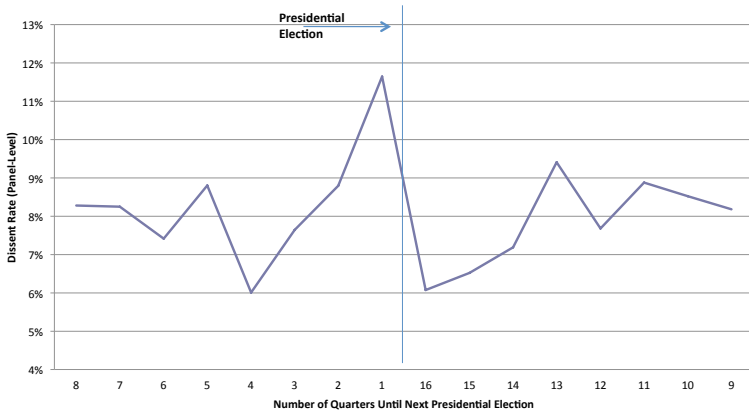
Experience

Wartime

4 Conclusion

Raw Data

**Figure 1A: Dissent Rate across the Political Cycle (Quarterly)
5% Sample (1925-2002)**



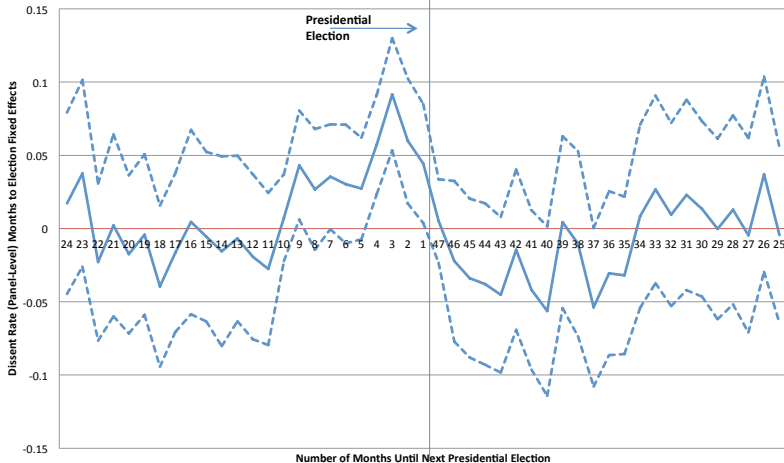
Regression Analyses

	Dissent (2-1 Decision) with or without Dissenting Opinion			
	Ordinary Least Squares		Probit	
	(1)	(2)	(3)	(4)
Divided (DRR or RDD)	0.0157 [0.00452]***	0.0153 [0.00451]***	0.114 [0.0327]***	0.111 [0.0328]***
Quarternoelect = 1	0.0637 [0.0123]***	0.0527 [0.0132]***	0.448 [0.0857]***	0.377 [0.0936]***
Quarternoelect = 2	0.0347 [0.0121]***	0.0255 [0.0138]*	0.284 [0.0960]***	0.224 [0.105]**
Quarternoelect = 3	0.0325 [0.0123]***	0.0302 [0.0134]**	0.270 [0.0982]***	0.256 [0.103]**

- Fixed effects for Year, Circuit, Legal Issues, and Season
- Average rate of dissent is 7.9%
- Increase represents 75% of average rate of dissent

Monthly Level

**Figure 1B: Dissent Rate across the Political Cycle (Monthly)
5% Sample (1925-2002)**



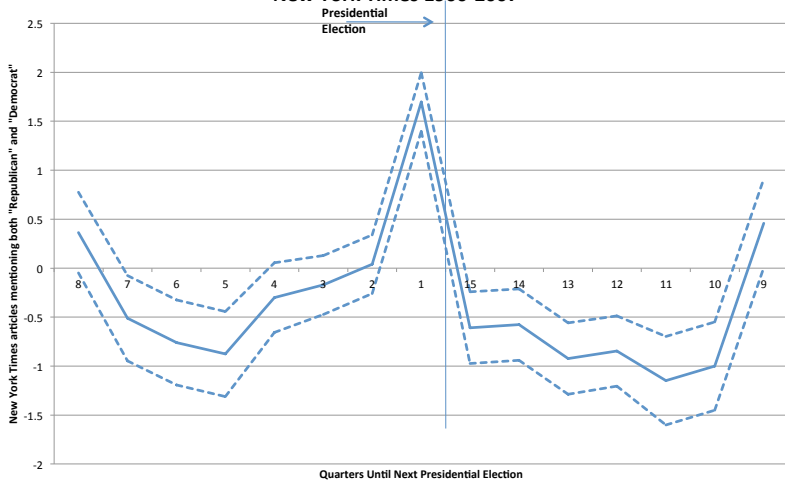
Regression Analyses

	Dissent (2-1 Decision) with or without Dissenting Opinion				Dissent (2-1 Decision) with Dissenting Opinion			
	Ordinary Least Squares		Probit		Ordinary Least Squares		Probit	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Divided (DRR or RDD)	0.0157 [0.00452]***	0.0153 [0.00451]***	0.114 [0.0327]***	0.111 [0.0328]***				
Quartertoelect = 1	0.0637 [0.0123]***	0.0527 [0.0132]***	0.448 [0.0857]***	0.377 [0.0936]***	0.0113 [0.00323]***	0.00847 [0.00337]**	0.0962 [0.0286]***	0.0724 [0.0303]**
Quartertoelect = 2	0.0347 [0.0121]***	0.0255 [0.0138]*	0.284 [0.0960]***	0.224 [0.105]**	0.00785 [0.00292]***	0.00474 [0.00318]	0.0705 [0.0263]***	0.0441 [0.0285]
Quartertoelect = 3	0.0325 [0.0123]***	0.0302 [0.0134]**	0.270 [0.0982]***	0.256 [0.103]**	0.00782 [0.00318]**	0.00445 [0.00331]	0.0704 [0.0284]**	0.0414 [0.0295]
Quartertoelect = 4	0.00581 [0.0111]	0.00578 [0.0111]	0.0444 [0.0963]	0.0481 [0.0962]	0.00153 [0.00399]	0.00158 [0.00368]	0.0138 [0.0365]	0.0153 [0.0333]
Quartertoelect = 5	0.0209 [0.0152]	0.0102 [0.0156]	0.170 [0.119]	0.101 [0.122]	0.00747 [0.00465]	0.00454 [0.00450]	0.0684 [0.0422]	0.0449 [0.0407]
Quartertoelect = 6	0.0120 [0.0141]	0.00302 [0.0155]	0.0970 [0.114]	0.0418 [0.118]	0.00496 [0.00460]	0.00185 [0.00455]	0.0451 [0.0419]	0.0196 [0.0407]
Quartertoelect = 7	0.0226 [0.0141]	0.0194 [0.0150]	0.178 [0.111]	0.159 [0.113]	0.0000166 [0.00470]	-0.00330 [0.00448]	-0.000524 [0.0431]	-0.0280 [0.0403]
Quartertoelect = 8	0.00772 [0.0141]	0.00859 [0.0141]	0.0521 [0.107]	0.0644 [0.106]	0.00519 [0.00446]	0.00528 [0.00415]	0.0455 [0.0405]	0.0464 [0.0370]
Quartertoelect = 9	-0.0115 [0.0155]	-0.0218 [0.0157]	-0.0717 [0.112]	-0.138 [0.114]	0.0120 [0.00500]**	0.00891 [0.00490]*	0.103 [0.0443]**	0.0759 [0.0427]**
Quartertoelect = 10	-0.0114 [0.0160]	-0.0193 [0.0174]	-0.0779 [0.115]	-0.128 [0.122]	0.00647 [0.00482]	0.00326 [0.00490]	0.0581 [0.0434]	0.0301 [0.0430]
Quartertoelect = 11	0.000311 [0.0162]	-0.00142 [0.0171]	0.00509 [0.116]	-0.00295 [0.118]	0.00706 [0.00499]	0.00364 [0.00497]	0.0623 [0.0450]	0.0323 [0.0438]
Quartertoelect = 12	-0.0102 [0.0128]	-0.00912 [0.0129]	-0.0628 [0.0900]	-0.0521 [0.0903]	-0.00102 [0.00382]	-0.00117 [0.00351]	-0.0101 [0.0336]	-0.0100 [0.0302]
Quartertoelect = 13	0.00115 [0.0148]	-0.0101 [0.0148]	0.00433 [0.0961]	-0.0726 [0.0980]	0.00450 [0.00385]	0.00141 [0.00374]	0.0347 [0.0330]	0.00970 [0.0316]
Quartertoelect = 14	-0.0157 [0.0134]	-0.0243 [0.0151]	-0.105 [0.0940]	-0.157 [0.103]	0.000920 [0.00382]	-0.00234 [0.00391]	0.00590 [0.0330]	-0.0210 [0.0329]
Quartertoelect = 15	-0.0176 [0.0117]	-0.0194 [0.0127]	-0.121 [0.0788]	-0.131 [0.0832]	-0.000372 [0.00391]	-0.00386 [0.00377]	-0.00561 [0.0335]	-0.0348 [0.0312]
Controls	N	Y	N	Y	N	Y	N	Y
Observations	18686	18686	18686	18686	263388	263388	263388	263388
R-squared	0.019	0.022			0.012	0.013		

