STATE SUPREME COURTS’ DECISION MAKING ON ABORTION

ISSUES: THE ATTITUDINAL AND INTEGRATED MODELS

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Wanqing Wang

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ABSTRACT

STATE SUPREME COURTS’ DECISION MAKING ON ABORTION ISSUES: THE ATTITUDINAL AND INTEGRATED MODELS

by

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Master of Arts in Political Science

California State University, Chico

Fall 2011

For half of a century, scholars have paid considerable attention to the Supreme Court justices’ voting behavior. Previous research has suggested three ways to explain and predict Supreme Court justices’ decision making: the Legal Model, the Attitudinal Model, and the Integrated Model. Because state supreme courts are usually the court of last resort for most cases and they handle the vast majority of cases heard in the United States, to study state supreme courts judges’ decision making has substantial outcomes.

In this study, using data from Brace and Hall’s Judge Level State Supreme Court Database, I estimate and evaluate state supreme court judges’ decisions on cases involving abortion from 1995 to 1998. Based on past research, I chose the four most important independent variables, namely judge’s ideology, judge’s gender, state ideology and judge’s term length, and I adopted two models in order to do comparative research. The first model is the Attitudinal Model, which includes the judge’s ideology and gender.
The other one is the Integrated Model, which also considers state ideology and judge’s term length. The dependent variable in my study is state supreme court judges’ decisions on abortion issues. At the level of state supreme courts, judges who decide that a minor can get a bypass to obtain an abortion without parental involvement and that government funding should cover abortions are characterized as pro-choice advocates. Alternatively, if judges favored parental control and denied public abortion funding, their votes are coded as pro-life. Therefore, I coded 0 if the judge voted in a pro-life direction and 1 if the judge voted in the pro-choice position. Since the dependent variable is binary in nature, I use the Classification and Regression Tree analysis and logistic regression to examine the judges’ decisions. I found that based on the data, the four variables do not have a strong and direct impact on state supreme court judges’ votes and neither the Attitudinal Model nor the Integrated Model is a significant improvement over the other. Despite these results, this study is still useful for future research. Since a stable logistic regression usually requires more data, the insignificant logistic regression fit at a 5% level may well be due to the small size of my data set.
Abortion has been legalized nationwide for nearly forty years since the U.S. Supreme Court handed down its landmark decision in *Roe v. Wade*. After *Roe*’s decision, abortion becomes one of the most common procedures performed at medical clinics (Freedman, Jillson, Coffin and Novick 1986). The Guttmacher Institute, which periodically surveys U.S. abortion providers, reported that there were 1.21 million abortions in 2008 and a rate of 19.6 abortions per 1,000 women aged 15 to 44 (Jayson 2011). Many scholars are concerned with this high rate of abortion. As Wolf (2001) noted,

> We need to contextualize the right to defend rights within a moral framework that admits that the death of a fetus is a real death; that there are degrees of culpability, judgment, and responsibility involved in the decision to abort a pregnancy; that the best understanding of feminism involves holding women as well as men to the responsibilities that are inseparable from this country’s high rate of abortion. (McBride 2008, 75)

The salience of abortion issues is claimed to be among the highest of all national issues (Klick 2004, 1).

Indeed, abortion issues remain as one of the most persistently controversial issues in the America. Thirty years after the Supreme Court’s decision in *Roe*, an ABC News poll result indicated that the U.S. population in 2003 was “almost evenly split over whether the next nominee to the Supreme Court should support or oppose legal abortion in most or all contexts” (Klick 2004, 1). In 2009, a USA Today/Gallup survey found that
47% Americans call themselves *pro-life* and 46% Americans view themselves as *pro-choice* (Saad 2009, 271). As Kurst-Swanger noted, the controversy has generally divided Americans into two camps: pro-life or pro-choice (Kurst-Swanger 2008, 146).

Generally speaking, pro-life advocates contend that abortion is murder, morally wrong, and should not be permissible, because abortion kills the life of an unborn innocent child (White 2008, 84). In the book *The Edge of Life: Human Dignity and Contemporary Bioethics*, Kaczor divided pro-life advocates into two groups: the consistent pro-life group and the moderate pro-life group (Kaczor 2005, 106). According to Kaczor, the Catholic Church has taken a strong consistent pro-life position, which “views abortion at any stage, and for any reason, as morally and/or legally impermissible . . . (because) abortion means the intentional destruction of human embryonic or fetal life” (Kaczor 2005, 106). On the other hand, people holding the moderate pro-life position view most abortions as morally or legally impermissible, but they support some abortions for cases of rape, incest, or fetal deformity (Kaczor 2005, 106).

Similarly, Kaczor split pro-choice advocates into two groups. The first group takes a consistent pro-choice position. They believe that all abortions are morally or legally permissible without exception (Kaczor 2005, 106). The second group takes a moderate pro-choice position, which holds that most abortions are permissible but some abortions, such as sex-selection abortions, are impermissible. This view is largely held by people who believe that abortions are morally or legally permissible before viability but should be forbidden after viability (Kaczor 2005, 106). For example, Mary Warren, a pro-choice advocate, contends that in the *early* stages of pregnancy when the fetus does not resemble a *person*, abortion should be permitted whenever the pregnant woman choose it. Warren claims that
abortion in early stages of pregnancy is different from infanticide. As she contends, one of the important differences is that “a fetus can pose a threat to the woman’s life or health, whereas the newborn infant cannot pose such a threat because the mother can put it up for adoption or place it in foster case” (White 2008, 86). Moreover, feminists argue that abortion is a necessary condition for women’s autonomy and women should possess the right to abortion. Without the emphasis on female rights, the door will be left open for other discussions such as parental consent (Rudy 1997, 69).

After the Court’s decision in Roe, each state could no longer decide whether abortion was legal within its own borders. In other words, abortion bans became unconstitutional in every state. However, “there is great ambiguity in the language of Roe; hence, there are few standards that bind judges to employ uniform criteria in their decision-making” as noted in Abortion Politics in the Federal Courts: Right versus Right (Yarnold 1995, 5). Pro-life groups have still tried to seek legal restrictions on abortions. In the case Planned Parenthood v. Casey (1992), the Supreme Court did not overturn the precedence of Roe v. Wade completely, and it reaffirmed the essential ruling of Roe that a woman had the right to choose abortion. However, the Court permitted states to place various restrictions on abortion (Scaros 2010, 151). In each state, abortion laws differ on certain specific issues, such as parental notification and public abortion funding. As the authority to regulate abortion under certain circumstances returns again to state legislature, pro-life and pro-choice groups continue to fight for their own rights.

Pro-life advocates contend that parental involvement should be required in a minor’s decision to have an abortion. According to Luker, a minor, who is under the age of eighteen, may “underestimate how accepting and supportive parents will be” (Luker 1985,
Without parental consent or notification law, the ties between parent and child will be loosened. In contrast, pro-choice advocates argue that families may excessively pressure minors not to terminate their pregnancies, which may cause minors to risk their lives and health in order to obtain abortion (Colker 1992, 71; Luker 1985, 173). Regarding public funding, pro-life advocates oppose abortions funded by the government, and they claim that public funding for abortion encourages pregnant women to get an abortion (Risen and Thomas 1999, 153). On the other hand, pro-choice advocates contend that public funding for abortion should not be eliminated because poor women need financial support to choose an abortion (Ravid 2008, 176).

As mentioned above, there are so many people on both sides of these abortion issues, and conflicts over abortion have remained constant over time. Regarding such a controversial and high-salience issue as abortion, how do Supreme Court justices reach their decisions? For nearly half of a century, scholars have paid considerable attention to the Supreme Court justices’ voting behavior, and previous research has suggested three ways to predict and explain justices’ decision making: the Legal Model and two law-in-action based models, namely the Attitudinal and Integrated Models.

The Legal Model claims that as the interpreters of the Constitution, justices make decisions based on legal factors and precedence. In this model, the basic pattern of legal reasoning can be described in “three steps: 1.) observation of a similarity between cases, 2.) announcement of the rule of law inherent in the first case, and 3.) application of that rule to the second case” (Epstein and George 1992, 324). These three steps are considered as the process by which judges and lawyers should proceed (Epstein and George 1992, 324). However, many scholars claim that justices’ personal attitudes, values, or ideologies play a
more important role in judicial decision making. For instance, constitutional law expert Herman Pritchett contends that law is “simply the behavior of the judge, that law is secreted by judges as pearls are secreted by oysters” (Pritchett 1941, 890). Similarly, Pritchett noted that, “judges are inevitably participants in the process of public policy formation; … they do in fact make law, (and) in making law they are necessarily guided in part by their personal conceptions of justice and public policy” (Epstein and George 1992, 323). It is likely that Supreme Court justices’ decisions are influenced by their personal policy preferences. Supporters of the Attitudinal Model claim that “justices come to the Supreme Court with their ideological preferences fully formed and, in light of contextual case facts, these preferences case overwhelming influence on their decision making” (Segal and Spaeth 1993). As a consequence, Supreme Court justices often have contradictory rulings in the same case area when they are involved with controversial issues. Finally, under the Strategic Model, justices are assumed to be strategic, and they must consider the potential reactions of their policy competitors, such as Congress and the president (Bergara, Richman, and Spiller 2003, 248).

Do state supreme court justices act similarly to their federal colleagues? Are they influenced by the same factors mentioned in the U.S. Supreme Court decision-making models? Because state supreme courts are usually the courts of last resort for most cases and they handle the vast majority of cases heard in the United States, more scholars are now interested in studying state supreme court judges’ behavior.

To study state supreme court decision making has substantial benefits. First, state supreme courts handle relatively many more cases than the federal Supreme Court on the same issues. Thus, there are more data to test the models so that the results can better avoid
large margins of error. Second, the institutional and contextual variations exhibited by state supreme courts provide an opportunity to explore the impact of different institutional contexts and configurations (Stricko-Neubauer 2004). Such variation may lead to different decision-making models between state supreme courts and the federal Supreme Court even on the same issue. Therefore, studying state supreme court justices’ decision making is important because these decisions may ultimately affect federal Supreme Court justices’ votes. Third, the study of state supreme courts will improve the understanding and theories of judicial decision making. As Brace and Hall noted, “Systematic analysis of multiple state courts not only can enhance our understanding of state adjudication but will promote development of theories capable of unifying the contextual and individual forces affecting judicial decisions more generally” (Brace and Hall 2000).

In this paper, I focus on comparative studies of the attitudinal and Integrated Models for predicting judicial behavior. Using data from Brace and Hall’s Judge Level State Supreme Court Database, I will estimate and evaluate state supreme court judges’ decisions on abortion issues from 1995 to 1998. To examine judges’ decisions, I will choose two conceptually simple yet powerful methods. These two methods are the tree-based classification and logistic regression. In the following two chapters, I will first review U.S. and state abortion cases, and then I will review federal and state judicial decision making. Next, in the fourth chapter, I will present the results of the data analysis. Finally, in the conclusion chapter, I will review the major findings and implications of this thesis, as well as areas for future research.
CHAPTER II

REVIEW OF U. S. AND STATE
ABORTION CASES

At Atlanta’s Centennial Olympic Park, a pipe bomb explosion killed a person and injured more than 100 people in 1996. Later in 1998, a bomb outside an abortion clinic in Birmingham killed an off-duty police officer, and a nurse was injured. Eric Rudolph, the one who took the responsibility of these two gruesome attacks, has admitted to serial bombings, and he maintained that the strong motivation for those attacks was merely “to anger and embarrass a government that permits women to have abortions” (Shaila 2005). This is not the only case in which people felt threatened by unexpected violence in public. In 1992, former president Bill Clinton, “. . . the most pro-abortion president since Roe came down… issued a series of executive orders liberalizing abortion law” on his first day in office” (Ponnuru 2006). Following Clinton’s unequivocal support for abortion rights, violence against abortion clinics doubled. A group of people led a movement with the slogan “if you think abortion is murder, act like it,” and since then the environment, in which the murder of abortion doctors was taken as “justifiable homicide,” has been created (Ginsburg 1998, xii). Indeed, the public has turned its sights to this serious social issue, and abortion is no longer a purely personal choice. In America, it remains as much a controversial issue as the day the United States Supreme Court made the landmark decision in the case Roe v. Wade (1973). After nearly forty years, the decision of the Court undoubtedly does not end the issue; rather
it seems to be the beginning of a nationwide abortion debate. Pro-choice groups seek legal support to ease restrictions on abortion, while pro-life groups see abortion as a form of infanticide. On a nationwide scale, without a highly convincing interpretation of the Constitution from the Supreme Court, more and more confusion, frustration, and anger have been involved into the abortion issue. Thus, to understand the judicial decision-making process on this policy issue becomes very important. This chapter focuses on the issue of abortion in the U.S., and it consists of five sections. The first section mainly deals with the introduction of the case *Roe v. Wade*. The following section discusses Supreme Court decision-making through the dilemmas of the judiciary from three aspects. These three aspects are: the role of the Supreme Court, the interpretation of the Constitution, and public opinion. Next, section three and section four focuses on two controversial abortion topics at the level of state supreme court. These two topics are parent control and public funding of abortion. Finally, the conclusions are given in section five.

