

Ideological Values and the Votes of Justices Revisited

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Prepared for presentation at the 1994 meeting of the Midwest Political Science Association, Chicago. We thank Carol Mershon for her comments. This project was supported by National Science Foundation grants SES-9211452 and SES-8313773.

Political Science Paper Number 221, Washington University in St. Louis.

Abstract

Segal and Cover (1989) content analyzed newspaper editorials to devise measures of the ideological values of the justices of the U.S. Supreme Court. Because their measures came from sources independent of the judicial vote, scholars have widely adopted them.

This note updates, backdates, and extends the Segal and Cover research by adding the two Bush appointees and the seven Roosevelt and four Truman nominees whose service extended beyond the start of the Vinson Court. While we find that the ideological values of the Eisenhower through Bush appointees correlate strongly with votes cast in economic and civil liberties cases, the results are less robust for justices appointed by Roosevelt and Truman.

Ideological Values and the Votes of Justices Revisited

A predominant, if not the predominant, view of judicial decision making is the attitudinal model. It supposes that the ideological values of jurists provide the best predictors of their votes (see Segal and Spaeth 1993). Although this proposition has gained wide acceptance, testing it in a valid way presented the seemingly intractable problem of circularity: judicial attitudes were often measured through the very votes one sought to predict.

In a 1989 article, Segal and Cover set out to solve the circularity problem as it pertained to U.S. Supreme Court decision making. They did so by devising a set of measures—reflecting the justices’ ideological positions— from sources independent of judicial votes. As we describe below, Segal and Cover gathered these measures from editorials (published before the Senate confirmed the nominee) in four newspapers. They then used the scores to demonstrate the aptness of the attitudinal model. Specifically, they found a correlation of .80 between judicial values (as measured by newspaper editorials) and votes in civil liberties cases for justices appointed between 1953 and 1988.

This note has two purposes. First, we update the Segal/Cover scores by adding the two Bush appointees (Souter and Thomas) and backdate them by including the seven Roosevelt (Black, Reed, Frankfurter, Douglas, Murphy, Jackson, and Rutledge) and the four Truman (Burton, Vinson, Clark, and Minton) nominees whose service extended beyond the start of the Vinson Court. In and of themselves, these tasks serve an important function. For, despite the relative recency of their appearance, judicial specialists have widely adopted the Segal/Cover scores (*e.g.*, Segal, Cameron, and Cover 1992; Mishler and Sheehan 1993; Sheehan, Songer, and Mishler, 1992; Kearney

and Sheehan 1992), publishing their results in the *American Political Science Review*, the *Journal of Politics*, and other important disciplinary journals. Adding more justices will be of substantial interest to analysts who wish to study earlier eras in particular, as Harold J. Spaeth is in the process of backdating his oft-used Supreme Court Judicial Database to include the Vinson Court.

Second, we update and expand the analytic portion of Segal and Cover's paper. The update determines if the addition of justices substantially alters its results for civil liberties cases. So doing permits us to assess whether ideological values provide a predictor of voting behavior as powerful for early eras as for later periods. This is an important enterprise because the attitudinal model, which the Segal and Cover's research purports to reinforce, has been only casually considered for pre-Warren Court eras (*e.g.*, Pritchett 1954).¹ Here, by using proven surrogates for judicial values, we can consider the model in systematic terms. The expansion investigates another area of the Court's docket: economic regulation. We seek to discover whether the values of the justices (as measured by the editorials) correlate with economic votes as highly as they do with those cast in civil liberties cases. Since some scholars (Bowen 1992; Mishler and Sheehan 1993) have used the Segal/Cover scores to study issues other than civil liberties (including economic regulation), the expansion allows us to assess their efforts.