- 100% sample also reveals midterm effect

News Cycle

Figure 2A: Political News Articles across Political Cycle (Quarterly)
New York Times 1900-2007



Interpreting Magnitudes

- More statistically salient than criminal sentencing cycles of 276,119 decisions by judges with electoral incentives (Berdejo and Yuchtman 2012).
- Among our sample of 18,686 cases, the ratio of coefficients to standard errors is twice as large than in the Washington state sample.
- 5.9% of total prison time of sentenced criminals is attributed to electoral proximity (Gordon and Huber 2007).
- 23% of total dissents could be attributed to electoral proximity (each quarter to an election reduces the dissent rate by 0.24%, $\times 7.5 / 7.9\% = 23\%$)

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

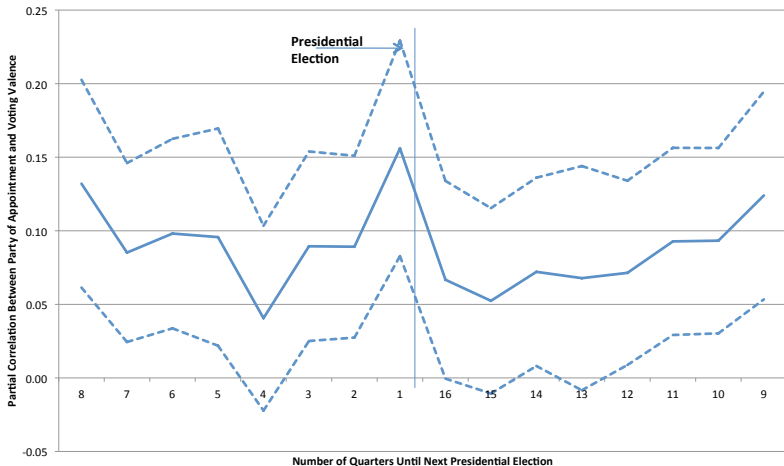
Partisan Voting

Code:	Liberal Vote			
	(+1/0/-1)		(+1 vs. 0/-1)	(+1/0 vs. -1)
	Ordinary Least Squares	Ordered Probit	Probit	Probit
	(1)	(2)	(3)	(4)
<i>Panel A: All Judges</i>				
Lastquarter	-0.0337 [0.0348]	-0.0507 [0.0497]	-0.0528 [0.0527]	-0.0472 [0.0571]
Appointed by Democrat	0.0707 [0.00820]***	0.0988 [0.0115]***	0.100 [0.0119]***	0.0993 [0.0127]***
Appointed by Democrat	0.0707	0.0955	0.113	0.0867
* Lastquarter	[0.0367]*	[0.0497]*	[0.0577]**	[0.0488]*
Controls	Y	Y	Y	Y
Observations	56058	56058	56058	56058
R-squared	0.087			

- Correlation between party of appointment and voting valence increases by 100%.
- The effects are quite large if only 5 to 15% of cases are legally indeterminate according to judges' estimates (Edwards and Livermore 2008).

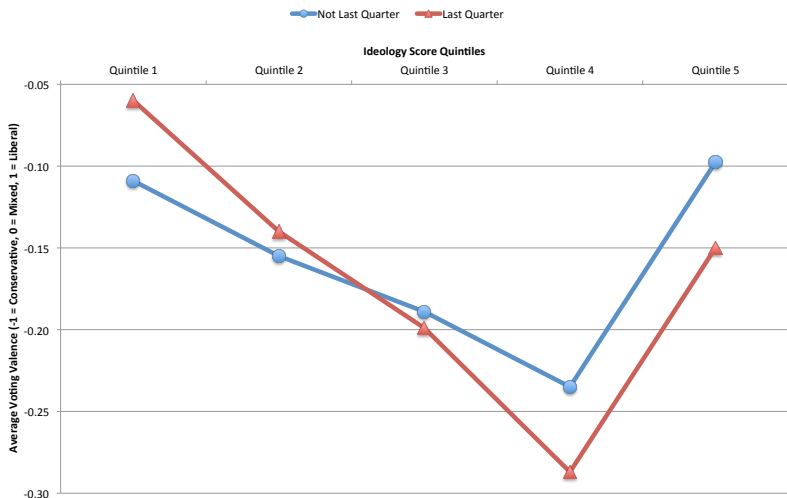
Partisan Voting

Figure 3A: Influence of Party of Appointment on Voting Valence across Political Cycle (Quarterly)



Partisan Voting

Figure 3B: Electoral Cycles in Voting Valence by Ideology Score



- One-decile shift similar to that found among state supreme court judges before competitive elections (Hollibaugh 2011).

Legal Outcomes

Panel B: Politically Unified Panels (DDD or RRR)

		Liberal Precedent		
Lastquarter	-0.194 [0.105]*	-0.282 [0.154]*	-0.225 [0.164]	-0.325 [0.161]**
Appointed by Democrat	0.163 [0.0303]***	0.232 [0.0423]***	0.217 [0.0468]***	0.247 [0.0447]***
Appointed by Democrat * Lastquarter	0.208 [0.126]*	0.288 [0.178]	0.237 [0.193]	0.345 [0.183]*
Controls	Y	Y	Y	Y
Observations	5659	5659	5659	5659
R-squared	0.100			

- Precedent dictating a liberal outcome should be just as likely to appear for Democrat panels as for Republican panels.
- In the quarter before a presidential election, unified panels are 125% more likely to issue partisan opinions.

Legal Outcomes

Panel C: Electoral Cycles in the Affirmations and Reversals of Lower Courts

	Affirm	Reverse	Reverse and Remand	Reverse No Remand
	Ordinary Least Squares			
Lastquarter	-0.0515 [0.0240]**	0.0414 [0.0163]**	0.0503 [0.0218]**	-0.00489 [0.0125]
Controls	Y	Y	Y	Y
Observations	18686	18686	18686	18686
R-squared	0.054	0.024	0.036	0.016

- Appellate courts decrease by about 10% the rate at which they affirm the lower court and increase by about 15% the rate at which they reverse the lower court above the baseline of 57% affirmations and 27% reversals.
- Reversals without elements of remand do not increase.

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

Case Type

1-Digit Criminal cases and economic activity cases

	Criminal	Civil Rights	First Amendment	Due Process	Labor Relations	Economic Activity	Misc.
Mean of dep. var.	0.077	0.100	0.185	0.100	0.093	0.071	0.073
Divided (DRR or RDD)	0.0253*** (0.00868)	0.0378** (0.0157)	-0.00112 (0.0614)	0.0980* (0.0574)	0.00702 (0.0183)	0.00676 (0.00560)	0.0201 (0.0297)
Quarternoelect = 1	0.0799*** (0.0222)	0.0466 (0.0483)	0.308 (0.257)	-0.0985 (0.177)	0.0687 (0.0658)	0.0649*** (0.0169)	-0.0786 (0.132)
Quarternoelect = 2	0.0547** (0.0247)	0.0113 (0.0399)	0.157 (0.180)	-0.255* (0.150)	-0.0434 (0.0591)	0.0455** (0.0177)	-0.171 (0.119)

2-Digit

- Federal criminal cases
- Commercial cases (e.g. contract breach)
- Property cases (e.g. eminent domain)

Priming

70% of campaign ads mention economic policy while 0.26% mention civil rights/liberties.

Development of Law

	Length of Majority Opinion	Citations	Dissenting Citations	Conditional on Dissenting, Dissent for Procedural, not Merits Issue	
<i>Panel A</i>	(1)	(2)	(3)	(4)	(5)
Lastquarter	0.216 [0.227]	0.289 [0.536]	-0.0809 [0.0456]*	0.0785 [0.0289]**	0.0962 [0.0535]*
Dissentdummy	1.902 [0.123]***	2.115 [0.262]***	0.413 [0.0363]***		
Lastquarter *	0.387	-0.232	-0.292		
Dissentdummy	[0.428]	[1.206]	[0.111]***		
Controls	Y	Y	Y	N	Y
Observations	18686	18649	18649	227	227
R-squared	0.223	0.168	0.077	0.038	0.207

- Opinions written when there are dissents are generally more important (over 40% longer than opinions without dissents and receive 33% more citations and more citations by subsequent dissents).
- Opinions written in the quarter preceding an election, however, have less influence on evolution of legal precedent (cited less often by subsequent dissents than cases decided in other quarters).
- Dissents before elections are twice as likely to be made on non-merits, procedural issues.

Crowding Court Docket

<i>Panel B: Treatment by Supreme Court</i>	Appeal Made to Supreme Court	Supreme Court Takes Case	Supreme Court Reverses
Mean of dep. var.	0.252	0.029	0.712
Lastquarter	0.0177 (0.0217)	0.00654 (0.00904)	-0.208 (0.146)
Dissentdummy	0.139*** (0.0131)	0.0446*** (0.00729)	0.0106 (0.0641)
Lastquarter * Dissentdummy	0.0129 (0.0433)	0.00965 (0.0324)	-0.333* (0.194)
Controls	Y	Y	Y
Observations	18686	18686	549
R-squared	0.040	0.019	0.216

- Cases with dissents are generally more likely to be appealed to the Supreme Court and more likely to be heard by the Supreme Court. No difference for cases with dissents before elections.
- This suggests that 3% of Supreme Court docket can be attributed to priming of appellate judges.
- Dissent before election is less likely to change precedent (50% less likely to yield a reversal).