Introduction: *Roe v. Wade*

Back in the 1970s, Texas enacted a statute prohibiting abortions except those performed to save a pregnant woman’s life. Norma McCorvey, whose name later became Jane Roe in this case, was a single mom having little money. She was pregnant and could not legally terminate her pregnancy by abortion. After she gave birth to a child, Roe met two recent graduates from law school. These three women then challenged the constitutionality of the Texas law and launched a case against Henry Wade, who was the criminal district attorney in Texas. Regarding the Texas statute, Roe argued that the statute invaded the pregnant woman’s right to choose abortion. She contended that this right was embodied in
the Fourteenth Amendment’s Due Process Clause as “personal liberty;” or in the Bill of Right as “personal, marital, familial, and sexual privacy;” or in the Ninth Amendment (Mason and Stephenson 1990, 463). The district court upheld Roe’s opinion. Wade eventually appealed to the Supreme Court.

The Supreme Court found that abortion laws, such as the Texas statute, did not originate from ancient law or common law; instead those laws came from statutory changes in the late 19th century. Before this time, most statutes had a quickening distinction. They tolerantly dealt with abortion before quickening and considered abortion after quickening as a crime. Then from the middle and late 19th century to the end of the 1950s, most laws in America banned abortion except those performed in order to save the pregnant woman’s life (White 2008, 91).

Moreover, the Court admitted that the Constitution did not explicitly mention any right of privacy. However, it contended that a right of personal privacy did exist under the Constitution, such as the implied right of privacy found in the First, Fourth, Fifth and the Ninth Amendments, and the concept of liberty in the Fourteenth Amendment. The Court found that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in the guarantee of personal privacy;” and that “the right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education” (Mason v. Stephenson 1990, 463). Thus, the Court affirmed that a woman had the right of privacy to make her own decision whether or not to terminate her pregnancy, but it did not uphold a woman’s absolute right. The Court concluded that a woman possessed the right to conduct abortion, which belonged to the right of privacy, but held that such right was not absolute and should be considered against
compelling state interests in regulation.

Further, the Court found that the word person did not refer to the unborn under the Fourteenth Amendment, and it refused to define when life began because the Constitution did not clearly define person. As a consequence, the Court applied several compelling points to the period of pregnancy. Before the end of the first trimester, since mortality in abortion would normally be less than mortality in normal childbirth, the Court ruled that the pregnant woman possessed the right to abortion without the interference from the state. For the subsequent stage of pregnancy, the Court ruled that the state had the right to regulate the pregnant woman’s choice in concerns for the health of the mother. For the stage after viability, considering the state’s interest in protecting potential life, the Court ruled that the state might “regulate, and even proscribe abortion” unless the mother’s life was at risk in giving birth to a child (Mason and Stephenson 1990, 463).

Finally, the Court concluded that the Texas law violated the Due Process Clause of the Fourteenth Amendment for its ignorance of the three pregnancy stages and other interests involved.

The Dilemmas of the Judiciary

The Role of the Supreme Court

Referring to the Supreme Court’s decision in Roe v. Wade, Donald Dworkin, an American philosopher and scholar of constitutional law, explicitly stated, “no judicial decision in our time has aroused as much sustained public outrage, emotion, and physical violence, or as much intemperate professional criticism” (Dworkin 1989, 49). It seems that the Court did not provide a reasonable and convincing resolution of the abortion issue, thus
the public was expected to resolve the problem itself. Early in 1970s, the National Right to Life Committee and other anti-abortion organizations held many events, such as the founding of the Moral Majority that helped bring millions of Protestants into the movement. Later, during the midterm election of 1978, “evangelical and conservative Protestants entered the political fray with modest success” (Karrer 2011, 557). Indeed, since the Roe v. Wade decision, the abortion issue has been involved in politics. U.S. Supreme Court Justice Ruth Ginsburg asserted that the Supreme Court’s decision in Roe was a political mistake (Balkin 2007, 11). The proper position and role of the Supreme Court in the abortion issue have been questioned.

U.S. Supreme Court Justice Antonin Scalia forthrightly argued that the whole abortion issue should be left to the political process because such a policy issue was beyond the judicial review power and should not be interfered by judicial scrutiny. In his view, the Supreme Court’s ruling in Roe was a great damage to the Court, and the only solution to the abortion issue should be determined through the democratic process (Schultz and Smith 1996, 64). “The American people love democracy,” as Justice Scalia stated, “. . . (the Court should not) enlarge its role by making value judgments on divisive public-policy questions” (Pohlman 2005, 120). He concluded that the Court’s opinion in Roe was wrongly decided and the Court should withdraw itself from the abortion issue. U.S. Supreme Court Justice Byron White made a similar argument. He claimed that “the judgment is an improvident and extravagant exercise of the power of judicial review . . . this issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs” (Kommers, Finn and Jacobsohn 2004, 243). Lacking a clear existence of an abortion right in the text of the Constitution, the Supreme Court’s judicial review power and
accountability in such issue have been seriously challenged. As eminent constitutional legal scholar John Ely noted, the Supreme Court “is under an obligation to trace its premises to the charter form which it derives its authority…but if it lacks connection with any value the Constitution marks as special, it is not a constitutional principle and the Court has no business imposing it” (Coleman and Sebok 1994, 249). Indeed, many scholars severely criticize the exercise of judicial review power in *Roe*.

Federal Circuit Court Judge Robert Bork considered *Roe v. Wade* “as the greatest example and symbol of the judicial usurpation of democratic prerogatives in this century and should be overturned” (Rafferty 2011, 220). He contended, “a more fundamental rethinking of legitimate judicial power than the mere demise of *Roe* would signify is required” (Bork 1997, 116). Similarly, Edwin Meese III, a former Reagan attorney general, doubted whether it was necessary to keep the judiciary always independent. He addressed in speeches that independent counsels and agencies were unconstitutional. In the article *The Imperial Judiciary... and What Congress Can Do about It*, Edwin Meese III and Rhett DeHart claimed:

> America’s Founding Fathers created a democratic republic in which elected representatives were to decide the important issues of the day. In their view, the role of the judiciary, although crucial, was to interpret and clarify the law --- not to make law. The Framers recognized the necessity of judiciary restraint and the dangers of judicial activism. . . Thomas Jefferson believed that allowing only the unelected judiciary to interpret the Constitution would lead to judicial supremacy. ‘It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions,’ said Jefferson, ‘It is one which would place us under the despotism of an oligarchy.’ (Meese and DeHart 1997, 55)

Indeed, the Supreme Court is the final court of appeal. If the Court is able to solve a political issue through interpreting the Constitution, in Bork’s opinion, the legislative and executive branches should have the same power so that if a woman involved in an abortion
case is not satisfied with the Court’s judgment, she will be able to appeal the same issue to the other branches of the government, such as the executive branch (Bork 1997, 265). Thus, there are some suspicions of the Court in *Roe*: Is the Court supposed to take the abortion issue? If abortion essentially is not a judicial issue, how can the Court exercise its judicial review power in *Roe*? If the Court settles conflicts over a political issue through interpreting the Constitution, does the Court extend its power beyond its legal limitations and intervene the political branches?

In addition to the view in which the Supreme Court is trying to solve a political issue, the Court has also been criticized for improperly legislating. As mentioned above, the Court is supposed to interpret the Constitution instead of making laws. Regarding the abortion issue, Justice Antonin Scalia found that the Constitution contained no right to an abortion. Since the abortion issue was constitutionally irrelevant, he argued that the States should be able to legislate on abortion as they saw fit, although the Constitution did not mention any requirement for them to do so (Duffy and Leeman 2005, 412). Therefore, according to Scalia, the Court overrode state laws because its ruling upheld a woman’s right to an abortion in *Roe*. Specifically, by dividing the pregnancy into three separate periods, *Roe*’s decision substantially overturned the abortion laws of all fifty states and overrode the states’ autonomy in concerns of whether or not to legalize abortion for their people. Alexander Bickel, a law professor and expert on the U.S. Constitution, harshly criticized the *Roe* opinion for “being legislation but not legal action” (Devins and Watson 1995, 150). Considered from this aspect, the judiciary may need to defer to the state legislatures.

However, supporters of *Roe* argue that the Supreme Court plays a greater role than Congress when dealing with legislation affecting race, religion, and other minorities. In
practice, democracy is governed by its most popular principle: majority rule. In a democracy, any law passed by a majority may deprive people in the minority group of the equal opportunity to enjoy equal protection of the law. Thus, judicial review by the Supreme Court, which can rule a law passed by a majority to be unconstitutional, is often taken as a necessary supplement to democracy. Regarding Congress’s power to legislate, U.S. Supreme Court Justice Harlan F. Stone noted that Congress only needed a rational basis for legislation. In an attached footnote to *United States v. Carolene Products Co.*, Justice Stone added:

There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth… It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation… Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, … or racial minorities; whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. (Cates and McIntosh 2001, 202)

This footnote implicates that Congress may not always have a rational reason to act constitutionally. Thus, when legislation is aimed at certain minorities, Justice Stone’s reasoning is often used to justify the Court’s decision and the power of judicial review. In addition, if a state statute regulates personal conduct but infringes on a fundamental right, the Court has a reasonable expectation to subject the statute to strict scrutiny (Tribe 2000, 1454).

Consequently, if to declare that a woman has a constitutional right to abort a pregnancy is within the Supreme Court’s judicial review power, then the Court needs to face
a second dilemma of whether its decision in *Roe* is within the bounds of constitutionally permissible interpretation.

**The Interpretation of the Constitution**

Many scholars recognize that *Roe* is bad constitutional law. In any judiciary case, the common knowledge is that the Supreme Court has the power of judicial review and that all justices should be bound to follow the Constitution. The Constitution is not the same as constitutional law. To understand their difference is very important. According to former Attorney General Meese, the distinction between the Constitution and constitutional law is essential to maintaining our limited form of government. The Constitution is the binding, authoritative norm in American society, and it is the document of the most fundamental law; and constitutional law is “what the Supreme Court says about the Constitution in its decisions resolving the cases and controversies that come before it” (Meese 1986, 983). Thus, the most important thing is not the Court’s decision itself; rather, what matters is whether the Court’s judgment is supported by the Constitution.

To judge the Court’s ruling in *Roe* depends on whether the decision is constitutionally permissible. The following part of this chapter will discuss the Court’s interpretation of the Constitution from two aspects: 1) the trimester framework, and 2) the right of privacy. I argue that the Court’s decision-making process is complicated and the text of the Constitution is not always the only constraint on judicial decision-making.