Measures and Data Sources

The measures of the independent variables for our study (ideological values) are the same as those used by Segal and Cover (1989): newspaper editors' assessments of the justices' ideological values, ranging from -1 (unanimously conservative) to 0 (moderate) to +1 (unanimously liberal). Segal and Cover gathered their data from four newspapers, two with liberal stances (*The Washington Post* and *The New York Times*)

¹More systematic examinations of voting prior to the onset of the Warren Court exist (*e.g.*, Handberg 1976) But those works (or, at the very least, those that find their grounding in the attitudinal school) rely on votes as measures of values.

and two with conservative ones (*The Los Angeles Times* and *The Chicago Tribune*). Using only four newspapers was sufficient for their purposes because, as Table 1 depicts, Supreme Court nominations of the latter part of the 20th Century generated ample reaction. But the relative paucity of editorials concerning judicial nominees prior to the Warren Court era (see Table 1) caused us to extend and diversify our reach by adding a liberal Midwestern paper (*The St. Louis Post-Dispatch*) and a conservative Northeastern one (*The Wall Street Journal*).

(Table 1 about here)

We also followed the Segal/Cover coding scheme, with some allowances made for the earlier time frame.² General mentions of a nominee's liberalism, progressivism, or identification with the Democratic party, Franklin Roosevelt, or the New Deal were coded as liberal. Identification with conservatism or the Republican party were coded as conservative (none of the earlier nominees opposed Roosevelt or the New Deal). For more specific issues, we coded as liberal support for New Deal economic policies (as well as for the Court-packing plan [see Caldeira 1987]) and for the rights of individuals, except when the "individuals" in question were businesses fighting economic regulations. Like Segal and Cover, we identified as liberal support for equal protection, First Amendment freedoms, and procedural rights for the accused criminals. But such mentions were few and far between: Editorials tended to focus on the pressing problems of the day, most of which were economic in nature. In fact, the only citations to civil rights issues came in *The St. Louis Post-Dispatch*, which noted Clark's opposition to civil rights (August 10, 1949) and *The Chicago Tribune*, which mentioned the Ku Klux Klan's support for Black (August 14, 1937). The sole citations to First Amendment freedoms accompanied a discussion of Minton's introduction of the "Press Gag Bill of 1938" (*The Los Angeles Times*, September 16, 1949) and Rutledge's support for religious

²Despite these slight adaptations for time, reliability is not a concern since Jeffrey A. Segal coded the articles for us.

freedom (*The St. Louis Post-Dispatch*, January 16, 1943).

Our dependent variable is the percentage of formally decided (including orally argued per curiams) civil liberties and economics cases from the start of the Vinson Court era in 1946 through the end of the 1991 term in which the justices took a liberal position. We defined the civil liberties category as did Segal and Cover: it combines cases involving criminal procedure, civil rights, First Amendment, due process, attorneys, and privacy. Liberal civil liberties decisions are those that favor the criminally accused, the civil liberties/rights claimant, indigents and Native Americans and that are against the government in due process and privacy litigation. Economic cases are those involving labor unions, commercial business activity (plus litigation involving injured persons or things), employee actions vis-à-vis employers, zoning regulations, and governmental regulation of corruption other than that involving campaign spending. Liberal economic decisions are pro-union votes against both individuals and the government, pro-government votes against challenges to its regulatory authority and also pro-competition, anti-business, pro-liability, pro-injured person, and pro-bankrupt votes. We derived the data from the U.S. Supreme Court Judicial Database, using citation plus split votes as the unit of analysis.³

Results

Table 2 presents the results of our updating and backdating of the Segal and Cover scores; it contains the values of the justices (as derived from the newspaper editorials) and the liberal percentages in civil liberties and economic cases. In general, the findings appear in line with broad-based impressions of the justices (see, generally, Baum 1989). Murphy and Rutledge, for example, had perfect liberal editorial scores, while Minton and Burton had the most conservative ones, among the pre-Eisenhower

³Data for the Vinson Court era were collected by Harold J. Spaeth. They are consistent with his data for later Court eras (contained in the U.S. Supreme Court Judicial Database).

appointees.