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

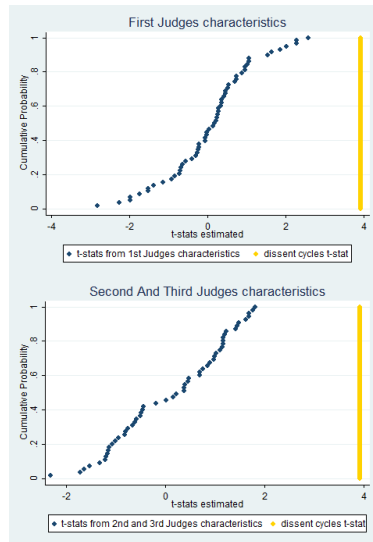
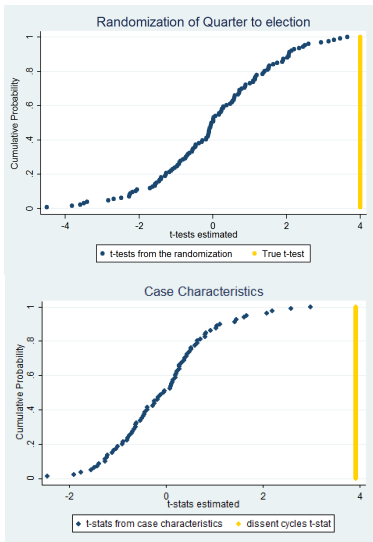
Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

Randomization



- True t-statistic of 4.01 lies far to the right of all the placebo t-statistics.

Randomization

- No increase or decrease before presidential elections along substantive legal issues, including whether there was an issue of constitutionality; whether the court engaged in statutory interpretation; how many appellants or respondents were persons, businesses, public interest groups, or government actors; and whether the issue involved state or local law, an executive order or administrative regulation, summary judgment, alternative dispute resolution, conflict of laws, international law, agency discretion. Caseload and publication frequency are also even.
- Electoral cycles on four procedural issues in “other” category.

Discretionary

Procedural

Electoral cycles on four procedural issues in “other” category.

- ① “other issues” related to juries,
 - ② whether some “other evidence” besides confession and evidence obtained through search and seizure was inadmissible,
 - ③ whether the attorneys’ fees favored the appellant, and
 - ④ whether there was some “other issue” of civil law.
- They are highly discretionary (e.g., attorneys’ fees are only to be awarded to the appellant in exceptional circumstances (Rolax v. Atlantic C. L. R. Co. 186 F2d 473))

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

Career Incentives

- Perhaps judges seek promotion to the Supreme Court.

Theoretically Unclear

Dissenting could also signal an inability to persuade colleagues and forge a majority coalition on the Supreme Court.

Finding

In our 5% sample, not a single judge elevated to the Supreme Court chose to dissent before the election. Nor is there a partial correlation between dissenting before election and being a potential nominee.

Electoral Incentives

- Perhaps collegiality equilibrium breaks down, judges seek to get out the vote, or litigants bring different types of cases.

Finding

Dissents by judges coincide with closeness of their state's popular vote when that state has more electoral votes and with increases in campaign advertisements in the state where a judge resides.

Fact

Judges' decisions are promulgated at the circuit, not state level.

Fact

For litigants, time to case resolution is very uncertain.

Displacement Incentives

- Perhaps judges shift their attention to cases that require dissent and away from other cases.

Fact

Court guidelines limit the ability to delay cases (and courts can't displace controversial cases until after wartime).

Finding

Larger pre-election dissent spikes are associated with smaller post-election dissent dips.

◀ Displacement

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

Experience

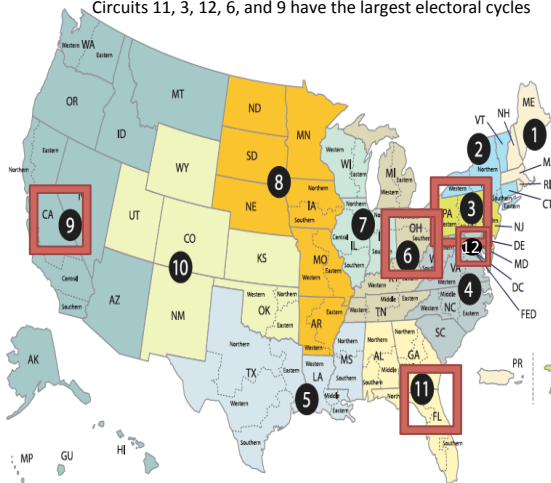
Wartime

4 Conclusion

Circuits with Electorally Pivotal States

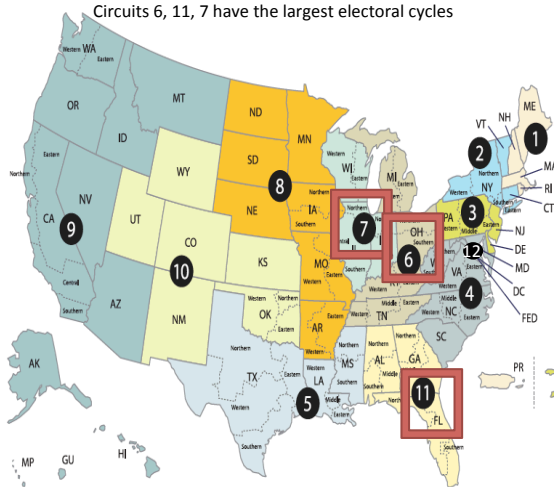
Lastquarter	0.0545
Circuit 1	[0.0398]
Lastquarter	0.0383
Circuit 2	[0.0589]
Lastquarter	0.164
Circuit 3	[0.0651]**
Lastquarter	0.0102
Circuit 4	[0.0552]
Lastquarter	0.0128
Circuit 5	[0.0286]
Lastquarter	0.102
Circuit 6	[0.0500]**
Lastquarter	0.0567
Circuit 7	[0.0378]
Lastquarter	0.00822
Circuit 8	[0.0453]
Lastquarter	0.0669
Circuit 9	[0.0371]*
Lastquarter	0.00819
Circuit 10	[0.0320]
Lastquarter	0.192
Circuit 11	[0.0590]***
Lastquarter	0.135
Circuit 12	[0.0614]**

Circuits 11, 3, 12, 6, and 9 have the largest electoral cycles

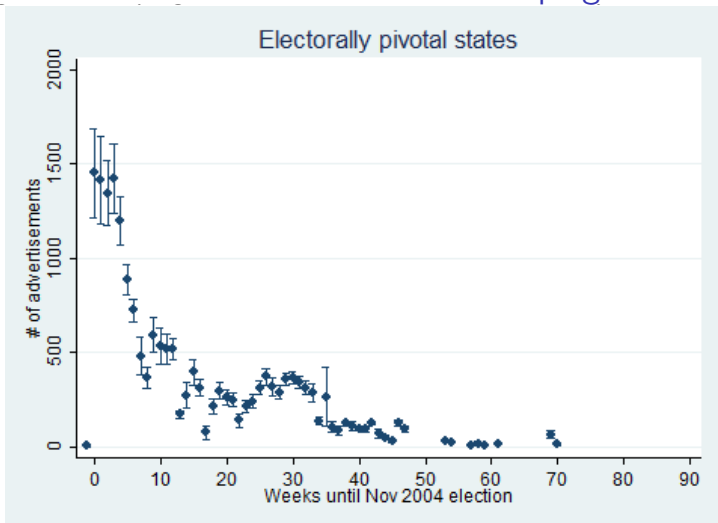


Circuits with Electorally Pivotal States

Lastquarter	-0.00368
Circuit 1	[0.0108]
Lastquarter	0.00156
Circuit 2	[0.0107]
Lastquarter	0.0119
Circuit 3	[0.0137]
Lastquarter	0.0127
Circuit 4	[0.0153]
Lastquarter	0.00888
Circuit 5	[0.00812]
Lastquarter	0.0348
Circuit 6	[0.0115]***
Lastquarter	0.0208
Circuit 7	[0.00871]**
Lastquarter	0.0122
Circuit 8	[0.0110]
Lastquarter	-0.0121
Circuit 9	[0.00689]*
Lastquarter	0.00254
Circuit 10	[0.0100]
Lastquarter	0.0211
Circuit 11	[0.00822]**
Lastquarter	0.0124
Circuit 12	[0.0135]

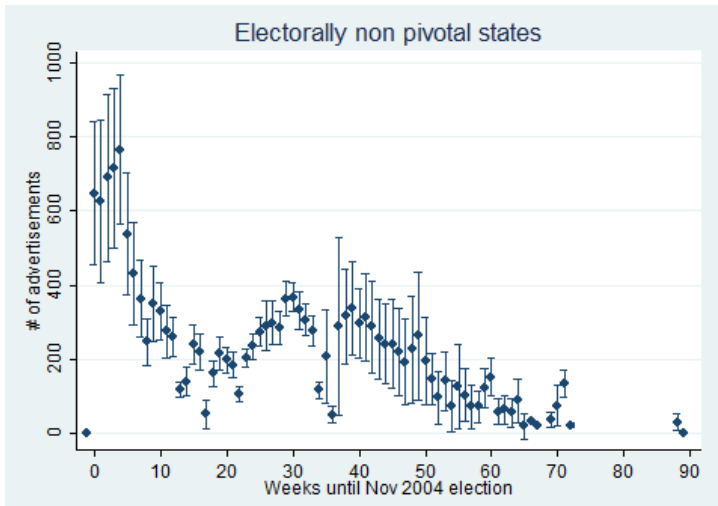


Campaign Ads



- Large states count heavily in the presidential election since the winner of a state's plurality of votes takes all of that states' electoral votes, making these states' media markets an attractive target for campaigns.

