

Preface

A central question in the study of judicial politics in the United States involves why the Supreme Court adopts the policies that it does. There is surprisingly little consensus on an answer. One major school of thought, advanced over the past decades by Professor Harold Spaeth of Michigan State University and generally known as the “attitudinal model,” is that what motivates the justices is their personal attitudes and policy preferences. A substantial body of empirical research does show that the behavior of the justices exhibits some regularities, and these regularities do appear explainable in terms of the justices’ personal attitudes and policy preferences.

We argue in this book, however, that this theory of political behavior on the Court has not been developed well enough to allow a comprehensive and systematic empirical test. There are at least three significant problems with the theory as developed thus far.

The first problem is that the foundations of this theory remain unclear. Are the justices to be seen from a psychological perspective, in which a justice’s behavior is the expression of preexisting attitudes that have been activated by particular aspects of a particular case? Or are the justices to be seen from a rational-choice perspective, in which a justice’s behavior is the outcome of strategic calculations conducted in the pursuit of particular policies? One can find evidence of both perspectives in the literature on the attitudinal model, particularly Segal and Spaeth’s *The Supreme Court and the Attitudinal Model* (1993) and *The Supreme Court and the Attitudinal Model Revisited* (2002). In our view, these are very different kinds of perspectives that imply very different kinds of approaches to the study of judicial behavior and that call for very different kinds of empirical evidence. Yet both perspectives have been combined—rather uneasily, in our view—under the rubric of “the attitudinal model.”

The second problem is that the attitudinal model has been focused largely on the last stage of Supreme Court decision-making, involving how the justices vote on the final majority opinion. For the most part, the effects of the

earlier stages of Court decision-making on the final outcome—these are the stages involving certiorari, the conference vote, opinion assignment, and opinion writing and coalition formation—have been neglected theoretically. One can find fragments of the needed theory at various places in the literature, and these fragments have formed the basis of a considerable amount of useful empirical research. But there has been no rigorous and systematic development of the logic of the attitudinal model (whether from the psychological perspective or the rational-choice perspective) throughout all the stages of the Court's decision-making process.

The third problem is related to the second: although the attitudinal model has been focused largely on how the justices vote on the final majority opinions, as just noted, and although substantial empirical research has attempted to account for these final votes, there is almost no theorizing or empirical research that seeks to account for the content of the final majority opinion on which the justices are voting. This is odd because what is presumably of greatest interest is not why the justices vote as they do (although that is certainly of great interest), but why the Supreme Court adopts some final opinions and not others. It is not adequate merely to say that the Court adopts those final opinions that maximize achievement of the personal policy preferences of the members of a Court majority. The difficulty is that there are many possible Court majorities, which means that one question has simply been replaced by another: which majority should we expect to prevail, and in support of which policy?

The purpose of this book is to lay a foundation for solving these three problems. Our approach involves the development of a formal model of multistage Supreme Court decision-making by strategically rational justices. The model addresses these three problems in the following way. First, the formal model is explicitly a rational-choice model. There is certainly room for—and perhaps even a need for—the development of various kinds of psychological models of judicial decision-making (not only attitude-based models but perhaps also models from learning theory and cognitive psychology). However, one cannot know the capacity of any particular kind of perspective without comprehensively, rigorously, and systematically developing it and exploring its full implications. This is what we seek to accomplish with regard to the rational-choice perspective.

Second, our model explicitly incorporates all stages of Supreme Court decision-making—from the certiorari decision at the outset to opinion writing, coalition formation, and the final vote at the end—in a single integrated model. It shows what implications the choices from the early stages have for the content of the final majority opinion and for how the justices will vote on this opinion. It turns out that some of what the judicial politics literature considers to be rational behavior by the justices would not, in fact,

be rational; some of the conventional wisdom, in other words, is incorrect. It also turns out that other parts of the conventional wisdom are incomplete or else rest on implicit (and often unrecognized) assumptions that may be problematic on explicit examination.

Third, our model not only explains how the justices will vote on the final majority opinion, but, even more importantly, the model also explains what this final majority opinion will be. This final majority opinion turns out to be a function not only of the justices' policy preferences on the case, as posited by the attitudinal model, but also of the Court's decision-making procedures and of the current policy status quo on the case. All three kinds of variables interact to produce the final opinion, and none of these variables can be omitted from an analysis.

We think it is no exaggeration to say that our book provides the first comprehensive, rigorous, and systematic model of Supreme Court decision-making. In so doing, it also provides what we consider to be an essential theoretical foundation for the conduct of empirical research on Supreme Court decision-making from the perspective of a rational-choice version of the attitudinal model. For reasons of time and space, we do not attempt any empirical work ourselves. Yet we do expect that the propositions we derive from our model will provide the basis for several years of empirical work by many different scholars. Comprehensive empirical studies such as Maltzman, Spriggs, and Wahlbeck's *Crafting Law on the Supreme Court: The Collegial Game* (2000) are an excellent start on what needs to be done empirically, but as our book makes clear, much more remains to be done.

We emphasize that our book should be seen as a sustained "if . . . then" exercise; that is, *if* the justices are motivated primarily by their personal policy preferences on a case, as Spaeth and many other scholars have argued, *then* the justices should be expected to behave in particular ways at each stage of the Court's decision-making process. If empirical research suggests that the justices do behave in accordance with the expectations of our model, we could claim to have constructed a solid foundation for this general perspective on Supreme Court decision-making. But if this empirical research suggests that the justices do not behave in accordance with our model's expectations, then something is wrong with the general theory or with our translation of the theory into a specific model. It may be that the model must be modified, for example, but if these modifications do not resolve the empirical problems, it might be that the general theory itself has to be modified or even, at the end, abandoned. Nonetheless, as we make clear in our last chapter, there are a great many modifications of our model (all compatible with the basic rational-choice perspective) that may need to be developed and empirically tested before a fundamental assessment can be made of the overall power of the rational-choice version of the attitudinal model.

Our book's most immediate contribution involves the development of a comprehensive and integrated model of Supreme Court decision-making. However, there are long-term contributions that we think are equally important. One long-term contribution is that our model should actually be seen as the beginning, not the end, of the process of building models of Supreme Court decision-making. Our last chapter details some of what these more advanced models might involve. Another long-term contribution is that our model makes possible a more definitive empirical test than has yet been possible of the theory that Supreme Court justices are strategically rational actors who are motivated primarily by their personal policy preferences.