(Table 2 about here)

Still, a few surprises do emerge. Given that scholars have ranked him as one of the most liberal justices of his generation, Douglas' score is more moderate than we might have expected.⁴ A simple explanation is that he ran the Securities and Exchange Commission so fairly that even the staid *Wall Street Journal* (but not the extremist *Chicago Tribune*⁵) spoke of him in moderate terms. Moreover, at least two editorials noted Douglas' strong support for the free enterprise system, with one quoting his view that "[o]ur main efforts must lie along the lines of making as certain as possible that opportunity for work exists and that honest business has opportunity to make honest and substantial profits" (*The Los Angeles Times* March 21, 1939). Jackson's score, in contrast, is more liberal than anticipated. This is largely based on two editorial statements attributing to him strong New Deal loyalties; other than those, the newspapers ignored his nomination.

The Relationship between Votes and Values

The above provides a description of the data. More important, of course, is our investigation of the relationship between values and votes. Table 3 presents the results of regressing economic and civil liberties votes on the ideological value scores. It depicts the simple correlations and the RMSEs⁶ for the pre-Warren Court nominees, the post-Warren period and the combined set.⁷

(Table 3 about here)

Several interesting results appear. First and foremost is that the ideological

⁴See Segal and Cover (1989, 560) for similar results concerning Goldberg.

⁵Its editorial of March 22, 1939, entitled "Totalitarian Judges," essentially called Douglas a Stalinist. Consider too its comment on Murphy from January 6, 1940: "The Court is to have another judge who will look upon the spread of communistic ideas and practices without dismay."

⁶The RMSE is the root mean squared error of the bivariate regression equation predicting the justices' votes from their ideological values.

⁷For the reader's interest, Table 2 also lists Justice Ginsburg's score. We do not include her in the voting analyses to follow since she joined the Court after the 1991 term.

values of the justices are far less helpful predictors of the votes of the Roosevelt-Truman appointees than for their later counterparts. Their correlations for civil liberties ($r=.46$) are weak in comparison to the Eisenhower-Bush appointees ($r=.80$) and to the results reported by Segal and Cover ($r=.80$ for Eisenhower-Reagan appointees). And while the RMSE for economic issues indicates that predictions of votes in this area will be more precise than for those in civil liberties, the simple correlation ($r=.39$) is disappointing.

Figure 1, which graphs the residuals for both issue areas, tells the story in even more vivid terms. Beginning with civil liberties, we see that the ideological values severely underestimate Douglas' liberalism and overestimate Jackson's. Douglas predicted value is 54.2, compared to his actual support of 88.4; for Jackson those percentages are 65.8 (predicted) against 40.4 (actual). Obviously, then, these justices significantly depress our results; in fact, if we remove Douglas from the equation, the simple correlation jumps from .46 to .57; omission of both Douglas and Jackson yields a r of .72, a figure approaching Segal and Cover's result for the Eisenhower through Reagan nominees. Turning to economic votes, Jackson emerges as the largest residual, with our predicted percent of 68 overestimating by 28 percentage points his actual support of 40.4. Once again, the omission of Jackson from the equation substantially improves our results: the simple correlation climbs to an acceptable .56 and the RMSE decreases to 13.4.

(Figure 1 about here)

The removal of Douglas and Jackson, then, provides one possible solution to our comparatively poor results for the Roosevelt-Truman appointees but it does not help to circumvent the larger problem. To put it succinctly, we can predict civil liberties and economic votes for the Roosevelt-Truman justices from their values, but not with the precision of Segal and Cover's effort.