Campaign Ads



Electorally Pivotal States

Sample:	Dissenting Vote					
	Top 8 States in Electoral Votes Count and DC	States with Fewer Electoral Votes	States Likely to be Electurally Pivotal and DC	States Not Likely to be Electurally Pivotal	States in Top Quartile of Campaign Ads	States below Top Quartile of Campaign Ads
	(1)	(2)	(3)	(4)	(5)	(6)
<i>Panel A</i>						
Divided (DRR or RDD)	0.00925 [0.00238]***	0.00411 [0.00183]**	0.0108 [0.00304]***	0.00403 [0.00166]**	0.00571 [0.00300]*	0.00517 [0.00158]***
Lastquarter	0.0236 [0.00670]***	0.00400 [0.00548]	0.0316 [0.00986]***	0.00503 [0.00501]	0.0291 [0.00850]***	0.00762 [0.00404]*
Controls	Y	Y	Y	Y	Y	Y
Observations	20145	31315	12642	38818	11246	36672
R-squared	0.010	0.009	0.016	0.007	0.015	0.007

- Top 8 states by electoral vote: CA, TX, NY, FL, IL, PA, OH, MI
- MI, OH, PA, FL, and CA (they had 1,790 more campaign advertisements and 900 more negative campaign advertisements per media market)
- The magnitude of the electoral cycle is up to 6 times larger in the regions of the country likely to have political debate

Close Elections in Electorally Pivotal States

Panel B	Dissent Rate in Three Quarters Before Election - Dissent Rate in Three Quarters After Election	
	(1)	(2)
Electoral Vote Count	0.00160 [0.00114]	0.000786 [0.00126]
Popular Vote Tightness	-0.0801 [0.0772]	-0.0845 [0.0947]
Electoral Vote Count	0.0118	0.0121
* Popular Vote Tightness	[0.00622]*	[0.00702]*
Controls	N	Y
Observations	593	593
R-squared	0.007	0.026

- Judges who do their writing in states *when* they are likely to have greater amounts of political debate are also more likely to dissent.
- Popular vote tightness*: $-|RepublicanVoteShare - DemocratVoteShare|$.
- For a large state with 30 electoral votes, going from a popular vote tightness from 5% to 0% (statistical tie) would result in an increase of 1.7% points in the dissent rate.
 - Stimulus is sharpest for dissenting judge

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous

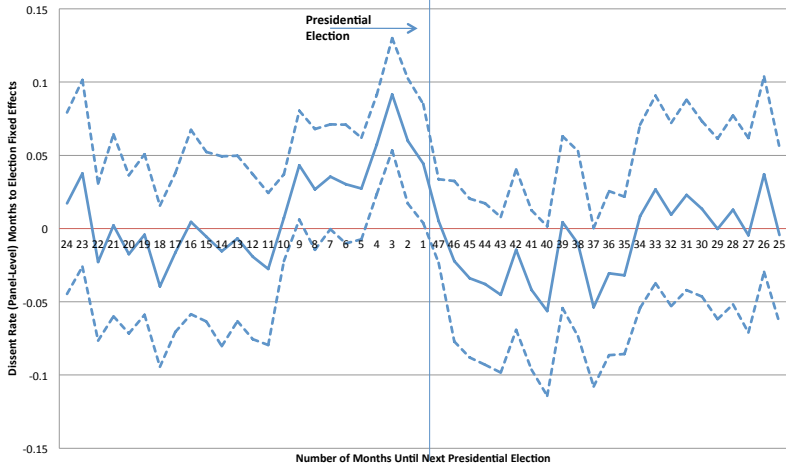
Experience

Wartime

4 Conclusion

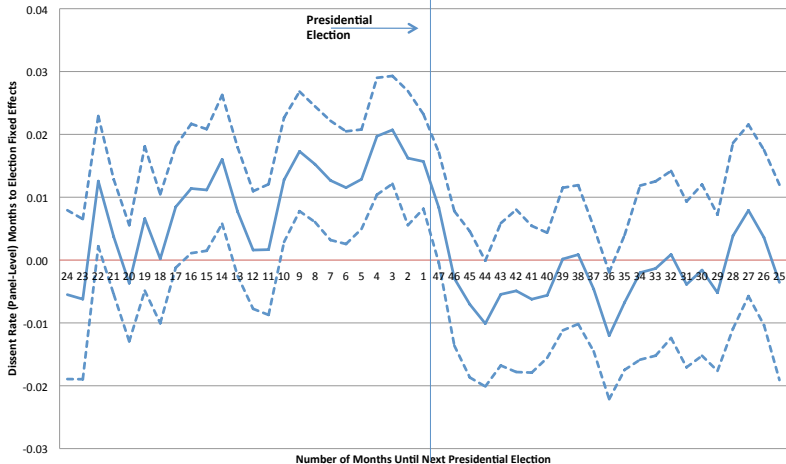
Third Month Before Presidential Election

**Figure 1B: Dissent Rate across the Political Cycle (Monthly)
5% Sample (1925-2002)**



Third Month Before Presidential Election

**Figure 1C: Dissent Rate across the Political Cycle (Monthly)
100% Sample (1950-2007)**

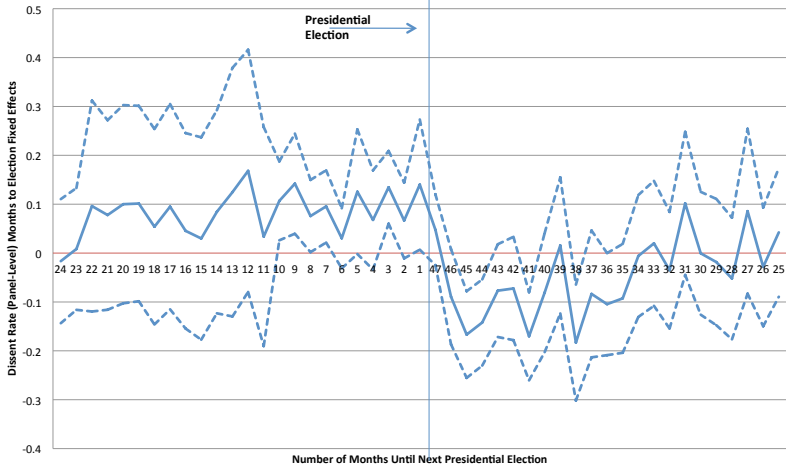


Nominating Conventions

- Candidates need to energize party loyalists before the nominating conventions and, unlike the general elections, many states use a proportional system to allocate delegates for the nominating convention.
- The relative importance of electorally non-pivotal states is likely to decrease precipitously after the nominating conventions.

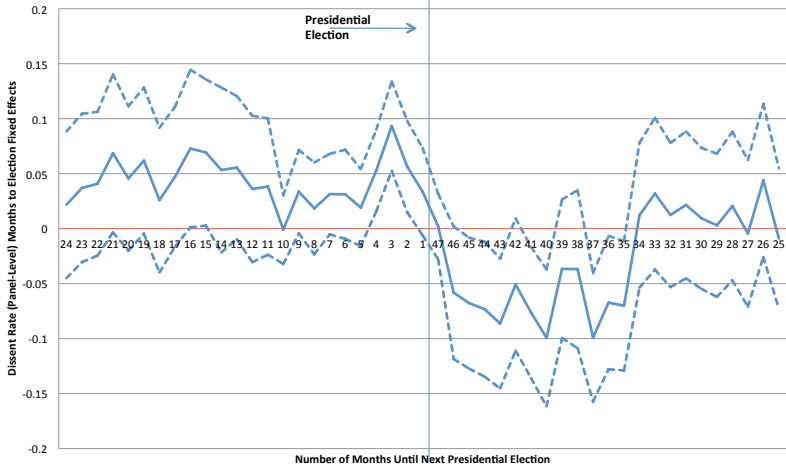
Electorally Pivotal

Figure 6A: Dissent Rate across the Political Cycle (Monthly)
Electorally Pivotal States