First, the Constitution does not explicitly mention a right to abortion. Neither do the *trimesters* appear in the Constitution. In contrast, the *Roe* Court divided pregnancy into three roughly equal time periods and eventually overturned the Texas statute that forbade abortion except for the situation in which the mother’s health was in danger. U.S. Supreme
Court Justice Harry Blackmun wrote the Court’s opinion in *Roe*. He acknowledged that it was impossible to arrive at a consensus on the question when life began in the respective disciplines of medicine, philosophy, and theology, and he claimed that the Court did not need to solve this difficult question. However, he argued that a fetus was not a *person* within the meaning of the Fourteenth Amendment because a fetus had never been treated as a person in law or under the Constitution. Once a fetus reached *viability* in the second and final periods of pregnancy, Justice Blackmun contended, the state could at its option assert a compelling interest in protecting the unborn child (*Roe v. Wade* 1973).

Justice Blackmun’s argument received harsh criticism from his opponents. U.S. Supreme Court Justice Byron White denounced the trimester framework as an arbitrary rule. In addition, Justice White criticized the Court for “enforcing a right not specified in the Constitution to overturn statutes that were no more restrictive than those widely in force when the Fourteenth Amendment was adopted” (Hall and Ely 2009, 263). Charles Fried, a prominent American jurist and lawyer, asserted that the Court’s decision in *Roe* was a source of instability in law and that the *compelling* points made by the Court were not workable. Specifically, Fried argued that the trimester scheme was based on the medical classification. And he claimed that the compelling points such as quickening or viability would change due to the medical progress. As a result, the Court’s decision in *Roe* “always would lead courts to differing conclusions over the constitutionality of specific state regulations” (Epstein and Kobylka 1992, 254). Moreover, it is a work of judicial invention in Justice William Rehnquist’s perspective. Justice Rehnquist recognized that “the trimester framework constructed in *Roe* is hardly consistent with the notion of a Constitution cast in general terms, as ours is, and usually speaking in general principles. . .” (Kommers, Finn and
Indeed, the Court did not give an explicit constitutional warrant for imposing Roe’s trimester framework. It omitted answering the question why the unborn, if it did not reach the point of viability, was not privy to the constitutional right to life. It also failed to explicitly declare whether the right to abortion was a fundamental right protected by the Constitution. In conclusion, the trimester framework is an unacceptable exercise of judicial power.

Second, the Constitution does not specifically mention the right of privacy, but the Supreme Court has found constitutional protection for the right of privacy as inherent in the Constitution and the Court uses such right to protect a range of personal activities, such as the abortion right, which is not protected in other particular constitutional provisions. In 1965, the right of privacy appeared in the Court’s interpretation of the case Griswold v. Connecticut for the first time. In Griswold, the Court held that the association of marriage was a privacy right older than the Bill of Rights and that Connecticut’s birth-control law unconstitutionally intruded on married persons’ right of marital privacy. Later in Roe, relying on the principles in Griswold, the Court held that the Constitution protects the right of privacy, which included a woman’s choice to have an abortion during the first trimester of pregnancy. In response to this ruling, Justice Black contended in his dissent that the Supreme Court justices should not have tried to remedy the unwise Connecticut’s law because it should be left to democratically elected legislators. In addition, he stated that “the Court talks about a constitutional right of privacy as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the privacy of individuals. But there is not” (Vieira and Gross 1998, 73). Justice Bork essentially took a similar position. Although he insisted that he did not oppose the principle of marital privacy,
Justice Bork made a severe attack on the Court’s opinion in both *Griswold* and *Roe*. He termed *Griswold* “a radical departure” from the Court’s previous jurisprudence, and he asserted that the decision in *Griswold* contained no legal reasoning and that it had been incorrectly decided (Garrow 1998, 668). In regards to *Roe*, Justice Bork claimed that the Court’s opinion, which was based on a right to privacy shown in *Griswold*, was “an unconstitutional decision, a serious and wholly unjustifiable usurpation of state legislative authority” (Neal 1987, 83). If the Constitution makes no express provision for the right of privacy, where do the Supreme Court justices find a textual basis for the right?

Constitutional scholar John Ely acknowledges that the right to privacy has a sound basis in the text of the Constitution, history, and political theory of natural rights that are fundamental to the Constitution (Ely 1973, 928). Similarly, Justice Blackmun, the person who delivered the Court’s opinion, explains that abortion is personal freedom belonging to a subset of *liberty* that could be described as the right of *privacy*. Although the Constitution does not mention the exact term *privacy*, it implicitly recognizes zones of privacy (Finkelman 2006, 1368). Indeed, many constitutional scholars observe that the right of privacy is not just a favored moral premise but implicit in the concept of ordered liberty. The text of the Constitution does not have to embrace exactly the same term as the term *privacy*, and the right can be an implied right found in the shadows of particular constitutional rights. As Justice John Harlan said:

. . . *liberty* is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints… and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. (DeRosa 2007, 119)
According to the above comments, the Court’s rationale in *Roe* is based on the right of privacy and this right is grounded in the protection of personal liberty. Since the Constitution guarantees personal liberty and never mentions a general right of privacy, why does the Court use *privacy* instead of *liberty* as its rationale in the first place? Why does the Court somehow need to create a new constitutional right? As Circuit Court Judge Richard Posner said,

> We already have perfectly good words – Liberty, Autonomy, Freedom – to describe the interest in being allowed to do what one wants (or chooses) without interference. We should not define privacy to mean the same thing and thereby obscure its other meaning. (Laurie 2002, 71)

If “to present privacy only as an aspect of or an aid to general liberty is to miss some of its most significant differentiating features” (Laurie 2002, 71), then what is the legal reasoning for allowing so? Moreover, in *Griswold*, although the Court interpreted out of the U.S. Constitution a right to privacy that was not expressly included therein, the right at this stage was “concerned with family life and its protection” (Laurie 2002, 72). However, after the decision in *Griswold*, the right of privacy has been extended to individual privacy and beyond. As some scholars claim, the Court’s ruling in *Roe* is in fact “a return to a more conservative or restrictive conception of individual freedom, the freedom to enjoy nudity or obscenity in privacy,” and it never lies in the overall principle of the constitutional theory of privacy in the *Griswold* decision (Slaby and Tancredi 1984, 54).

Further, the Court’s opinion in *Roe*, such as the application of the trimester framework and the privacy right, belies the framers’ intention in the measure of history (Epstein v. Kobylka 1992, 254). Justice Fried argued, “the textual, historical and doctrinal basis of *(Roe)* … is so far flawed that this Court should overrule it and return the law to the
condition in which it was before that case was decided” (Keck 2004, 161). He acknowledged that,

. . . the words of general constitutional provisions do not interpret themselves . . . the further afield interpretation travels from its point of departure in the text, the greater the danger that constitutional adjudication will be like a picnic to which the framers bring the words and the judges the meaning. Constitutional interpretation retains the fullest measure of legitimacy when it is disciplined by fidelity to the framers’ intention as revealed by history, or failing sufficient to help from history, by interpretive tradition of the legal community. (Keck 2004, 161)

On that score, *Roe*’s decision could not be justified.

The analysis above implies that judicial behavior, which is supposed to be determined through standards set in the Constitution, is practically much more complicated.

**Public Opinion**

After the Supreme Court issued its ruling in *Roe*, abortion became legal in the United States. This landmark decision had a very profound impact on American society. As Franklin and Kosaki noted, “the impact of the Court decision was, instead, to crystallize issue preferences further and to lead to greater homogeneity of within-group preference” (Egan 2008, 90). Although many people hope public opinion will change over time, the force of public opinion never fades away because the Court has the authority to overturn a precedent in any case under its judicial review.

On one hand, the supporters of *Roe* contend that to avoid getting pregnant by accident is inevitable. If a woman who has an unwanted pregnancy does not deserve a legal right to abortion, she will face some significant and pressing problems. For example, if the woman’s pregnancy is a result of rape or incest, she may become a single mother who is unable to support or care for a child. Further, abortion right supporters claim that when medical advances make abortion much safer and convenient for the pregnant woman than
childbirth, it is unfair to ban the woman’s abortion right by considering her health or life (West’s Federal Reporter 1997).

On the other hand, the opponents of Roe argue that the unborn is a person and that having an abortion is killing a baby. Also, they question how much public funding the federal government should spend on abortion each year. Further, they claim that if the right to an abortion roots in the right of privacy, why is euthanasia or same-sex marriage and the like never considered as the extension of this privacy right (McBride 2008, 243)?

The tension between the two so far has not been resolvable. The pro-life group seeks to overturn the landmark decision in Roe and they are in favor of an abortion ban. In 1989, the abortion case Webster v. Reproductive Health Services was brought to the Supreme Court. Justice Rehnquist delivered the Court’s opinion. He contended that states had a compelling interest in protecting the life of the unborn child throughout the pregnancy. And he noted that he could not “see why the (government’s) interest in protecting potential human life should come into existence only at the point of viability” (Eisenstein 1994, 106). In addition, he contended, “nothing in the Constitution requires states to enter or remain in the business of performing abortions” (Eisenstein 1994, 106). As a result, the Court’s ruling in Webster substantially weakened the Court’s decision in Roe. Similarly, in the case Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), the Court abandoned the trimester framework, and it adopted a relatively more flexible approach. For instance, the Court acknowledged: “in the future, a state might draw a line between legal and restricted abortion at line between legal and restricted abortion at viability, when the state’s interest in protecting potential human life becomes compelling” (Dorothy 1997, 122). Also, the Court claimed that a state might regulate abortion even in the first trimester in order to protect
potential life, as long as the state did not place “undue burdens” on the woman’s fundamental right to seek an abortion (Dorothy 1997, 122). However, the Casey Court did not overturn Roe, and it affirmed Roe’s essential holding: “a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State” (Dorothy 1997, 122). As Justice Felix Frankfurter once noted:

The Court’s authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction. Such a feeling must be nourished by the Court’s complete detachment, in fact and in appearance, from political entanglements and by abstention form injecting itself into the clash of political forces in political settlements. (Curry and Battistoni 2011, 11)

Indeed, in order to keep the Court’s authority, the Court cannot easily overturn a precedent.

Since the Court does not have the power to enforce its decision and its authority ultimately rests on sustained public confidence, the Court must convince the public that the federal judiciary is insulated from politicians, institutions, and the people. However, if the Court’s decision-making process is not influenced by public opinion at all and the case’s interpretation is solely based on the plain meaning of the text of the Constitution, why is there huge discrepancy between justices’ interpretations towards the same facts and circumstance of an issue? As Justice Charles Hughes said, “we are under the Constitution, but the Constitution is what the judges say it is” (Menez, Vile and Bartholomew 2004, 1). If the justices themselves perceive that they can change public opinion, then their role is more than appellate judges who just resolve legal disputes. Also, the President of the United States appoints all Supreme Court Justices. The President’s attitude towards a certain issue will have an undoubted impact on the outcome of judicial decision-making. For example, George H.W. Bush (1989-1993) was a pro-life president. He urged the Court to overturn Roe v. Wade, and he vetoed ten bills that would have proved easier access to abortion (Francome
2004, 92). Also, Bush nominated David Souter, a conservative-leaning justice, to replace Justice Brenan, who was one of Roe’s strongest supporters. Following Bush in the US presidency, Bill Clinton, who supported Roe, nominated two moderate justices, Ruth Bader Ginsburg and Stephen Breyer. Indeed, the appointment of a Supreme Court Justice is highly related to the justices’ personal attitudes and relationship with public opinion. Moreover, in highly salient cases, such as Casey, does the Court need to react to public concerns or follow the precedent? In deciding whether to overturn Roe, the Court considered “the reliance people have placed in the rule of law in Roe and whether overturning the rule of law in Roe would create special hardships” (Gillman 1999, 181). However, if the precedent itself is negative, why does the Court not overturn it? If the Court does not overturn a negative precedent and it decently buries the previous decision, how can we evaluate the influence of public opinion on the Court’s decision? And what kind of public opinion should the Court be concerned about? Further, if the Court rules a law that is supported by majority of the public to be unconstitutional, does the Court’s judicial review power undermine democracy?