The second finding is that our attitudinal measure improves substantially for the

Eisenhower-Bush appointees. For civil liberties cases, we obtained a r of .80 and a RMSE of 13.5 for justices appointed from Warren through Thomas. Thus, our addition of the Bush appointees (Souter and Thomas) did not depress the results reported by Segal and Cover ($r=.80$, $RMSE=13.4$ for this period). Indeed, the predicted result for Souter in civil liberties (42.6) is quite close to his actual score of 41.7; for Thomas the results are within an acceptable range (a prediction of 33.9 against his actual support of 25.6). Interesting, too, is that ideological values predict economic voting—a class of cases unaddressed in the Segal and Cover research—with relative precision. The simple correlation for economics cases ($r=.62$) may be lower than for civil liberties but the RMSE (9.9) suggests that our predictions have acceptable levels of accuracy. And, again, our inclusion of the Bush appointees did not damage the predictive capacity of the model: we were within two points for Souter and six for Thomas.

Combining the pre- and post-Warren Court justices also yields satisfactory results. The correlation is higher for civil liberties votes ($r=.70$) than for economic ones ($r=.57$) but the regression predictions are more precise for the economics ($RMSE=12.1$) than for civil liberties ($RMSE=15.6$). The higher correlation in civil liberties cases is probably due to greater variance in those votes than in the ones cast in economic cases. Figure 1 supports this interpretation, as does Segal and Cover's (1989, 561-562) analysis of residuals for the Eisenhower-Reagan appointees.

Ruth Bader Ginsburg: Some Predictions

Because the vote data end with the 1991 term, the above analyses excluded the newest member of the Court, Justice Ginsburg. Based on the satisfactory performance of our attitudinal measure (at least for the Eisenhower-Bush appointees), however, we have little hesitation in using it to characterize her place on the current Court and to generate some predictions of her vote.

As noted in Table 2, our examination of the pre-confirmation editorials written about Ginsburg yields a score of .36. Given that the mean value score of the Court she

joined was $-.58$ (with a standard deviation of $.31$), our measure easily places her as the institution's most liberal member; in fact, her ascension to the Court raised the average $.10$ points, to $-.48$. Still, it is worth noting that this figure is a far cry from the heydays of the liberal Warren Court era (the 1968 term) when the mean of our attitudinal measure reached as high as $.66$ (standard deviation of $.33$). This is hardly a surprise. For virtually all members of the current (1993 Term) Court are—based on the scores depicted in Table 2—more conservative than the justices who sat during the 1968 term.⁸

And, in all likelihood, Ginsburg will be no liberal. To generate predictions of her votes, we multiplied her score of $.36$ by the coefficients of the attitudinal measure produced for the Eisenhower-Bush appointees (for both civil liberties and economic votes) and added the constant.⁹ The results indicate that she will cast about 60 percent of her civil liberties votes and 57 percent of her economic votes in a liberal direction. Of course, this suggests that she will be ideologically distinct from her colleagues, whose actual (and predicted) support of civil liberties is in the 30 percent range.¹⁰ But, based on our estimates, Ginsburg would have been a relatively moderate, if not conservative jurist, had she served during the 1968 term when the Court supported civil liberties claims in over 75 percent of its cases. This change in context is something analysts might keep in mind as they explore Ginsburg's voting behavior in the years to come.

Discussion of Results

Our willingness to generate predictions of Ginsburg's votes stems largely from the ability of the value measures to account for the votes of the Eisenhower-Bush appointees. To put it another way, we agree with sentiment expressed by Segal and Cover (1989, 562) in the conclusion of their article: that their findings “provided exceptional support for the attitudinal model...For the first time support is from measures

⁸The one exception is Ginsburg. Her score of $.36$ was higher than White's $.00$.

⁹The equation for civil liberties votes was: $Y = 51.03 + .36(25.2) = 60.1$; for economic votes it was: $Y = 52.94 + .36(10.88) = 56.9$.

¹⁰The mean support for civil liberties for the eight justices (excluding Ginsburg) of the current Court is 37.5 percent; the mean support predicted by our attitudinal score is 36.4 percent.

of values independent of the votes of justices.” But what are we to make of the results for the Roosevelt-Truman appointees? Since they are less than robust, should we conclude that the attitudinal model’s predictive power is limited to the post-1953 period? For those who believe that the Warren Court virtually created, or at least perfected, ideological decision making (*e.g.*, Bork 1990, ch. 3), such a conclusion would be comforting, indeed.