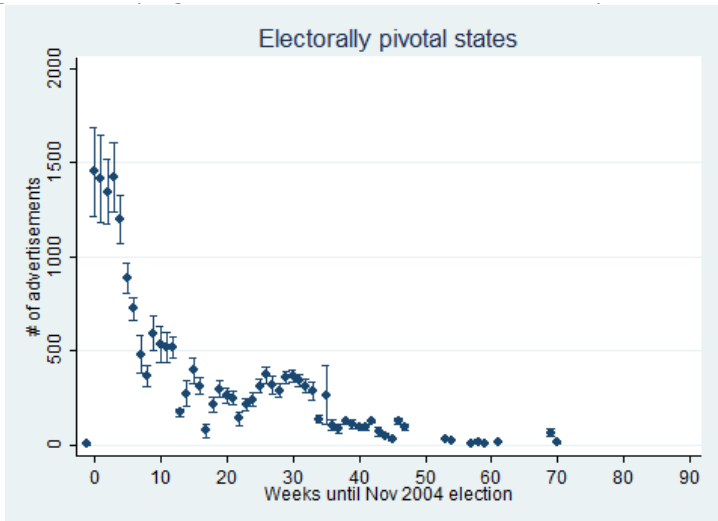


Electoral Non-Pivotal

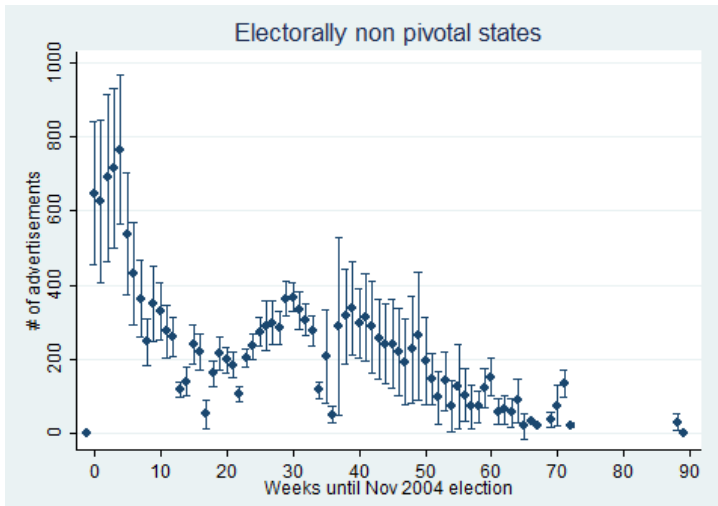
Figure 6B: Dissent Rate across the Political Cycle (Monthly)
Electoral Non-Pivotal States



Electorally Pivotal



Electorally Non-Pivotal



Nominating Conventions

- Campaign advertisements only about double from its peak before the nominating convention for non-pivotal states while they increase roughly 5-fold for pivotal states.
- Priming effects have only been documented one week after the stimulus (Hassin, Ferguson, Shidlovski, and Gross 2007), yet ours is a setting with lots of stimuli over a long time, unlike laboratory studies, which typically stimulate once.

Campaign Ads Stimulus

	Dissent Vote						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Δ Campaign Ads (t0)	0.00725 [0.00316]**	0.00998 [0.00475]**	0.0100 [0.00487]**	0.00810 [0.00479]*	0.00871 [0.00551]	0.0223 [0.0103]**	0.0251 [0.0156]
Δ Campaign Ads (t1)		0.00824 [0.00817]	0.00877 [0.00870]	0.00430 [0.00910]	0.00469 [0.0116]		
Δ Campaign Ads (t2)			-0.00500 [0.0125]	-0.00285 [0.0127]	-0.00455 [0.0127]		
Δ Campaign Ads (f1)						0.00775 [0.00538]	0.00893 [0.0112]
Δ Campaign Ads (f2)							0.00329 [0.00535]
Controls	N	N	N	Y	Y*	N	N
N	7410	6674	5864	5864	5864	6674	6036
R-sq	0.000	0.001	0.001	0.012	0.086	0.001	0.001

- Dissent rates of judges coincide with increases in campaign advertisements in the state of their duty station.
- The importance of different states at different points in time during the 2004 electoral cycle predicts the months of stimulus in different states for other elections.
- An increase in 10,000 campaign advertisements in the previous month corresponds to 0.7 percentage point increase in dissent rate by the judge in that state.
- Estimates are robust to judge fixed effects; similar magnitudes with quarter-to-election fixed effects

Placebo Dates

	Dissent (2-1 Decision) - 100% Sample (1971-2006)									
	Publication Date	Docket Date	Date Filed in District Court	Notice of Appeal Filed	Date Brief Notice Issued	Date of Last Brief Filing	Submitted on Merits	Date of Oral Argument	Final Judgment Date	Publication Date
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)*
Quartertolect = 1	0.00847 [0.00337]**	-0.00239 [0.00357]	0.00467 [0.00335]	0.00436 [0.00342]	-0.00503 [0.00688]	0.00695 [0.00429]	0.0102 [0.00911]	0.00323 [0.0101]	0.00721 [0.00330]**	0.00908 [0.00328]***
Quartertolect = 2	0.00474 [0.00318]	-0.00469 [0.00446]	0.00387 [0.00345]	-0.00208 [0.00442]	-0.00664 [0.00716]	0.00557 [0.00571]	0.00662 [0.00888]	0.00474 [0.0138]	0.00390 [0.00341]	0.00504 [0.00351]
Quartertolect = 3	0.00445 [0.00331]	-0.00131 [0.00557]	0.00292 [0.00359]	0.00166 [0.00556]	-0.00295 [0.00914]	0.00736 [0.00773]	0.00485 [0.00780]	-0.00134 [0.0129]	0.00418 [0.00356]	0.00282 [0.00386]
Quartertolect = 4	0.00158 [0.00368]	-0.00238 [0.00583]	0.000658 [0.00363]	0.00182 [0.00612]	0.00412 [0.0104]	0.0108 [0.00727]	0.0104 [0.00799]	0.0105 [0.0126]	0.00116 [0.00411]	0.000715 [0.00428]
Quartertolect = 5	0.00454 [0.00450]	-0.000143 [0.00585]	0.00170 [0.00368]	-0.000972 [0.00579]	0.000219 [0.00979]	0.0124 [0.00763]	0.0146 [0.00918]	0.0106 [0.0130]	0.00314 [0.00482]	0.00340 [0.00483]
Quartertolect = 6	0.00185 [0.00455]	-0.0000619 [0.00600]	0.00402 [0.00376]	0.00383 [0.00610]	0.00431 [0.0111]	0.00877 [0.00769]	0.00580 [0.00986]	0.00368 [0.0153]	0.000993 [0.00494]	-0.000504 [0.00502]
Quartertolect = 7	-0.00330 [0.00448]	0.000717 [0.00617]	0.000956 [0.00349]	0.00129 [0.00602]	0.00366 [0.0107]	0.00979 [0.00817]	0.0155 [0.0101]	0.0104 [0.0147]	-0.000730 [0.00554]	-0.00470 [0.00523]
Quartertolect = 8	0.00528 [0.00415]	-0.000674 [0.00625]	-0.00253 [0.00346]	0.00239 [0.00615]	0.00613 [0.0119]	0.0152 [0.00896]*	0.00950 [0.00979]	0.0134 [0.0144]	0.00181 [0.00465]	0.00409 [0.00481]
Quartertolect = 9	0.00891 [0.00490]*	0.00591 [0.00642]	-0.0000849 [0.00363]	0.00630 [0.00630]	0.0150 [0.0128]	0.0167 [0.00840]**	0.0125 [0.00936]	0.0113 [0.0139]	0.00730 [0.00540]	0.00970 [0.00574]*
Quartertolect = 10	0.00326 [0.00490]	0.00416 [0.00632]	0.00439 [0.00400]	0.00931 [0.00633]	0.00871 [0.0122]	0.0125 [0.00811]	0.0169 [0.00986]*	0.00350 [0.0145]	0.00284 [0.00567]	0.00313 [0.00564]
Quartertolect = 11	0.00364 [0.00497]	0.00571 [0.00610]	-0.00111 [0.00353]	0.00935 [0.00588]	0.00754 [0.0129]	0.0115 [0.00820]	0.00604 [0.0101]	0.00836 [0.0147]	0.00587 [0.00509]	0.00332 [0.00529]
Quartertolect = 12	-0.00117 [0.00351]	0.00160 [0.00631]	0.000268 [0.00346]	0.00460 [0.00585]	-0.000817 [0.0114]	0.0140 [0.00881]	0.00692 [0.00826]	0.00992 [0.0145]	-0.00753 [0.00411]*	-0.00750 [0.00406]*
Quartertolect = 13	0.00141 [0.00374]	0.00417 [0.00599]	-0.00498 [0.00305]	0.00425 [0.00543]	-0.000679 [0.00948]	0.00650 [0.00752]	0.00857 [0.00633]	0.00764 [0.0111]	-0.00392 [0.00442]	-0.00222 [0.00466]
Quartertolect = 14	-0.00234 [0.00391]	0.00455 [0.00513]	0.00616 [0.00320]*	0.00996 [0.00515]*	-0.00595 [0.0105]	0.00914 [0.00625]	-0.000736 [0.00732]	-0.00389 [0.00904]	-0.0112 [0.00462]**	-0.0124 [0.00511]**
Quartertolect = 15	-0.00386 [0.00377]	-0.00271 [0.00333]	0.00139 [0.00347]	0.00289 [0.00422]	-0.00577 [0.00558]	0.00681 [0.00487]	0.00153 [0.00548]	-0.00901 [0.00608]	-0.00748 [0.00446]*	-0.0101 [0.00452]**
Controls	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Observations	263388	164545	150293	151246	58773	155695	27231	134116	164545	164545
R-squared	0.013	0.019	0.019	0.019	0.026	0.019	0.018	0.019	0.019	0.019

- Exact time in which a judge makes the mental decision to dissent may be shortly before publication of an opinion.

