




The Supreme Court in the Trump Era: Politics and Predictions

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November 28, 2018

Overview of topics


- Is the current Supreme Court “politicized” in historical context?
- Relationship between broader national and Congressional politics, on the appointment and voting behavior of Supreme Court Justices.
- What impact of Trump appointees Gorsuch, Kavanaugh? Others?
- The uniquely important role of Chief Justice John Roberts
- Specific cases and issues in upcoming Term

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What does it mean to say Court is “politicized”?

- 1) Much higher correspondence between party of appointing President and voting behavior as a Justice
- 2) Much less variation and deviation among Justices appointed by same-party President
- 3) Increased polarization and consistency of voting in close high-profile cases
- 4) Prevalence of ideology as the prime variable in Presidential selections




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From 1790 to 2010:	2
From 2010 to 2014:	8



Through most of 20th Century, more variation within group appointed by same party

Republican appointees: Stevens, Blackmun, Warren, O'Connor

Democrat appointees: White, Black, McReynolds

Factors other than ideology were relatively more important in appointment decisions by President (politics, personality, geography)



Miranda v Arizona (1966)

A landmark 5-4 decision

Majority: Black, Douglas, Fortas, Warren, Brennan

Dissent: Clark, White, Harlan, Stewart



Much less variation among Justices appointed by same party President today

Standard Deviations in voting behavior:

	1986-93	2010-15
Democratic Appointees	24%	4%
Republican Appointees	15%	5%



Republican appointed Justices more “conservative” votes; Democratic appointees the same

Percentage of all judicial votes coded as “conservative”:

	1953-93	2010-15
Democratic Appointees	38%	40%
Republican Appointees	48%	60%



Politicization of Court reflects broader national political trends

- Members of Congress display similar voting trends as Court (more party uniformity, polarization)
- Elites from both parties more polarized than broader public (a reversal of 20th century dynamic)
- Ideology of Supreme Court Justice more salient in elections, at least for Republican voters. Ideological proxy of Federalist Society membership more important than ever (about 85% of Trump circuit and Supreme Court nominees)

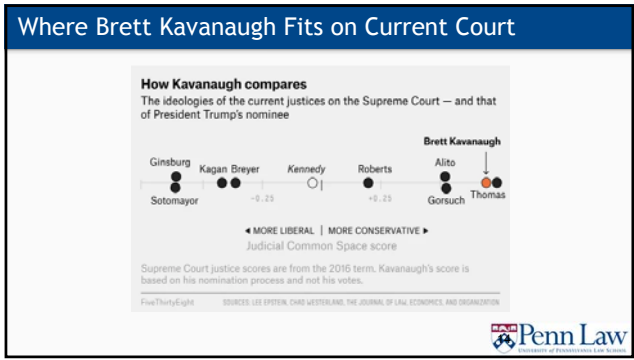


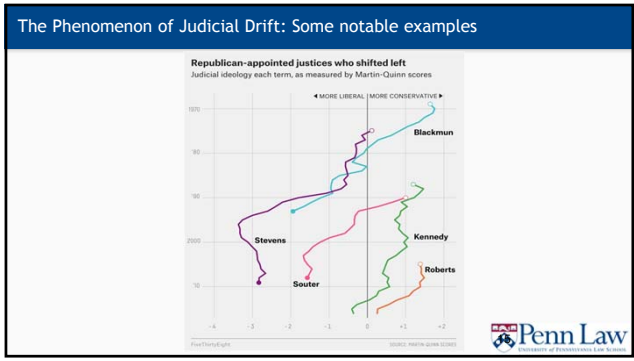
Senate Voting on Nominees More Partisan

Number of “nay” votes on confirmation:

Scalia:	0	Sotomayor:	31
Ginsburg:	3	Kagan:	37
Roberts:	22	Gorsuch:	45
Alito:	42	Kavanaugh:	48





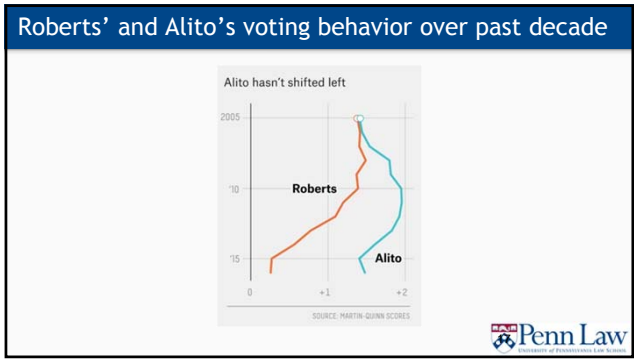


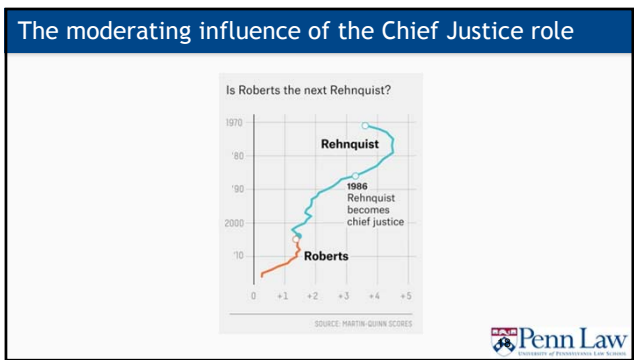
John Roberts voting with liberals slightly more often

How often Roberts agreed with ...

	2010	2011	2012	2013	2014	2015
Samuel Alito Jr.	96%	91%	90%	85%	81%	84%
Clarence Thomas	89	88	86	88	70	75
Elena Kagan	69	73	67	83	65	87
Ruth Bader Ginsburg	65	64	65	77	69	78

SOURCE: SCOTUSBLOG





Predictions for Future

A more conservative Court, with John Roberts in center

This Term: relatively few major cases yet, but issues of immigration, other Presidential power and authority loom

Near future: affirmative action, federalism, non-delegation (EPA cases), abortion and reproductive rights, religious freedom