Yet, for two reasons it may be a premature conclusion. First, we cannot ignore the possibility of measurement error. It is perhaps the case that ideological values do provide a better predictor of the vote than our results indicate but that our measures for the Roosevelt-Truman appointees were imperfect, at least compared with those used for later justices. Two factors support this. For one, recall that the paucity of editorials on pre-Warren justices forced us to consult two more newspapers than did Segal and Cover. Table 1 confirms the fact that the number of comments increased over time: the average pre-Warren appointee garnered .91 editorials per paper; that figure was 2.2 for post-1953 justices, excluding Thomas who generated an unusual amount of commentary. Little doubt can exist that the greater the number of data sources, the more precise the measurement gauge. For another, we should not forget the lack of concern that editorial writers of the 1930s and 1940s showed for civil liberties issues, in particular. As noted, our scores for the pre-Warren justices are based on precious few civil liberties mentions compared with economic ones. Again, that we found only a small number of citations to rights, liberties, and justice issues is hardly surprising in light of the pervasive concerns of the day. Yet, it does help to account for the large RMSE yielded in civil liberties cases, with Douglas the most prominent exemplar.

Second, the results for the Roosevelt-Truman justices, albeit far from dramatic, are not without importance. Using one variable (here, the values of justices) to predict a lifetime of voting behavior in two expansive issue areas (civil liberties and economics) and obtaining correlations in the .40 range is not easy to dismiss. To be sure, the results

leave room for the entry of other explanations for the vote—explanations that may center on the change in case mix occurring during the Roosevelt Court years (see Pacelle 1991) or the demise of consensual norms just a few years earlier (see Walker, Epstein, and Dixon 1988), to name just two. More broadly, this was a dramatic period in the Court’s history, one during which observers and the justices themselves wondered what sort of role it would come to play (see Jackson 1941; McCloskey 1960). But the fact that other explanations exist does not necessarily belie the importance of ideological values in the judicial decision-making calculus. This is especially persuasive since our predictions for seven of the nine Truman-Roosevelt appointees were well in line with the postulates of the attitudinal model.

Conclusion

Previous systematic research on the attitudinal model, *using independent measures of the justices' values*, has been limited to the 1953 through 1988 terms and to civil liberties votes at that (*e.g.*, Segal and Cover 1989). Our research seeks to fill this gap by considering votes in economic cases and justices of earlier periods. The results are somewhat mixed. On the one hand, the votes cast in economic cases by post-Eisenhower appointees can be explained by a relatively straightforward measure of their attitudes, one that is independent of those votes. Indeed, the results for economic issues are as good as those for civil liberties. On the other hand, the disparity we found between the pre- and post-Warren Court appointees deserves underscoring. When future researchers apply the attitudinal model to the voting behavior of pre-Warren justices—as they undoubtedly will—it seems advisable that they supplement ideological evaluations with other potential determinants of the vote.

Although our findings may be mixed, we do not wish to discourage scholars from using these scores as surrogates (independent of the vote) for ideological values. To the contrary: our results—especially for the Eisenhower-Bush appointees—point to their strong predictive power. Our research, however, does suggest the need for caution when using the scores to investigate earlier Court eras. Scholars should be sensitive to changes in the legal, political, and social environments (which generate the newspaper reactions on which the scores are based) and use appropriate diagnostic tools to tease out their potential effects.