Time

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

Partisan Identities, Political Environment, and Previous Experience

Wartime

4 Conclusion

Latent Partisan Identities and Political Environment

- Divided panels, Minority judges ◀ Minority
- Distant judges, Different party-Shared ideology scores ◀ Scores
- 3.5 times larger in close elections, non-existent in landslide elections, and *reversed* in elections during wartime. ◀ Type
- Increasing polarization since the 1970s (even controlling for judge age) ◀ Polarization1 ◀ Polarization3
- Electoral cycles before 1975 are strong and significant ◀ Publishing
- Senator elections have half the impact of presidential elections; no detectable effect from governor elections.

Previous Experience and Associative Links

- Inexperience magnifies priming effects—conscious processing, directed by an individual's intentions and goals, can override the usual or habitual response to priming (Krosnick and Kinder 1990). ◀ Inexperience
- Activated concepts will spread only if an associative link has been formed, and the stronger the association the wider and faster the activation will spread (Bargh and Chartrand 2000).
- Federal prosecutors, i.e. those advocating on behalf of the government in federal courts, have displayed behavior reflecting party politics in federal public corruption prosecutions (Gordon 2009).
- Highly political and highly legal. ◀ FederalProsecutors

Outline

1 Introduction

Motivation/Relevance

Institution, Model, and Data

2 Electoral Cycles in Judicial Behavior

Dissents

Voting Valence and Legal Outcomes

Case Type and Development of Law

Randomization

3 Priming Mechanism

Incentive-Based Mechanisms?

Campaign Advertisements

Timing Puzzle, Length of Priming, and Summary Judgment

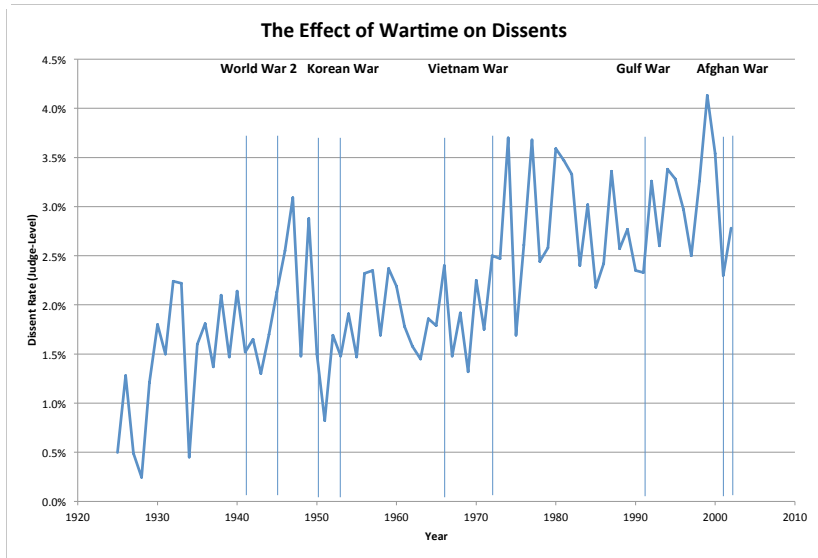
Partisan Identities, Political Environment, and Previous

Experience

Wartime

4 Conclusion

Raw Data



Wartime

Outcome:	Dissent (2-1 Decision)			Dissent Vote		Affirm	Reverse
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Divided (DRR or RDD)	0.0150 [0.00442]***		0.0198 [0.00499]***	0.00579 [0.00148]***	0.00737 [0.00166]***		
World War 2	0.0240 [0.0132]*						
Korean War	-0.0187 [0.0101]*	0.00272 [0.00486]					
Vietnam War	-0.0126 [0.00565]**	-0.0208 [0.00185]***					
Gulf War	0.0257 [0.0197]	-0.0109 [0.00255]***					
Afghan War	-0.0157 [0.0229]	0.00294 [0.00623]					
War			0.00992 [0.00869]	-0.0000581 [0.00308]	0.00578 [0.00364]	0.0389 [0.0107]***	-0.0207 [0.00993]**
Divided * War			-0.0263 [0.00972]***		-0.00810 [0.00321]**		
Inexperience (<= 10 Years)				0.00189 [0.00163]	0.00194 [0.00164]		
Inexperience * War				-0.00744 [0.00367]**	-0.00779 [0.00364]**		
Year (linear time trend)	Y	Y	Y	Y	Y	Y	Y
Observations	18686	265868	18686	49374	49374	18686	18686
R-squared	0.014	0.012	0.014	0.005	0.005	0.045	0.014

- Judges who are less experienced and sitting on divided panels are both more likely to dissent before presidential elections and more likely to not dissent during wartime.

◀ WarRandom

Summary

- Two datasets from 1925-2007 indicate:
 - ① Judges are roughly twice as likely to dissent, vote along partisan lines, and set precedent along partisan lines in the quarters leading up to a presidential election.
 - ② Dissents coincide with increase in campaign advertisements in states where judges' duty station resides and with closeness of the state's popular vote when that state has more electoral votes.
 - ③ Ideologically polarized environments, inexperience, and previous associative links magnify the electoral cycle.
 - ④ Wartime reduces dissents, and this reduction is exhibited especially in ideologically polarized environments and by judges with characteristics associated with susceptibility to priming.
 - ⑤ Electoral cycles larger and more robust than previously-documented electoral cycles.
- We test and reject incentive-based mechanisms.
- We build a formal model of priming.

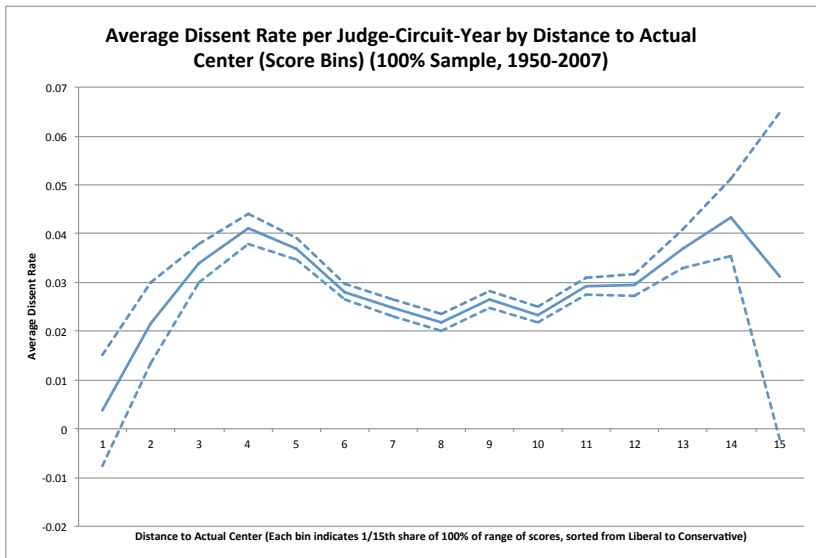
Broader Implications

- ① Social scientists have long speculated on whether people choose the same group because of a shared set of ideas or whether groups impart a set of ideas.
 - Priming group identity isolates the second channel in a naturally occurring setting.
 - Our research design tracks individual behavior over time as well as individual demographic characteristics before a prime to see if individuals from different groups diverge after the prime in their views of the moral or “just” thing to do.
 - Stylized facts for a burgeoning theoretical literature on endogenous normative commitments (Benabou and Tirole 2010).
- ② If elite U.S. judges are in fact susceptible to priming via the partisan nature of electoral cycles, then highly trained individuals may be susceptible to other forms of priming regardless of their professional commitments to be unbiased.

Ongoing Work

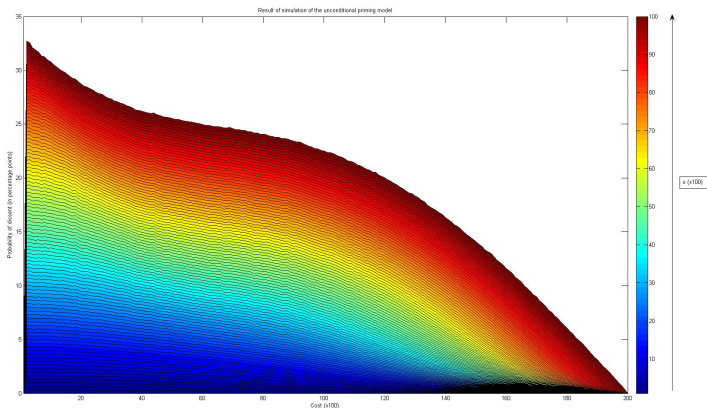
- Extend data backwards to 1891.
- Text Analysis of 100% sample to understand mental mechanisms.
 - Do judges use more categorical arguments? (No)
 - Length of dissent. (No)
 - Do judges use more partisan words?
- High frequency judicial decision-making (high-stakes refugee asylum cases).
 - Priming
 - Gambler's fallacy
 - Racial contrast effects
- Infectious ideology, ideology scores, preferences for perfection, persuasion
 - Repeated random assignment to peers
- Link judicial decision-making to oTree laboratory measures

Puzzle: Preferences for Perfection?