Parental Control

Pro-life and pro-choice groups hold different views on abortion rights of minors. Regarding whether a minor can obtain an abortion, these two groups argue over whether parents should be involved in the minor’s decision-making process. As the supporters of parental control laws, pro-life advocates believe that constraints on abortion, such as parental consent, create wanted problems for a young woman to terminate her pregnancy. In contrast, most pro-choice advocates are opponents of parental control laws, and they consider abortion
as an individual decision just as the decision to carry pregnancies to term, which does not require parental consent.

On one hand, pro-life camps have successfully initiated legislation requiring parental notification (Gross 1997, 163). According to the Congressional Record, in 1998, there were already 16 states enacting parental consent statutes and 10 more having parental notification laws on abortion, which meant that 26 states had parental notification laws (Congressional Record 1998, 15373). Despite the fact that minors could still get abortions without parental consent in these states, pregnant minors were legally required to notify at least one parent before they made decisions. For example, the Nebraska legislature enacted a statute requiring that a minor first inform one of her parents when she seeks an abortion. Pro-life advocates believe that such laws help protect a minor’s best interest. In the case, Petition of Anonymous 1, the Nebraska Supreme Court denied a petition to bypass statutory parental notification requirement for obtaining an abortion. The court found that the minor in this case, who was only 13 years old, had “. . . never handled her personal finances or held employment other than a summer job, that she did not understand and appreciate nature, gravity, impact and consequences of each option before her. . .” (Petition of Anonymous 1 1997). Therefore, the Nebraska Supreme Court noted that the minor failed to provide a convincing evidence of her maturity that would permit the court to authorize relief. Also, the court held that the minor “could not establish that notifying at least one of her parents would not be in her best interest” (Petition of Anonymous 1 1997). Further, the Nebraska Supreme Court acknowledged,

When the Legislature has expressly chosen a judicial forum for the resolution of these issues, it is not this court’s province to rewrite the statute or suggest alternate or additional procedures to be utilized in this context, unless the judicial bypass statute
violates 1) the state Constitution, 2) the federal Constitution (or any federal law made pursuant thereto), or 3) a federal treaty. (Petition of Anonymous 1 1997)

As a result, the Court affirmed the decision of the district court, which denied a judicial bypass to the minor. Similarly, in the case In Re Anonymous 2, the Nebraska Supreme Court held that the 15-year-old minor who did not have “sufficient experience, perspective and judgment required to support order authorizing abortion” was not sufficiently mature to obtain abortion without parental consent (Petition of Anonymous 2 1997). As discussed in the above two cases, pro-life advocates believe that either one or both parents’ involvement would represent a minor’s best interest.

Generally speaking, pro-life groups consider parental control in helping reduce the chance of abortion from three aspects. First, pro-life people claim that a young pregnant woman needs parental guidance in making decisions over the serious matter of abortion. In essence, pro-life adherents believe that “one becomes a parent by being a parent; parenthood is for them a natural rather than a social role” (Streb 2007, 38). As being a parent, a pregnant woman must plan her family ahead of time in order to give her child the best emotional and financial resources. However, a pregnant minor who is under the age of eighteen usually does not have the experience handling and managing her life alone. Lacking the experience of dealing with financial planning and especially medical problems independently, a pregnant minor may make decisions that are contrary to her best interest unless parental control is involved. For instance, when a young woman has severe financial and psychological problems to bear and raise a baby, she is more likely to hide her pregnancy and seek an abortion unless her parents are involved. Second, pro-life people contend that parental involvement does not only benefit a pregnant minor, but also strengthens family
relationships. Parental consent laws, which require parental involvement, alert parents to take care of their children both physically and mentally. This, in turn, will not destroy the family, but rather promote stronger family bonds (Naden 2007, 45). Third, pro-life advocates claim that parental control laws protect minors from unexpected sexual relationships. For instance, in the case *Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc.*, Texas State Supreme Court judge Raul Gonzalez filed a concurring opinion. In his judgment, Judge Gonzalez recounted a story of a minor impregnated twice by her mother's boyfriend while she was living with her mother. These two occasions happened when the minor was twelve and thirteen, respectively. Both times, the boyfriend took the minor to an abortion clinic for a secret abortion. Judge Gonzalez claimed that if a minor were required to notify at least one parent of her decision to have an abortion, sexual abuse of the minor would have been prevented earlier (*Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc.* 1998). In short, getting pregnant can physically and emotionally damage a minor’s life, especially when a minor is in an abusive relationship. A parental consent requirement would help stop the sexual exploitation and protect a minor from harm.

On the other hand, pro-choice advocates argue that parental involvement does not always lead to a decline in abortion rates. For example, Massachusetts enacted a statute in 1981 requiring minors to get a parent’s consent before seeking an abortion. However, the *American Journal of Public Health* in 1986 reported that the percentage of minors who obtained abortions remained unchanged before and after the parental consent law (Naden 2007, 45). In 1997, a suit that aimed at ending parental consent before abortion was brought to the Massachusetts Supreme Judicial Court. Herbert Wilkin, the Chief Justice of the Massachusetts Supreme Judicial Court, delivered the Court’s opinion. He held that “statutory
requirement that pregnant unmarried minors obtain consent of both parents before obtaining abortion violated the due process clause” (*Planned Parenthood League of Massachusetts, Inc. v. Attorney General* 1997). Such rulings might be disappointing to Massachusetts pro-life advocates but not surprising. According to *Abortion Politics in American States*, “Massachusetts has had an almost uninterrupted series of pro-choice governors” since the Supreme Court’s decision in *Roe* (Segers and Byrnes 1995, 199). “A pro-choice governor is therefore an assumed element in Massachusetts abortion politics. . . He or she would also, presumably, recast the ideological profile of the judiciary, altering standards for civil rights appeals in abortion conflicts” (Segers and Byrnes 1995, 199).

Similarly, the California legislature passed a law in 1987 requiring minors to obtain parental consent prior to an abortion. However, the law never came into force due to legal challenges. In 1997, California’s parental consent law was struck down by the California Supreme Court’s decision in *American Academy of Pediatrics v. Lungren* (*American Academy of Pediatrics v. Lungren* 1997). California Supreme Court Chief Justice Ronald George delivered the Court’s opinion. He found that a parental consent requirement before obtaining abortion “was not necessary to further state’s interests in protecting health of minors or parent-child relationship” (*American Academy of Pediatrics v. Lungren* 1997). Moreover, he held that the parental consent law seriously violated a minor’s constitutional right of privacy. In conclusion, Justice George held that the parental consent statute was constitutionally impermissible.

In general, pro-choice groups consider abortion as a personal choice. They have relatively stronger individual concerns, and they disagree with the opinion of pro-life advocates that parental involvement always brings minors benefits. For example, a minor’s
parent may be a drug addict, physically abusive, or have severe mental or financial problems. In such situations, a young woman will be afraid to inform her parents of her pregnancy due to various reasons, such as being afraid of emotional or physical abuse. As Professor Laurence Tribe noted, “parental consent and notice requirements may sound like moderate recognitions of the parents’ central role in family life but are likely in practice to achieve little and to cause great grief” (Tribe 1992, 203). Moreover, pro-choice advocates contend that people should consider “the quality of life of an unwanted child” (Nevid, Rathus and Rubenstein 1998, 278). If a young woman is forced to give birth to an unwanted child, she may eventually place her child for adoption. Further, if the child is physically or mentally disabled, the situation will be worse. The child may spend childhood shuffled from one home to another due to a difficult situation caused for adoptive parents. In short, pro-choice people believe that a pregnant minor already has enough pressures on herself and that laws should not require parental involvement in a minor’s decision-making process concerning abortion.

Public Funding

After the legalization of abortion in 1973’s Roe decision, the funding of abortion by federal and state government has been the vision of equity in abortion politics. Like parental consent or notification, public funding remains another one of the key issues in the abortion debate.

Pro-life advocates seek to limit public funding for abortion through the political system. For example, they voted for pro-life advocate Donald Regan as president. When Regan subsequently ran for president, he also won backing from pro-life forces (Cannon 2000, 729). Further, pro-life groups initiated legislation to limit the permissible boundaries
of abortion. In 1976, the Hyde Amendment, which was passed by Congress, prohibited the federal government from providing matching funds for state Medicaid coverage of abortions (Moffitt 1998, 102). In 1995, only fifteen states were using public money to help fund abortions for Medical recipients. In contrast, there were twenty-seven states, such as North Carolina, restricting public funding to pay for medical abortions but to do so when a woman’s life was endangered or the pregnancy was the result of rape or incest (Schroedel 2000, 82).

Later in 1997, in *Rosie J. v. North Carolina Dept. of Human Resource*, indigent women brought suit to the North Carolina Supreme Court challenging the State’s policy of funding childbirth expenses but denying funding abortions for indigent women. North Carolina Supreme Court Justice Webb represented the Court’s opinion. He noted, “no person has the constitutional right to have the State pay for medical care” (*Rosie J. v. North Carolina Dept. of Human Resource* 1997). Thus, the State was under no obligation to use its Medical Assistance Fund to financially support low-income women’s abortions. Also, Justice Webb found that the state’s policy to fund childbirth was “rationally related to the legitimate governmental objective of encouraging childbirth and, thus, the policy did not violate equal protection” (*Rosie J. v. North Carolina Dept. of Human Resource* 1997).

Indeed, pro-life advocates contend that state abortion funding should be eliminated. Basically, they believe that abortion-funding policies encourage indigent women to end their pregnancies.

However, pro-choice advocates argue that states should provide public funding for abortion care. In *Roe v. Harris* (1996), appellants sued Jerry Harris, the Director of Idaho Department of Health and Welfare, challenging departmental rules and the state statute that
prohibited state funding of abortion except in specified instances. Idaho Supreme Court judge Johnson addressed the Court’s opinion. He claimed that the Department of Health and Welfare did not have a reasonable basis for restricting state funding of abortion. And he held that the state should not withhold abortion funds when the abortion was necessary to preserve a woman’s health (Roe v. Harris 1996). Similarly, feminist historian Rickie Solinger noted, “society’s symbolic recognition of women’s abortion rights must include governmental funding of poor women’s right to choose abortions” (Ravid 2008, 174). Also, she contended that such right should not be limited to persons of a particular category, such as women with money. In Solinger’s perspective, restrictions on abortion funding for poor women would make a mockery of a woman’s right to choose. In conclusion, for most pro-choice people, resources such as abortion funding can turn theoretical rights into actualized rights (Ravid 2008, 174). Women, especially poor and vulnerable women who are not able to bear and raise a baby, do need public funding to get the care they need.

Conclusion

The judicial decision-making process is very complicated, especially in highly salient cases, such as Roe v. Wade. Over the last several decades, there is a clear tension between pro-life and pro-choice supporters, and the abortion issue has never been really solved. The Supreme Court has been criticized for involving itself in a political issue and improperly legislating. Although justices are expected to look solely to the text of the Constitution, since the words of the Constitution are not plain, judicial interpretations towards the same issue can be very different. For instance, public opinion affects interpretation, or the outcome of the Court’s final decision in some unexpected places. As
Justice Rehnquist recognized, “judges, so long as they are relatively normal human beings, can no more escape being influenced by public opinion in the long run than can people working at other jobs” (Kennamer 1992, 108). The justices need to face many dilemmas in practice beyond the plain meaning of the words of the Constitution. The powerful influence of a justice’s personal attitude and public opinion can never be underscored

Moreover, pro-life advocates contend that parental consent or notification strengthen the ties between parent and child. They believe that parental involvement will reduce emotional and physical harm to minors, especially when minors are in an abusive relationship. In their opinion, a parental control requirement helps assure a minor’s best interest. Additionally, pro-life people believe that public abortion funding encourages women to end their pregnancy. Therefore, they tend to oppose public funding for abortion. In contrast, pro-choice groups see government abortion funding as an option available to poor and vulnerable women. Regarding parental control, they claim that this requirement brings more pressure on minors emotionally and physically. Not all parents are educated or civilized, and abortion is an individual choice. Pro-choice people oppose parental control laws as a means of eroding the right to choose an abortion.
CHAPTER III

REVIEW OF FEDERAL AND STATE
JUDICIAL DECISION MAKING

The U.S. Supreme Court’s opinions create “articulate legal principles and, in effect, public policies that affect the behavior of both governmental and non-governmental decision makers” (Hansford and Sprigs 2006, 155). Yet, the Supreme Court differs from legislative branches. Most of the Court’s decisions are given a constitutional base. However, if the Court’s decisions are based on constitutional grounds, why does the Court sometimes overturn certain legal precedents decided by the prior Court? And how does the Supreme Court reach its decisions? Many political scientists have long been concerned with the factors that impact Supreme Court decision-making. In this area, there are three dominant models: 1.) the Legal Model, 2.) the Attitudinal Model, and 3.) the Strategic Model.