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Table 1. Number of Editorials Per Justice

<i>Justice</i>	<i>Number of Editorials</i>	<i>Number of Editorials Per Paper</i>
Roosevelt-Truman Appointees		
Black	11	1.83
Reed	6	1.00
Frankfurter	6	1.00
Douglas	6	1.00
Murphy	4	.67
Jackson	6	1.00
Rutledge	4	.67
Burton	5	.83
Vinson	4	.67
Clark	4	.67
Minton	4	.67
Eisenhower-Bush Appointees		
Warren	8	2.00
Harlan	5	2.00
Brennan	3	.75
Whittaker	2	.50
Stewart	4	1.00
White	3	.75
Goldberg	2	.50
Fortas ^a	3	.75
Marshall	2	.50
Burger	12	3.00
Blackmun	7	1.75
Powell	15	3.75
Rehnquist ^b	15	3.75
Stevens	4	1.00
O'Connor	8	2.00
Rehnquist ^c	19	4.75
Scalia	19	4.75
Kennedy	13	3.25
Souter	20	5.00
Thomas	47	11.75

Note: For Roosevelt-Truman appointees the number of papers used is six; for Eisenhower-Bush appointees, that figure is four.

^aIncludes Fortas' nomination to associate justice only. His nomination for the Chief Justiceship generated 38 editorials in four newspapers.

^bAs a Nixon nominee.

^cAs a Reagan nominee.

Table 2. Justices' Values and Votes

<i>Justice</i>	<i>Appointing President</i>	<i>Ideological Value</i>	<i>Civil Liberties Vote</i>	<i>Economics Vote</i>
Black	Roosevelt	.75	73.9	81.7
Reed	Roosevelt	.45	35.1	54.0
Frankfurter	Roosevelt	.33	53.8	39.9
Douglas	Roosevelt	.46	88.4	79.4
Murphy	Roosevelt	1.00	80.0	77.9
Jackson	Roosevelt	1.00	40.4	40.4
Rutledge	Roosevelt	1.00	77.2	80.0
Burton	Truman	-.44	38.9	50.0
Vinson	Truman	.50	36.7	50.2
Clark	Truman	.00	43.8	69.7
Minton	Truman	.44	36.8	59.5
Warren	Eisenhower	.50	78.5	79.8
Harlan	Eisenhower	.75	43.7	42.0
Brennan	Eisenhower	1.00	79.5	70.5
Whittaker	Eisenhower	.00	43.3	34.6
Stewart	Eisenhower	.50	51.3	47.7
White	Kennedy	.00	42.4	59.2
Goldberg	Kennedy	.50	88.9	65.4
Fortas	Johnson	1.00	81.0	67.4
Marshall	Johnson	1.00	81.4	65.9
Burger	Nixon	-.77	29.6	42.8
Blackmun	Nixon	-.77	51.5	55.1
Powell	Nixon	-.67	37.4	46.0
Rehnquist ^a	Nixon	-.91	19.8	42.0
Stevens	Ford	-.50	61.4	57.5
O'Connor	Reagan	-.17	33.4	43.3
Rehnquist ^b	Reagan	-.91	22.0	43.9
Scalia	Reagan	-1.00	29.7	44.1
Kennedy	Reagan	-.27	34.7	45.2
Souter	Bush	-.34	41.7	47.4
Thomas	Bush	-.68	25.6	40.0
Ginsburg ^c	Clinton	.36	---	---

Note: Value is the ideological value for the justice as derived from content analyses of newspaper editorials. It ranges from -1.00 (extremely conservative) to 1.00 (extremely liberal). Civil Liberties and Economics Vote represent percent liberal votes in those issue areas during the 1946-1991 terms

Sources: Values for Black through Minton and Souter, Thomas, and Ginsburg were collected by the authors; values for Warren through Kennedy were reported in Segal and Cover (1989, 560). Civil Liberties and Economics come from the U.S. Supreme Court Judicial Database.

^aValues and Votes as a Nixon appointee

^bValues and Votes as a Reagan appointee

^cGinsburg is listed for readers' interest only. She is not included in the vote analyses.