Simulation

- We assumed that $\bar{Q} \sim N(0,1)$, but ignored the possibility that the realization of \bar{Q} is near Q . We can simulate three random draws of judges and plot the probability of dissent as it varies by cost of dissent and priming.



Reputational Incentives

Panel A: Newspaper Articles

Mean of dep. var.

<i>Panel A: Newspaper Articles</i>	Mentioning Federal Appellate Court Dissents			Mentioning "Republican" and "Democrat"		
Mean of dep. var.	3.09			148		
Last Quarter	-0.343 (0.711)	0.214 (0.966)	-0.662 (1.505)	81.54*** (9.646)	65.74*** (13.95)	24.65*** (9.501)
Fixed Effects	None	Q	YSQ	None	Q	YSQ
Observations	183	183	183	1294	1294	1294
R-squared	0.000	0.075	0.273	0.065	0.121	0.810

Panel B: Primaries

Mean of dep. var.

<i>Panel B: Primaries</i>		100% Sample (1950-2007, Quartertoelect = 2 to 8)				
Mean of dep. var.		0.028			0.028	
Quartertoprimary == 1	0.000767 (0.000932)	0.00119 (0.000923)	0.00133 (0.00102)	0.000493 (0.000818)	0.000860 (0.000816)	0.00105 (0.000902)
Quartertoprimary == 2		0.00296* (0.00150)	0.00310** (0.00153)		0.00255* (0.00136)	0.00274* (0.00141)
Quartertoprimary == 0			0.000906 (0.00152)			0.00119 (0.00145)
Fixed Effects	None	None	None	C	C	C
Observations	298341	298341	298341	298341	298341	298341
R-squared	0.000	0.000	0.000	0.002	0.002	0.002

Panel C: Displacement

Mean of dep. var.

<i>Panel C: Displacement</i>		Mean Dissent Rate - Dissent Rate in Three Quarters After Election					
		5% Sample (1925-2002)			100% Sample (1950-2007)		
		Dissent (2-1)	Dissent (2-1)	Dissent Vote	Dissent (2-1)	Dissent (2-1)	Dissent Vote
Mean of dep. var.		0.019	0.021	0.030	0.0058	0.010	0.0040
Dissent Rate in Three Quarters		-0.0800	-0.0566**	-0.0588**	-0.687***	-0.505***	-0.406***
Before Election - Mean Dissent Rate		(0.0503)	(0.0270)	(0.0253)	(0.0524)	(0.0252)	(0.0249)
Observations		206	724	724	160	711	711
R-squared		0.012	0.006	0.007	0.521	0.362	0.272

Time Between Oral Argument and Final Judgment

- Decisions with dissents take 10% less time (baseline of 174 days). TimeToJudge

Outcome:

Number of Days Between Oral Argument and Final Judgment

Appeals Database (1925-2002)

100% Sample (1950-2007)

Sample:

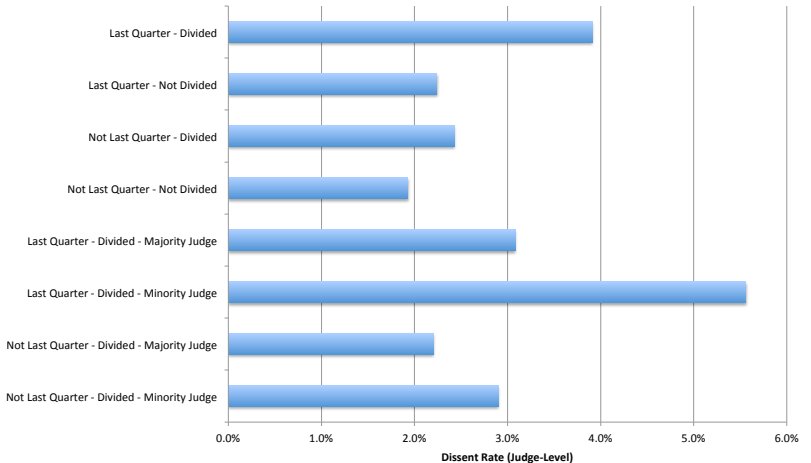
Cases With Dissents (2-1 Decisions)	Cases Without Dissents (3-0 Decisions)	Cases With Dissents (2-1 Decisions)	Cases Without Dissents (3-0 Decisions)
(1)	(2)	(3)	(4)

Divided (DRR or RDD)	-12.10 [18.71]	0.603 [4.945]		
Quartermoelect = 1	-87.83 [43.82]**	12.17 [14.51]	-0.480 [7.665]	19.19 [2.828]***
Quartermoelect = 2	-84.67 [42.35]**	6.080 [13.72]	-16.47 [8.099]**	1.227 [1.833]
Quartermoelect = 3	-80.05 [43.66]*	12.24 [14.04]	-20.12 [8.071]**	1.882 [2.152]
Quartermoelect = 4	51.65 [49.99]	-19.54 [25.56]	1.058 [11.62]	1.533 [2.976]
Quartermoelect = 5	61.32 [55.78]	-4.137 [30.47]	10.83 [13.06]	19.93 [3.664]***
Quartermoelect = 6	17.62 [62.41]	-10.18 [31.55]	-4.236 [12.65]	4.407 [3.798]
Quartermoelect = 7	81.76 [68.65]	29.95 [31.02]	-6.682 [14.15]	1.679 [3.594]
Quartermoelect = 8	-69.36	25.17	0.631	6.185

Latent Partisan Identities

← Part1

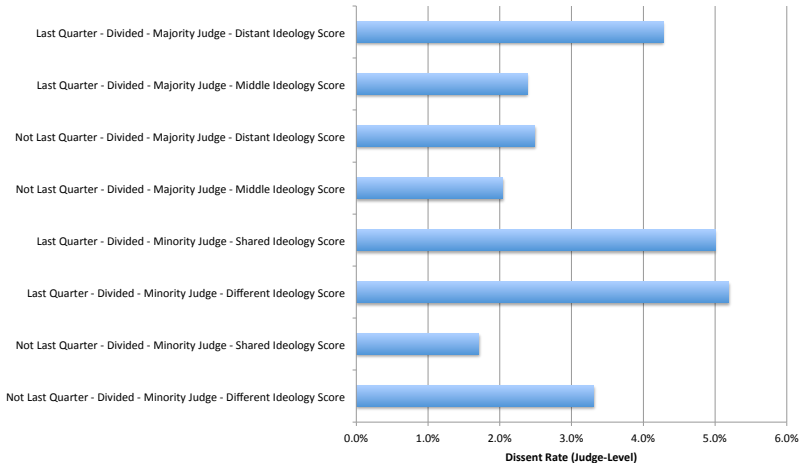
Figure 7A: The Role of Judicial Panel Characteristics in Electoral Cycles in Dissents



Latent Partisan Identities

← Part2

Figure 7B: The Role of Judicial Ideology Score in Electoral Cycles in Dissents



Type of Election

Panel A: U.S. Courts of Appeals Database (1925-2002)	Dissent (2-1 Decision)			
	(1)	(2)	(3)	(4)
Divided (DRR or RDD)	0.0153 [0.00451]***	0.0153 [0.00450]***	0.0152 [0.00450]***	0.0153 [0.00451]***
Last Three Quarters	0.0332 [0.00793]***	0.0447 [0.00967]***	0.0491 [0.00904]***	0.0464 [0.00879]***
Close Election (Electoral Count is Less than 55%)	0.0801 [0.0187]***			0.0767 [0.0175]***
Close Election (Electoral Count is Less than 55%) * Last Three Quarters	0.0846 [0.0381]**			0.0713 [0.0383]*
Landslide Election (Electoral Count is More than 95%)		0.0252 [0.0173]		0.00958 [0.0167]
Landslide Election (Electoral Count is More than 95%) * Last Three Quarters		-0.0400 [0.0139]***		-0.0203 [0.00948]**
War			0.0203 [0.0131]	0.0204 [0.0132]
War * Last Three Quarters			-0.0605 [0.0111]***	-0.0499 [0.0108]***
Controls	Y	Y	Y	Y
Observations	18686	18686	18686	18686
R-squared	0.021	0.021	0.021	0.021

- 3.5 times larger in close elections, non-existent in landslide elections, and reversed in elections during wartime. [Part 3](#)

Type of Election

Panel B: 100% Sample (1950-2007)