Compared to the research that has been done on the U.S. Supreme Court, relatively fewer studies have evaluated judges’ decision making at the level of state supreme courts. As state supreme courts have become more important in policy making over the past several decades, more research has been done to predict state supreme court judges’ behavior. In this chapter, I will first focus on the literature review of these three dominant models in U.S. Supreme Court decision-making. Then I will also describe current studies of state supreme court decision making.
The Legal Model

Scholars have been making efforts to examine and evaluate the process of the Supreme Court’s decision making. In a seminal *Harvard Law Review* article, Pound draw a distinction between *law in books* and *law in action* (George and Epstein 1992, 3). Based on his research, the Attitudinal Model and the Strategic Model belong to the law-in-action based methods, and the Legal Model focuses on law in books.

The Supreme Court differs from other political institutions because of its unique relationship to the U.S. Constitution. The Legal Model discusses the role of the Constitution and contends that Supreme Court decisions are based on the plain meaning of the Constitution and the intent of the framers. Also, supporters of the Legal Model claim that case analysis allows judges flexibility but does not lead to unconstrained decision-making (Richards and Kritzer 2002, 305). They consider the Supreme Court justices as constrained decision makers who “will base their opinions on precedent and will adhere to the doctrine of *stare decisis*” (Wasby 1984, 336). Under the Legal Model, textual interpretation and precedent remain at the core of judicial decision making (Maveety 2003, 122). For example, Epstein and Kobly’s study of death penalty decisions indicates that law and precedent matter in the Supreme Court’s decisions (Richards and Kritzer 2002, 305). According to Cross, supporters of the Legal Model contend that the path of the law can be identified through reasoned analysis of factors internal to the law [, that] reasoning was central, but reason was superimposed upon common law precedents or statutory texts [, leaving] no room for any judicial individuality, much less any expression of judicial ideology. (Cross 1997, 255)

Indeed, Supreme Court justices are assumed to begin cases with no preconceptions or biases and they adhere to the law in books in order to carry out their responsibilities. They act like
“single minded seekers of legal policy” (George and Epstein 1992). There may be some political decisions, but they are “the exception, not the rule” (Maveety 2003, 122).

However, some opponents of the Legal Model argue that legal decision-making is nothing more than “a sincere belief that their decision represents their best understanding of what the law requires” (Gillman 2001, 486). They also argue that the Court's decisions are not really final, because all the rulings can be overturned by “subsequent decisions, by constitutional amendment, or, as in the case of *Dred Scott v. Sandford*, by civil war” (Olson 1999, 119). Similarly, scholars noted, in high salience issues such as abortion, although precedent exists (i.e. *Roe v. Wade*), conservative lower court panels do not necessarily continue to uphold such rights (Whittington, Kelemen, and Caldeira 2010). Indeed, if justices make decisions simply based on existing doctrine and precedents, there would be no overturned precedents and any doctrine change would be impossible (Epstein and George 1992).

The Attitudinal Model

The Attitudinal Model is one of the law-in-action based methods of judicial decision making. It holds that Supreme Court decisions are based on the attitudes and values of justices. That is, for example, liberal justices vote liberally, while conservative justices vote conservatively. As Frank noted, “justices, like other human beings, are influenced by the values and attitudes learned in childhood” (Frank 1950). Thus, justices cannot fully insulate themselves from personal attitudes and preferences. Additionally, Segal and Spaeth, the leading scholars of the Attitudinal Model of Supreme Court decision-making, employed a comprehensive dataset to analyze the relationship between Supreme Court ideologies and
its decisions. Through empirical research, they found that justices of the Court made decisions solely based on their policy preferences (Bergara, Richman and Spiller 2003; Segal 1984, 1997; Songer and Lindquist 1996). This result nicely converges with the Court’s specific institutional situation: the Supreme Court justices lack electoral accountability, “possess life tenure, sit at the pinnacle of the judicial hierarchy, seldom have ambition for higher office, choose which cases they will decide, and have little fear of being overturned by the elected branches of government” (Richards and Kritzer 2002, 305).

Lifetime tenure in the Supreme Court ensures that individual justices are able to act on their substantive preferences. However, this model neglects to reflect how a case measures up on its policy dimensions, especially a case where the substance of the decision is less important than the fact that the issue is settled (Pacelle, Ludowise and Marshall 2005). Also, case salience does not play a negligible role in justices’ decision making. As Hamilton’s Federalist No. 78 contends, the Supreme Court lacks sword and purse (Law 2008), thus the Court must rely on the executive branch to enforce its decisions. For instance, when a case involves a substantial policy issue or the president of the United States, justices may need to consider sacrificing their own policy preferences and choosing a relatively moderate way to make their decisions in order to ensure that their directives are implemented by other branches. Indeed, the Supreme Court is not completely independent. Even at the very beginning, the president’s power to appoint justices cannot prevent other branches’ philosophy and preferences coming to the Supreme Court. If justices’ decisions were merely motivated by their own preferences without considering other potential factors, according to the Attitudinal Model, any decision change would be due to membership change in the Court.
Also, it is likely that even the same justice’s attitudes towards the same issue do not always stay constant. The Attitudinal Model lacks evidence to explain such phenomena so that it fails to predict the justices’ behavior in such situations. Further, the Attitudinal Model is contrary to the standard attitudinal theories in the field of psychology, which hold that behavior is a joint function of attitudes and subjective norms (Fishbein and Icek 1975). In psychology, subjective norms, which could be an influence of the social environment, are important factors that impact justices’ attitudes (Ajzen and Fishbein 1975). Therefore, the Attitudinal Model is also insufficient to explain justices’ decision making.

The Strategic Model

The other law-in-action based method is the Strategic Model. Compared to the Attitudinal Model, the Strategic Model considers more dynamic factors as bases for decisions. It makes considerable efforts at explaining strategic concerns, particularly its identification of who the relevant political player is at each point in time. Indeed, as part of the political and government structure, the Court has both internal and external strategic concerns in its decision-making process (Epstein and Knight 1998; Richards and Kritzer 2002; Wahlbeck, Spriggs, and Maltzman 1998).

On one hand, “Congress can restrict the Court’s jurisdiction to hear cases; enact legislation, or even propose constitutional amendments, to recast Court decisions; and hold judicial salaries constant” (Baum 1989, 133). Thus, Congress is like the Court’s potential policy competitor. The Court has to rely on Congress to implement its decisions. As farsighted individuals, justices of the Court would not like to pass down a decision that would be replaced by a policy that would lead the Court’s decision to an inferior outcome. Also,
justices of the Court are appointed through the political process; given this, the president’s ideology and policy preferences may have a profound impact on justices’ decision-making. In short, the Supreme Court justices are assumed to consider the positions of Congress and the President collectively (Eskridge 1991).

On the other hand, the Supreme Court justices are assumed to be involved in a process of reasoning about other justices’ judgments. As Richard pointed out, justices of the Court “cannot merely offer reflexive, first-personal rationalizations of their decisions. They engage in bargaining and accommodation with respect to the content of opinions” (Richards v. Kritzer 2002, 307). They would consider the points of view of other justices, as well as their own views, because they must reason in a way that makes sense to other justices (Richards and Kritzer 2002).

As a consequence, the justices would not vote *exactly* based on their own personal policy preferences; rather, justices vote on cases with the aim of enacting policies that *best* reflect their ideological preferences (Bergara v. Richman v. Spiller 2003, 248). However, all concerns mentioned above are suggestions or possible considerations. Justices may need to consider those internal and external factors, but it does not necessarily mean that they have to. If in each case justices had to react to other justices or branches such as Congress, Congress would not necessarily need to pass legislation in order to weaken the Supreme Court’s decisions. For example, in 1986, Congress passed the Air Carrier Access Act, which acted to overrule the Supreme Court’s decision in *Department of Transportation v. Paralyzed Veterans of America*. In this case, the Court held that commercial airlines did not have to follow federal law prohibiting discrimination against the disabled unless they received direct federal subsidies in their provision of air transportation. If in this case the
Court considered the desire and willingness of Congress, Congress would not have been required to enact the Air Carrier Access Act in an effort to prohibit all commercial air carriers from discriminating against people with disabilities in air transportation (Eisenhauer 1992, 1183).

Review of Current State Supreme Court Research on Judicial Decision Making

As discussed above, three dominant models have made contributions to estimate and evaluate the Supreme Court justices’ behavior. However, considering the deficiencies of the three models in practice, the Legal, Attitudinal, and Strategic Models are only ideal types. It is likely that there is no single model that can perfectly explain justices’ decision making. Over the past several decades, scholars have devoted considerable effort to examine and explain state supreme court decision making. According to past research, there are at least four categories of factors that influence judicial outcomes at the state level. These four categories are: 1.) judges’ personal attributes, 2.) the political environment, 3.) institutional arrangements, and 4.) legal features.

First of all, many recent studies support the expectations about the significance of judges’ personal attributes at the level of state supreme courts (Brace and Hall 1992, 1993; Emmert and Traut 1994; Flemming, Holian and Mezey 1998). Personal attributes have proven to be strong predictors of judicial decision making. Many factors such as judges’ personal values, prior career patterns, and religious orientations are included in this category (Brace and Hall 1995; Dixon, Epstein, and Walker 1989).
The most common factor used in the research is judges’ personal values, attitudes, or ideological preferences, which is similar to the attitudinal theory at the U.S. Supreme Court level. Studies have shown the influence that judicial attitudes can have on state supreme court decisions, and scholars suggest that state supreme court judges’ decisions are largely influenced by their individual ideological preferences (Brace and Hall 1992, 4). Also, scholars contend that judges’ policy preferences can mediate the impact of case facts in judicial decision making (Flemming, Holian and Mezey 1998, 7). Since there are no methods that can directly measure judges’ exact ideologies, current studies of judicial decision making are mainly dependent on the use of judges’ partisan affiliations. According to Brace and Hall (1996), partisan affiliations reflect ideological differences among judges. Specifically, Democratic judges generally are more liberal than Republican judges, who usually follow conservative judicial philosophy. Thus, Democratic judges are inclined to vote for more liberal outcomes than conservative judges. In short, supporters of the Attitudinal Model believe that partisan affiliations play an important role in judicial decision making (Dixon, Epstein, and Walker 1989; Flemming, Holian and Mezey 1998).

Other features in the category of personal attributes are also identified as important in judicial decision making. For example, Goldman’s research suggests that Catholic and Jewish judges tend to support more liberal positions on civil liberties and economic issues. However, regarding privacy claims, especially those claims involving abortion and gay rights, Goldman found that Catholic judges became less supportive (Flemming, Holian and Mezey 1998, 12). Basically, religious orientation is also considered as one of the important factors that influence judges’ behavior.
In contrast to personal attributes that focus on the importance of the individual, the political environment presents a more dynamic view of the judicial decision-making process. Many scholars consider the political environment as one important determinant of the judicial vote at the level of state supreme courts, and they have determined several major factors involved in this category. These factors are partisan competition, urbanism, and levels of expenditures by state governments (Brace and Hall 1995; Cannon and Jaros 1970).