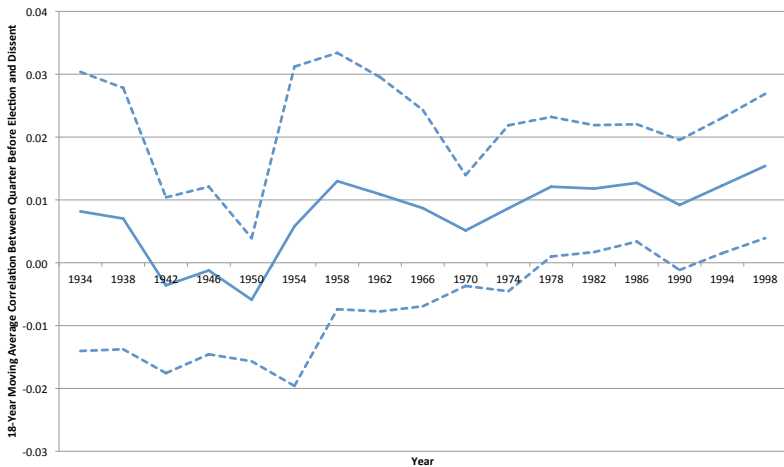
	Dissent Rate in Three Quarters Before Election - Dissent Rate in Three Quarters After Election	
	(1)	(2)
Electoral Count (%)	-0.000248	-0.000250
	[0.000124]**	[0.000124]**
Controls	N	Y
Observations	149	149
R-squared	0.027	0.098

- As the electoral college percent drops from 100 to 50, the dissent spike increases 1.3 percentage points, roughly twice the average dissent spike, which is 0.6 percentage points. ◀ Part4

Time Period

Part5

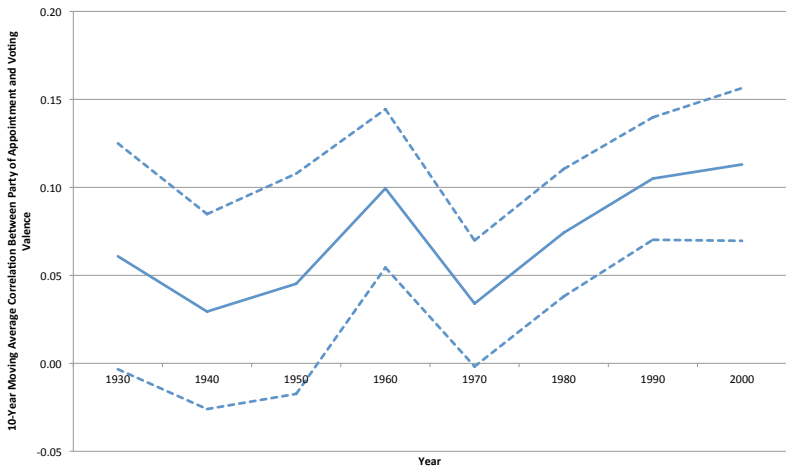
**Figure 8A: Increase in Electoral Cycles in Dissents over Time
(5% Sample)**



Time Period

Part 6

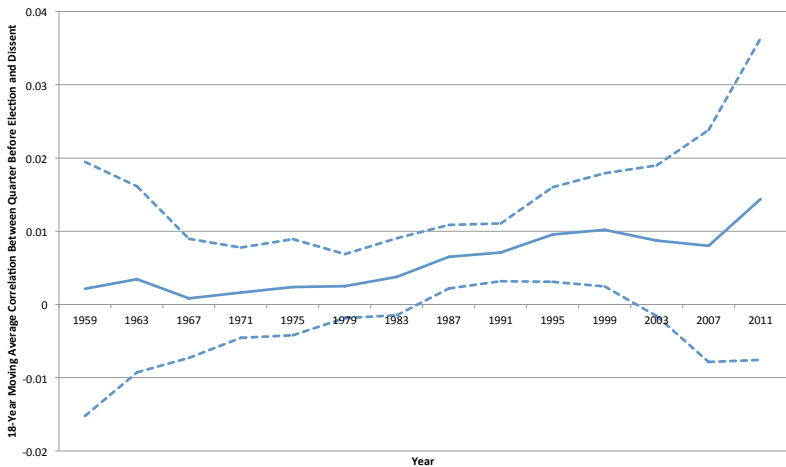
Figure 8B: Influence of Party of Appointment on Voting Valence Over Time (5% Sample)



Time Period

Part 7

**Figure 8C: Increase in Electoral Cycles in Dissents over Time
(100% Sample)**



Time Period

	Dissent		Liberal Vote	
	(1)	(2)	(3)	(4)
Divided (DRR or RDD)	0.0153 [0.00450]***	0.0153 [0.00466]***	-0.0141 [0.0141]	-0.0150 [0.0141]
Year > 1975	0.0469 [0.0146]***	0.0454 [0.0152]***	0.0324 [0.0541]	0.0319 [0.0590]
Lastquarter	0.0299 [0.0170]*	0.0265 [0.0171]		
Year > 1975 * Lastquarter	0.0409 [0.0202]**	0.0421 [0.0208]**		
Democrat Appointee			0.0520 [0.0106]***	0.0509 [0.0110]***
Democrat Appointee * Year > 1975			0.0466 [0.0159]***	0.0403 [0.0170]**
Born on or after 1940		0.00235 [0.00624]		-0.0329 [0.0200]*
Born on or after 1940 * Lastquarter		-0.00479 [0.0340]		
Born on or after 1940 * Democrat Appointee				0.0714 [0.0321]**
Controls	Y	Y	Y	Y
Observations	56058	51460	56058	51460
R-squared	0.021	0.022	0.087	0.088

- Time period, not judge age, drives electoral cycles.
- Electoral cycles before 1975 are strong and statistically significant.

Inexperience

- Inexperience magnifies priming effects—conscious processing, directed by an individual's intentions and goals, can override the usual or habitual response to priming (Krosnick and Kinder 1990). [Part9](#)

Each coefficient represents a separate regression

Last Quarter (Entire Sample)	0.0129 [0.00413]***	56058	0.231 [0.0734]***	56058
Last Quarter (Experience = 1-2)	0.0331 [0.0110]***	6314	1.133 [0.452]**	5314
Last Quarter (Experience = 3-4)	-0.000455 [0.0155]	6526	-0.0559 [0.272]	5641
Last Quarter (Experience = 5-6)	0.0206 [0.0188]	6075	0.239 [0.301]	5051
Last Quarter (Experience = 7-8)	0.0182 [0.0106]*	5644	0.542 [0.235]**	4788
Last Quarter (Experience = 9-10)	0.0150 [0.0178]	5041	0.251 [0.224]	3911
Last Quarter (Experience = 11-12)	-0.0196 [0.0142]	4390	-0.383 [0.252]	3553
Last Quarter (Experience = 13-14)	0.0308 [0.0203]	3605	0.493 [0.304]	2466
Last Quarter (Experience = 15-16)	-0.00230 [0.0165]	3002	-0.264 [0.575]	1597
Last Quarter (Experience = 17-18)	0.0173 [0.0292]	2288	0.456 [0.409]	1312
Last Quarter	-0.00166	2737	0.636	1850

Former Federal Prosecutors

- Activated concepts will spread only if an associative link has been formed, and the stronger the association the wider and faster the activation will spread (Bargh and Chartrand 2000).

	Ordinary Least Squares					Dissent Vote			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Divided (DRR or RDD)	0.00545 [0.00139]***	0.00479 [0.00139]***	0.00282 [0.00146]*	0.00598 [0.00148]***	0.00600 [0.00148]***	0.00545 [0.00139]***	0.00325 [0.00151]**	0.0639 [0.0299]**	-0.0275 [0.120]
Lastquarter	0.0129 [0.00413]***	0.00381 [0.00595]	0.00814 [0.00457]*	0.00764 [0.00370]**	0.0116 [0.00396]***	0.0126 [0.00402]***	-0.00287 [0.00565]	-0.0240 [0.110]	0.0819 [0.0305]***
Divided * Lastquarter		0.0130 [0.00680]*					0.00612 [0.00204]***	0.139 [0.159]	0.135 [0.165]
Minority (D of DRR or R of RDD)			0.00686 [0.00193]***				0.0199 [0.0125]	0.101 [0.0332]***	0.152 [0.0367]***
Minority * Lastquarter			0.0206 [0.0100]**				-0.00261 [0.00188]	0.191 [0.144]	0.179 [0.154]
Federal Prosecution Experience				-0.00251 [0.00188]			0.0189 [0.0126]	-0.0436 [0.0357]	0.346 [0.445]
Federal Prosecution Experience * Lastquarter				0.0188 [0.0129]			-0.00297 [0.00510]	0.224 [0.127]*	0.287 [0.143]**
Elevated					-0.00207 [0.00510]		-0.0306 [0.00677]***	-0.0357 [0.0963]	1.265 [0.686]*
Elevated * Lastquarter					-0.0304 [0.00624]***		-0.0306 [0.00677]***		
Retire or Resign Next Year						0.00126 [0.00416]	0.000822 [0.00415]	0.0105 [0.0735]	0.0129 [0.0789]
Retire or Resign Next Year * Lastquarter						0.00908 [0.0230]	0.0105 [0.0225]	0.144 [0.253]	0.0818 [0.249]
Controls	Y	Y	Y	Y	Y	Y	Y	Y	Y*
Observations	56058	56058	56058	51086	51460	56058	51086	51052	42719
R-squared	0.006	0.006	0.007	0.007	0.007	0.006	0.007		

- Federal prosecutors, i.e. those advocating on behalf of the government in federal courts, have

Randomization Inference