Among these factors that reflect the ideological context of a state, partisan competition has been used most often to evaluate a state’s political environment. As the last resort at the state level, state supreme courts have the final authority on issues that may eventually affect a major public policy concern. Thus, through affecting judicial decisions, two major political parties, namely Democrats and Republicans, may be able to control public policy over controversial issues such as abortion. As Brace and Hall noted (1993, 1996), partisan competition does have a significant impact on dissent. Also, they suggested that the effects of partisan competition in a state are conditioned by institutional arrangements (Brace and Hall 1995).

Indeed, institutional arrangements within which state supreme courts operate are quite diverse. Many studies have demonstrated institutional arrangements as forces influencing judicial decisions, and there are numerous institutional variables, such as the method of judicial selection, retention methods, the length of term, and the order of voting among the members of a court (Brace and Hall 1992, 1995; Puro 2005).

Since there are no states that have life tenure except for Rhode Island, state supreme court justices are motivated to act in a manner in order to maintain their positions (Comparato and McClurg 2007). Thus, retention incentives are considered very important in
judicial decision making. On one hand, “governors, state legislatures, and the public have means at their disposal to alter policy in response to written decisions of state supreme courts, the most important of which is the ability to remove judicial decision makers from office” (Comparato and McClurg 2007, 4); on the other hand, they must “concern themselves with the probability that their decisions may be reviewed and overturned by the Supreme Court” (Flemming, Holian and Mezey 1998, 8). As a consequence, state supreme court judges are assumed to behave in a manner that minimizes the risk of removal and being reviewed or overturned by the U.S. Supreme Court. Also, Kehoe suggested that different institutional arrangements produce dynamic incentive constraints (Kehoe 1989, 7). In states with rules that afford greater influence to more senior members, those senior members are more inclined to dissent than to seek consensus (Gillman 1999, 289). At the level of state supreme courts, Brace and Hall (1995) even claimed that any explanation of judicial choice must consider carefully the impact of institutional context on the exercise of judicial discretion and that effects of case facts, personal attributes, and political environmental features are all conditioned by institutional arrangements.

Following institutional arrangements, legal features are also identified as one important element in the state judicial decision-making process. Scholars have determined some important legal factors, such as case characteristics and precedents. According to Emmert, precedent is a normative guide for current decision making (Emmert 1992). Also, some recent studies suggest that judges do not respond to legal factors, such as case facts, in the same way. Rather, judges’ political attitudes mediate the impact of legal features in judges’ decision-making processes at the state level. Thus, when reviewing the same case, judges can have different ways to perceive the same case facts. Stated in another way, liberal
judges may focus on one set of facts whereas conservative judges may focus on another. In short, judges’ decisions are largely influenced by their personal ideologies (Brace and Hall 1996; Flemming, Holian and Mezey 1998).

Conclusion

According to Pritchett, justices of the Court may be “even more vulnerable than other decision makers because the rules of law are typically available to support either side” (Pritchett 1969, 31). The Attitudinal Model suggests that Supreme Court justices’ personal ideologies and policy preferences should be the only significant factors in determining the Supreme Court’s decisions. The Strategic Model focuses on the Court’s interaction with internal and external constraints due to the lack of any real mechanism to enforce its decisions. However, the Supreme Court justices cannot completely live outside political communities, and they are also part of a distinctive legal culture (Richards v. Kritzer 2002, 305). Thus, the impact of the Legal Model should not be denounced. In addition, at the level of state supreme courts, past research has established that judges’ personal attributes, political environment, institutional arrangements, and legal features all play an important role in judicial decision making.
CHAPTER IV

DATA AND RESULTS

Based on previous research, my empirical study focuses on the influence of attitudinal and strategic factors in explaining judicial behavior concerning abortion issues at the level of the state supreme court.

I focus only on the abortion issue because it is a highly salient and controversial issue in America. As mentioned earlier, the abortion issue has involved multiple political and legal forces since the Supreme Court’s landmark decision in Roe. With recent decisions of the U.S. Supreme Court allowing greater state discretion in the regulation of such areas as abortion, the power of state courts should be increasing (Brace and Hall 1992, 4). Thus, analyzing abortion cases helps examine the range of influences addressed to affect state supreme court judges’ behavior. Moreover, Stricko-Neubauer (2004) found that the decisional environment faced by state supreme court judges is dependent on what area of case law is examined. Therefore, this study focuses on one particular kind of cases, namely abortion.

The specific variables selected in this study are those that have been determined in past research as important to estimate and evaluate state supreme court judges’ decisions. The goal of variable selection in this thesis is not to include and examine every possible feature. Instead, the following research focuses on comparative studies of the attitudinal and Integrated Models for predicting judicial behavior. As a consequence, I only choose four
important features from the four categories mentioned in chapter 4. These four independent variables included in the analysis are as follows.

Judge Ideology

Previous research suggests that state supreme court judges’ personal ideologies have a significant influence on judicial decision making. As mentioned earlier, direct measures of judge ideology do not exist. As a result, partisan affiliations of the judges have been used to identify ideological differences among judges. In general, scholars expect Democratic judges to be more liberally inclined on a variety of issues than Republican judges. Thus, regarding the abortion issue, Democratic judges are assumed to be more likely to support the right to abortion. However, recent studies suggest that differences between Democratic and Republican judges on abortion issue do not necessarily happen in this way. As previous scholars noted, “support for abortion rights may often cut across party lines among both elites. (Flemming, Holian and Mezey 1998, 11). Also, Brace demonstrated that,

When it comes to comparative state analysis, party can mean different things in different states. A southern Democrat may have more in common with a northern Republican than with northern Democrats. Within states, Democrats may be consistently more liberal than Republicans, but across states this generalization does not always hold. (Brace and Boyea 2008, 6)

Based on previous studies, my research does not use partisan affiliation to measure judge ideology. Rather, I rely on the party-adjusted judge ideology measure (PAJID scores) developed by Brace, Hall and Langer (2000). These scores place state supreme court judges on an ideological continuum from most conservative to most liberal (0 = most conservative, 100 = most liberal). And the PAJID measure is comparable within and across states.
Gender

Do women judges decide abortion cases differently from men? According to Martin (1993), female judges have distinctive priorities than their male counterparts. Similarly, Allen and Wall found that a female chief justice might use her powers to address issues that have been neglected by the historically male dominated legal system (Allen and Wall 1987). Also, a recent study suggested that gender plays a significant role in criminal justice cases and a modest role in cases concerning civil liberties and rights (Collins, Manning and Carp 2010). Moreover, Songer and Crews-Meyer found that female judges in state supreme courts tend to vote more liberally than their male counterparts in both death penalty and obscenity cases (Songer and Crews-Meyer 2000). In short, past research has shown that gender matters in judicial decision-making process. Since female judges in state supreme courts are relatively greater in number than female justices on the U.S. Supreme Court, this study includes gender as one independent variable. Specifically, there are 13 decisions handed down by female judges (13 out of 57). Gender is scored 0 for a female judge and is scored 1 for a male judge.

State Ideology

At the state level, studies have proved that political environment may affect judges’ votes. I expect a relatively conservative political environment to reduce the willingness of judges to support abortion. Alternatively, I assume a liberal political environment will increase the likelihood of judges voting to support abortion. To assess the impact of political environment on state supreme court decision making, I rely on state
ideology scores developed by Berry et al. (1998), which present the general government ideology of each state. State ideology scores were obtained by

\[ \ldots \text{calculating the ideology position of each incumbent congress man using ratings by Americans for Democratic Action (ADA) and the AFL-CIO Committee on Political Education (COPE), two liberal interest groups. Positions of challengers (who did not vote and hence were not rated by ADA and COPE) were imputed using the average score for members of their party in the state. The incumbent and challenger scores were then averaged based on election vote shares and aggregated across all districts to yield a state measure (Matsusaka 2008, 38)} \]

This ADA/COPE measure of state government ideology is on an interval scale with a range from 0 (most conservative) to 100 (most liberal). The database provides state ideologies for all fifty states from 1960 to 2008. In this study, each judge’s state ideology is set to be the state ideology of the case year.

Term Length

As discussed earlier, institutional arrangements may be a significant influence on state supreme court judges’ decisions on such a salient and controversial issue as abortion. As one factor in the category of institutional arrangements, term length or the length of service matters in judicial behavior (Brace and Hall 1992, 1995). Different from Supreme Court justices, most state supreme court judges do not have life tenure. When their terms expire, they may keep their seats in one of three ways: retention election, reappointment, and reelection. Since most judges have term limits and must face re-election to retain their office, they may “feel they need to consider the views of voters, the governor, or legislators – whoever is responsible for reselecting them – when they make their decisions, rather than basing their decisions only on the facts of the case, the law, and precedent” (American Judicial Society 2010). Therefore, term lengths are an important factor in determining the
extent of judges’ independence and accountability. Moreover, in states that have seniority-based procedures, “the willingness of judges, Democrat or Republican, to exhibit partisanship should be significantly shaped by the length of their term” (Brace and Hall 1995). On the other hand, when voting takes place in order of seniority, the most senior judges may influence junior judges, reducing the likelihood of junior judges’ disagreements (Hall 1985). Thus, the length of service for each judge may influence judicial behavior more effectively when internal operation rules recognize seniority. As a consequence, I include in the model an independent variable for term length, which is coded in years.

Dependent Variable

The dependent variable in this analysis is relevant to state supreme court judges’ decisions in cases involving abortion. As discussed in chapter 3, judges who decided that a minor could get a bypass to obtain an abortion without parental involvement and that government funding should cover abortion are characterized as pro-choice advocates. Alternatively, if judges favored parental control and denied public abortion funding, their votes are considered as pro-life generally. Therefore, I coded 0 if the judge voted in a pro-life direction and 1 if judges voted in the pro-choice position.

The data for this analysis comes from four different resources. First, I use data from Brace and Hall’s Judge Level State Supreme Court Database at Rice University. The database is available from the State Supreme Court Data Project that creates a huge database providing reliable information on state supreme court decisions in all fifty states from 1995 to 1998. The data used in this study includes state supreme court abortion cases, names of judges involved, and state supreme court judges’ PAJID scores. Specifically, there are a total
of 12 cases involving abortion in the dataset. I examined each case to determine whether the state supreme courts’ decisions were related to abortion issues, and subsequently I found that two of them were not relevant to abortion. After two cases were eliminated, the rest of the cases involved 68 state supreme court judges. However, the data collection was not finalized. By looking into the details of the ten cases, I found that among the 68 state supreme court judges, 11 judges did not participate in the cases involved. Also, there were 4 judges who were missing from the database. In addition, the PAJID scores of 4 judges who joined in the abortion cases were not available. Consequently, I have a total of 57 individual votes that state supreme court judges cast in 10 abortion cases from 10 different states, and I obtained accordingly 57 PAJID scores.

Next, I collected information on gender identity and the year when state supreme court judges were appointed or elected to the bench from the book called *The American Bench*. Then, the case interpretations and the information of case year were derived from the Westlaw database. Using the case year and the year when the judges first started to serve in office, the information of term length was collected. Finally, regarding state ideology, I relied on the measure developed by Berry, Ringquist, Fording and Hanson mentioned above. Their research was partially funded by the National Science Foundation, and their measure has several advantages. First, their measure is sensitive to *annual* changes in public opinion and elite views (Berry, Ringquist, Fording and Hanson 1998). Because the state supreme court cases used in my study are handed down from 1995 to 1998, adopting their *annual* measure of state ideology is important in evaluating environmental changes in each state. Second, compared to most of the current scholars of state ideology, their measure of government ideology embodies a more realistic vision of the relationship between party
control and political power in state policy-making institutions. For instance, their measure includes the preferences of citizens who vote for losing candidates in congressional election. Therefore, in my empirical research, I relied on the measure developed by Berry, Ringquist, Fording and Hanson. Specific state ideology scores were obtained directly from Professor Fording.

To examine state supreme court judges’ behavior, I adopt two models. The first one focuses on the individual level. Specifically, I estimate the impact of judges’ personal attributes on their decision making, and I choose two variables, including judges’ personal ideological preferences (PAJID scores) and gender. Since the attitudinal model believes that Supreme Court justices decide cases solely on their attitudinal preferences and that justices come to the Court with their attitudes and values fully formed (Segal and Spaeth 1993), the first model I use is almost the same as the Attitudinal Model at the federal level. As Tate (1981) noted, personal attitudes and attributes operationally may be interchangeable. Thus, I consider the first model as the Attitudinal Model at the state level. Also, I assume that each judge is independent and would not be affected by external factors. The second one is an Integrated Model that provides a more dynamic view of judicial decision-making process. It incorporates both attitudinal and strategic factors, so it is used to test whether the Attitudinal Model works better. Features in the Integrated Model include PAJID scores, gender, state ideology scores, and term length, and I assume that state supreme court judges’ decisions are dependent from both internal and external factors.

In my study, the dependent variable, or response, is dichotomous or binary in nature, which means that a judge’s vote is either in a pro-life direction (coded 0) or it is not (coded 1). Standard regression (OLS) techniques are not suitable to examine judges’
decisions because the value of responses is restricted to 0 or 1 and using OLS, the estimated value may not be binary so that the model may have no interpretative power. Other estimation techniques have been developed to address this problem. Popular methods include tree-based classification, logistic regression, and discriminant analysis. In this study, I choose the first two methods to examine judges’ decisions on cases involving abortion, because both the tree-based classification and logistic regression techniques are conceptually simple yet powerful. In the following two sections, I will first briefly introduce these two methods, and then I will focus on the results of the statistical analyses.

Classification and Regression Tree Analysis

The Classification and Regression Tree analysis (CART) is a widely used data-mining procedure whose goal is to fit a model that classifies or predicts the response based on given input variables. The idea of this method is to partition the space of all the independent variables, or predictors, into disjoint rectangles and then use the mean response in each rectangle as the estimate to fit a simple model.

For example, we can illustrate a regression problem with a continuous response $Y$ and two predictors, $X_1$ and $X_2$, that take values from 0 to 1. The feature space is thus the square shown in figure 1:

As Figure 1 represents, scholars can partition the square recursively using red lines. Specifically, in each step, scholars choose a variable (either $X_1$ or $X_2$) and a corresponding partition point to obtain the best fit. For instance, I first split the square at $X_1 = a$. Next, the rectangle $X_1 \leq a$ on the left is partitioned at $X_2 = b$. Finally, I partition at $X_1 = c$ and stop the partitioning process. As a result, the original square has been divided
into four disjoint regions: R1, R2, R3, and R4. In real applications, the partitioning process may continue until a stopping criterion is reached. Using mathematical optimization, the statistical package \texttt{rpart} in R requires users to determine a tree complexity parameter $c_p$ and then automatically calculates the selection of the best variable to split, the optimal point where the partition should be made in each step, and when the program should stop the partitioning process.

In my example, I can represent the four partitioned regions graphically using a straightforward tree structure, as shown in figure 2.

Next, I model $Y$ with a constant $c_i$ in region $R_i$. In the figure 3 example, this means we can estimate the response by

$$\hat{Y} = f(X_1, X_2) = \sum_{i=1}^{4} c_i \cdot \Pi_{(X_1, X_2) \in R_i}$$

(1)
Figure 2. Tree representation of the recursive partitioning.

where $\Pi_{(X_1, X_2) \in R_i}$ is an indicator that takes on value 1 if $(X_1, X_2)$ is in region $R$ and 0 otherwise. To find the best choice of $c_i$ that minimizes the sum of squared errors in each region $R_i$, we can use $c_i$ as the average of observed responses in the region $R_i$.

Also, I want to remark on the tree size. If I consider too many partitions that make the tree overly complicated and I risk over-fitting the data. On the other hand, I cannot use a tree that is too small because doing so would lead to high-bias estimates. As a consequence, I need to specify an optimal complexity parameter $c_p$ to control the complexity of the tree. For this purpose, I can use the cross validation method to select $c_p$.

When the response has a classification outcome and only takes values from a set of categories, it is more suitable to use a classification tree instead of the regression tree illustrated in the previous example. However, the basic ideas of classification trees are the same as regression trees. The main differences are: 1.) classification trees classify each region using the observed majority class in that region, while regression trees fit a constant to
each region; 2.) using classification trees, scholars need to modify the conditions for partitioning the nodes.

In this study, I will first fit a tree that is too large, and then I will prune it back. In other words, I will show a complex tree that tends to over-fit, as well as an optimal tree using the correct $c_p$. Since the dependent variable (judges’ decisions) is either coded 0 if a judge voted in a pro-life direction or 1 otherwise, which means that the response $Y$ is binary, I choose the classification tree to estimate judges’ votes. First, to fit an Attitudinal Model, I use the independent variables: personal preferences (PAJID scores) and gender. Adopting an optimal complexity parameter $c_p = 0.08$ that is estimated using the cross-validation method, I obtain the following classification tree for the Attitudinal Model (figure 3).

![Classification Tree - Attitudinal Model](image)

**Figure 3. Fitted tree for the Attitudinal Model.**

The fit shown in figure 3 may be surprising to many scholars. As mentioned previously, I expect state supreme court judges with lower PAJID scores (more conservative) to be more inclined to vote 0 (pro-life). However, judges with PAJID scores lower than 25.54 or higher than 61.92 are both classified as the group that will be more likely to vote 0,
respectively. On the other hand, the above result suggests that *gender* is not identified as an important variable for classification purpose.

Next, I study the Integrated Model with two more independent variables, namely state ideology (SID) and the length of term (term). If I choose a relatively small complexity parameter $c_p = 0.01$, I obtain a fitted classification tree as follows (figure 4).

![Classification Tree - Integrated Model (Overfit)](image)

Figure 4: Over-fitted tree for the Integrated Model (overfitting).

Figure 4 reflects the complexity of the model in details. However, an over-fitted tree will reduce the predictive accuracy of a tree model because some branches may include anomalies in the training data due to noise or outliers (Liao and Triantaphyllou 2008, 377). Also, “as the number of nodes increases, the decision cost decreases monotonically for the learning data. This corresponds to the fact that maximal tree will always give the best fit to the learning dataset” (Lewis 2000, 8). Therefore, in order to prune the tree, I select an optimal complexity parameter $c_p = 0.1$ and fit the classification tree again (figure 5).
As shown in figure 5, under the Integrated Model, PAJID score is no longer the most important variable for classification; rather, the fitted result shows that state ideology is the best splitting variable. Also, the result shows that the states whose SID’s are higher than 16.67 but lower than or equal to 44.23 tend to vote for the pro-life position (coded 0). In contrast, I expected that states with lower SID’s (more conservative) would be more likely to vote for pro-life decisions and alternatively states with higher SID’s, which are more liberal in general, would tend to cast pro-choice votes. As a consequence, I find that regarding abortion issues, state supreme court judges’ decisions based on the dataset are not consistent with the original expectations and no convincing evidence shows that higher state ideology scores correlate with more liberal votes.

Logistic Regression Analysis

Logistic regression is another method that deals with binary responses (dependent variable). The advantage of logistic regression is that it does not assume a linear relationship between the response and the predictors. According to Kalyvitis and Vlachaki,

The logistic regression may handle nonlinear effects even when exponential and polynomial terms are not explicitly added as additional independents because the logit
link function on the left-hand side of the logistic regression equation is non-linear by construction. (Kalyvitis and Vlachaki 2008, 8)

This is particularly helpful in this study where non-linearity is likely to be present.

Since the final results of using the classification tree method are much different from what I expected, I will use logistic regression to explore the relationship between the response and the predictors. I assume that \( p \) is the probability that a judge will vote 1 given all the predictors \( x_1, x_2, \ldots, x_n \). The logistic regression with logic link assumes the following model:

\[
\text{logit}(p) = \log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1 x_1 + \cdots + \beta_n x_n
\]

(2)

To begin, I use the variables of the attitudinal model (PAJID scores and gender) to fit the logistic regression, so the formula becomes as follows:

\[
\text{logit}(p) = \log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1 \cdot \text{PAJID} + \beta_2 \cdot \text{gender}
\]

(3)

My goal is to use observed data to calculate the estimated coefficients \( \hat{\beta}_0, \hat{\beta}_1, \) and \( \hat{\beta}_2 \) and find the corresponding statistics. Because gender is a categorical variable that takes only two values M and F in my dataset, in order to make \( \hat{\beta}_2 \) meaningful, I transform the categorical variable gender into a dummy variable GenderM that takes on value 1 if a judge is male and 0 otherwise.

Table 1 represents the fitted results from R. As table 1 shows, p-score (Pr(> |z|)) for \( \hat{\beta}_0, \hat{\beta}_1, \) and \( \hat{\beta}_2 \) are 0.1601, 0.7490, and 0.0554, respectively. Based on the p-score, it appears that none of the fitted coefficients (\( \hat{\beta}_0 = 1.076781, \hat{\beta}_1 = 0.003654, \) and \( \hat{\beta}_2 = -1.389568 \)) is statistically significant at a 5% significance level. However, the fitted
Table 1. Fitted results for the Attitudinal Model

<table>
<thead>
<tr>
<th></th>
<th>Estimated Coefficient</th>
<th>Standard Error</th>
<th>z value</th>
<th>p-score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>1.076781</td>
<td>0.766552</td>
<td>1.405</td>
<td>0.1601</td>
</tr>
<tr>
<td>PAJID</td>
<td>0.003654</td>
<td>0.011419</td>
<td>0.320</td>
<td>0.7490</td>
</tr>
<tr>
<td>GenderM</td>
<td>-1.389568</td>
<td>0.725202</td>
<td>-1.916</td>
<td>0.0554</td>
</tr>
</tbody>
</table>

Null Deviance     | 78.861 on 56 degrees of freedom |
Residual Deviance | 74.575 on 54 degrees of freedom |
AIC               | 80.575                        |

coefficient $\hat{\beta}_2$ for the dummy variable, gender, does become significant if I loosen the level of significance to 10%. Since $\hat{\beta}_2 = -1.389568$ is negative, it implies that a male judge is more likely to vote 0 (pro-life). Moreover, table 1 shows that the null model (model with only the intercept term) has a deviance of 78.861, which is not much larger than a residual deviance of 74.575 in the logistic regression involving two variables. This means that my logistic regression model is not much better than the null model and the variables considered in the attitudinal model are not statistically significant on state supreme court judges’ votes on abortion issues.

Furthermore, I can construct a confidence interval to provide an estimate of the potential discrepancy between the true and estimated values of the coefficient. Since I can decide how large the confidence interval is, I choose the most common 95% confidence interval. This means I expect, with a 95% probability, that the confidence interval will cover the true value of the coefficient. The 95% confidence intervals for the fitted coefficients in the Attitudinal Model are given below (table 2).

In table 2, I find that the first two confidence intervals are quite wide due to the large variances of the estimated coefficients and both of these confidence intervals cover 0.
Table 2. Confidence intervals for the estimated coefficients: The Attitudinal Model

<table>
<thead>
<tr>
<th></th>
<th>2.5%</th>
<th>97.5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>-0.34198670</td>
<td>2.74727646</td>
</tr>
<tr>
<td>PAJID</td>
<td>-0.01887928</td>
<td>0.02662994</td>
</tr>
<tr>
<td>GenderM</td>
<td>-2.98478118</td>
<td>-0.05741794</td>
</tr>
</tbody>
</table>

Thus, \( \hat{\beta}_1 \) is not significantly different from 0 at a 95% confidence level, which means that I cannot be confident whether a change in a judge’s PAJID score has an impact on the probability this judge will vote for 0 or 1. Regarding \( \hat{\beta}_2 \) that is related to gender, I find that the confidence interval contains all negative values. As mentioned above, it means that being a male judge lowers the odds that the judge would vote pro-choice (coded 1). Examining the data set, I find that this is the case (table 3).

Table 3. Breakdown of voting behavior according to sex

<table>
<thead>
<tr>
<th></th>
<th>Male Judges</th>
<th>Female Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote 0</td>
<td>24</td>
<td>3</td>
</tr>
<tr>
<td>Vote 1</td>
<td>20</td>
<td>10</td>
</tr>
<tr>
<td>Odds voting 1</td>
<td>45.5%</td>
<td>76.9%</td>
</tr>
</tbody>
</table>

Since I only have a total of thirteen recorded votes for the female judges, their skewed voting behavior is perhaps a consequence of insufficient data. Without collecting more data, I am reluctant to reach the conclusion that gender plays a role in voting behavior, even at a 10% significance level. In short, the results at a 95% confidence interval further confirmed that the relationship between judges’ decisions and the two variables, namely PAJID scores and gender, are not statistically significant.

Next, I fit an alternative logistic regression for the Integrated Model. Including the four independent variables, PAJID scores, gender, term length, and state ideology, the
logistic equation becomes as follows:

$$\text{logit}(p) = \log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1 \cdot \text{PAJID} + \beta_2 \cdot \text{gender} + \beta_3 \cdot \text{term} + \beta_4 \cdot \text{SID}$$ (4)

Again, using R, the fitted results are displayed in table 4.

According to table 4, $p$-scores are 0.3170, 0.9649, 0.0618, 0.6393, and 0.3637, respectively. There is no variable whose estimated coefficient has a $p$-value smaller than, or equal to 0.05. This means that all the fitted coefficients are not statistically significant.

Table 4. Fitted results for the Integrated Model

<table>
<thead>
<tr>
<th>Fitted Results: Integrated Model</th>
<th>Estimated Coefficient</th>
<th>Standard Error</th>
<th>z value</th>
<th>$p$-score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>0.8308221</td>
<td>0.8302296</td>
<td>1.001</td>
<td>0.3170</td>
</tr>
<tr>
<td>PAJID</td>
<td>0.0005674</td>
<td>0.0128934</td>
<td>0.044</td>
<td>0.9649</td>
</tr>
<tr>
<td>GenderM</td>
<td>-1.3771610</td>
<td>0.7373426</td>
<td>-1.868</td>
<td>0.0618</td>
</tr>
<tr>
<td>Term</td>
<td>-0.0167971</td>
<td>0.0358412</td>
<td>-0.469</td>
<td>0.6393</td>
</tr>
<tr>
<td>SID</td>
<td>0.0131540</td>
<td>0.0144812</td>
<td>0.908</td>
<td>0.3637</td>
</tr>
</tbody>
</table>

Null Deviance: 78.861 on 56 degrees of freedom
Residual Deviance: 73.650 on 52 degrees of freedom
AIC: 83.65

at a 5% significance level. Also, table 2 suggests that the fitted coefficient for gender is the only one that is significant at a 10% significance level. Consequently, based on the data and the results of the logistic regression, PAJID scores, gender, the length of term, and state ideology are not statistically significant with state supreme court judges’ votes on cases involving abortion. Moreover, compared to table 2, this Integrated Model has a higher AIC (Akaike Information Criterion), which is 83.65, than the AIC that is 80.575 in the previous Attitudinal Model. According to scholars, “high AIC scores are worse, because these scores indicate that the fitted model is more distant from the truth” (Bandyopadhyay and Forster...
Thus, the results suggest that the Integrated Model is a slightly worse fit than the Attitudinal Model with respect to my data set.

To confirm my findings, I again construct the confidence intervals for these fitted coefficients (table 5). As table 5 shows, except the confidence interval for the coefficient of the dummy variable *GenderM*, all the confidence intervals contain 0 due to the large variances of the estimated coefficients. Thus, I find that state supreme court judges’ decisions do not depend on predictors including PAJID scores, term length, and state ideology. Also, as mentioned above, the confidence interval for gender contains all negative values, which means that there is a negative relationship between being a male judge and the probability that the judge votes on a pro-choice side.

Table 5. Confidence intervals for the estimated coefficients:
The Integrated Model

<table>
<thead>
<tr>
<th>Confidence Intervals: Integrated Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.5%</td>
</tr>
<tr>
<td>Intercept</td>
</tr>
<tr>
<td>PAJID</td>
</tr>
<tr>
<td>GenderM</td>
</tr>
<tr>
<td>Term</td>
</tr>
<tr>
<td>SID</td>
</tr>
</tbody>
</table>

In conclusion, by fitting logistic regression models to my data set, I find no statistical evidence that the four variables, PAJID scores, gender, term length, and state ideology, have a great impact on state supreme court judges’ decision making. The results must be surprising to many scholars who believe that the Attitudinal and Integrated Models have predictive power over voting results. Nonetheless, I want to point out that since a stable logistic regression usually requires more data, the insignificant
logistic regression fit at a 5% level may well be due to the small size of my data set (57 observations in this study).
CHAPTER V

CONCLUSION

Studies on state supreme courts over the past decades have made substantial progress. Regarding features that influence state supreme court judges’ decision making, there are mainly four categories: 1.) personal attributes, 2.) political environment, 3.) institutional arrangements, and 4.) legal features. First, personal attributes usually include factors such as state supreme court judges’ personal policy preferences, gender, age, prior career patterns, and religious orientations (Brace and Hall 1992, 1993, 1995; Dixon, Epstein, and Walker 1989; Emmert and Traut 1994; Flemming, Holian and Mezey 1998). Next, political environment variables mainly include partisan competition, urbanism, and levels of expenditures by state governments (Brace and Hall 1993, 1995, 1996; Cannon and Jaros 1970). Regarding institutional arrangements, scholars have been focused on numerous institutional variables, such as method of judicial selection, retention methods, and the length of service (Brace and Hall 1992, 1995; Comparato and McClurg 2007; Gillman 1999; Kehoe 1989; Puro 2005). Lastly, scholars have determined some important legal features that have an important impact on judicial decision making, such as case characteristics and precedence (Emmert 1992).

Based on previous research, my research found that there are four features that are considered theoretically and statistically important in influencing state supreme court judges’ decisions on issues such as abortion and the death penalty. These four features
are: judges’ personal attitudes (PAJID scores), gender, state ideology, and term length. Since this study focused on comparative studies, I did not combine all the possible variables in the research; rather, I used these four most important features to compare theattitudinal model of judicial decision making with the Integrated Model on abortion issues. Moreover, this study analyzed a total of 10 state supreme courts’ decisions that were handed down by 57 individual judges from 1995 to 1998. I obtained my data from the *State Supreme Court Data Project, The American Bench*, and the *Westlaw database*. And I relied on the measure of state ideology developed by Berry et.al. (1998).

The goals of this research were to answer the following question: 1.) Are state supreme court judges similar to their federal colleagues and influenced by the attitudinal and Integrated Models of judicial decision making? Based on the data, I found that the four predictors (PAJID scores, gender, state ideology, and term length) do not have a strong and direct impact on state supreme court judges’ votes. 2.) Since PAJID scores, gender, state ideology, and term length have been shown to have a significant impact on state supreme court judges’ behavior in cases involving death penalty and privacy rights (Brace and Hall; Songer and Grews-Meyer 2003), can these factors also explain judges’ decisions on abortion cases? Relying on classification tree analysis, I found no direct impact of the four predictors on judicial decision making. Furthermore, based on logistic regression, I found no statistical significance of the fitted coefficients, thus casting doubts on whether these four predictors are relevant in the decision making process. 3.) Compared to the attitudinal model of judicial decision making, does the Integrated Model better explain state supreme court judges’ decision making on abortion issues? The fitted results from the logistic regression suggest
that neither model is significantly better than the null model. Also, neither the attitudinal model nor the Integrated Model is a significant improvement over the other.

Through comparative research of the attitudinal and Integrated Models that included internal and external influences, respectively, I found that the results are significantly different from my expectations. However, this study still extends previous research in three ways. First, I found that no single predictor that I considered in the attitudinal model and Integrated Model had a profound impact on judicial decision making at the level of state supreme courts. According to Segal and Spaeth (1993), the attitudinal model suggests that justices decide cases based solely on their attitudinal preferences and that justices come to the Supreme Court with their attitudes and values fully formed. Similarly, Herman Pritchett believes that “private attitudes become public law” (Brace and Hall 1992, 3). In contrast, my study suggests that state supreme court judges’ decisions are not necessarily influenced by their personal attitudes. Second, I examined the attitudinal and Integrated Models in a new field of state constitutional law, namely abortion. At the state level, many researches have predicted and explained judges' decisions on death penalty issues. However, few studies have examined judges’ decisions involving abortion. As a highly salient issue where multiple political and legal forces are likely to intervene, abortion cases provide a large number of variables that may affect judges’ decisions. Also, since recent decisions of the U.S. Supreme Court allow greater state discretion in the regulation of such areas as abortion, the regulative power of state supreme courts on abortion issues should be increasing (Brace and Hall 1992, 4). Thus, analyzing abortion issues helps scholars better understand judicial behavior. Moreover, state supreme court justices do not respond to all cases in the same way, and decisions faced by judges are dependent on what area of case
law is examined (Stricko-Neubauer 2004). Therefore, to study judicial behavior in this new area is of practical importance. Third, I made use of the classification and regression tree analysis in this study, which provides a visual representation of how researchers can make predictions and explanations based on relevant variables.

The lack of data regarding judicial decision making at the state level is a serious concern in studies like mine. As Brace and Hall noted, conclusions about state supreme court decision making are limited to a large degree by the relative scarcity of state-level data (Brace and Hall 1996, 239). Without enough data, the study may be exposed to potential biases. For instance, in my study, the results show that state supreme court judges with PAJID scores greater than 61.92 (more liberal) are more likely to vote 0 (pro-life). However, in exploring the data, I can find that there are a total of 5 judges who have PAJID scores greater than 61.92, of which 3 voted 0. As a consequence, those 3 judges are counted as the majority in the group. To conduct future research, collecting more data will help researchers better determine the extent to which state supreme court judges respond to a particular factor. In order to avoid data snooping, researchers need to test and compare their fitted models using out-of-sample data. For instance, researchers can randomly select approximately 70% of the data to fit the models and find the parameter estimates. Then they can test and compare the models using the rest of the data. Last but not least, when scholars focus on judges’ decision making in different states, they may also need to incorporate specific state legal features into their models. According to Flemming and Holian,

Although most states are, like the U.S. Supreme Court, placed in the position of considering an unwritten right to privacy, 10 state constitutions contain explicit privacy guarantees, including 8 states that have added the privacy clauses to their
constitutions since 1972. Judges in these 10 states may be more likely to uphold privacy claims than in states without explicit constitutional guarantees” (Flemming and Holian 1998, 11).

Since the privacy right includes the right to choose abortion, legal features may influence state supreme court judges’ decisions in cases involving different states. In conclusion, my dataset is likely biased due to its size, so I cannot be certain whether the lack of statistical significance in my results truly reflects on the irrelevancy of the predictors in the abortion cases.
BIBLIOGRAPHY


Brace, Paul, and Melinda Gann Hall. *State supreme court data project*. NSF SBR 9617190 and NSF SBR 9529842.


Hall, Kermit L., and James W Ely. 2009. The Oxford guide to United States Supreme Court decisions. Oxford University Press. USA.


In Re Anonymous 1. 558 N.W.2d 784, Neb., 1997.

In Re Anonymous 2. 570 N.W.2d 836, Neb., 1997.


Olson, Kent C. 1999. *Legal information: How to find it, how to use it*. ABC-CLIO.

Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc. 971 S.W.2d 439, Tex., 1998.


Ponnuru, Ramesh. 2006. Party of death: the democrats, the media, the courts, and the disregard for human life. Regnery Publishing.