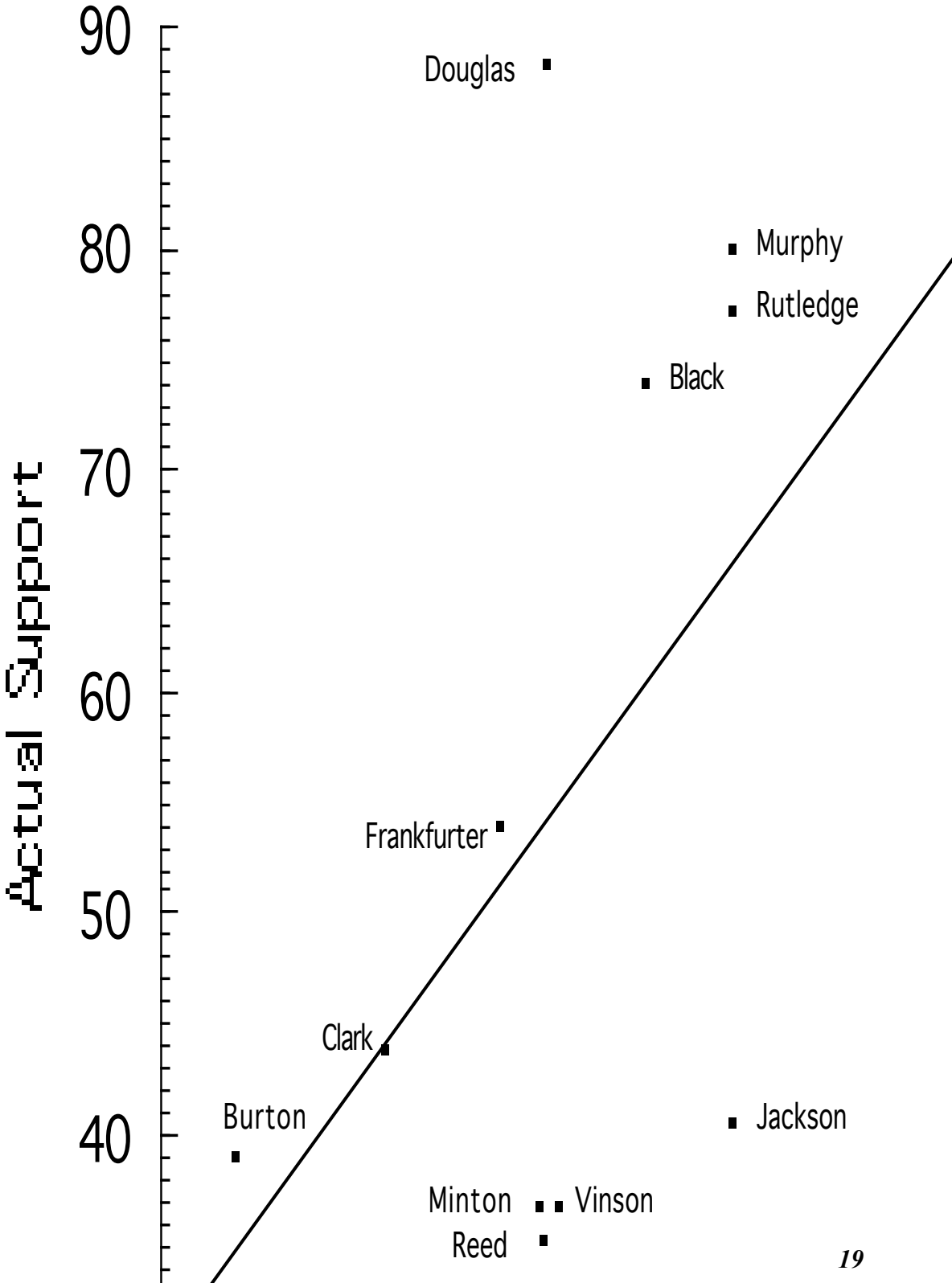
Table 3. Correlations between Values and Votes

	<i>Justices Appointed By</i>					
	<i>Roosevelt-Truman</i>		<i>Eisenhower-Bush</i>		<i>Roosevelt-Bush</i>	
	Civil Liberties	Economics	Civil Liberties	Economics	Civil Liberties	Economics
R	.46	.39	.80	.62	.70	.57
RMSE	19.2	16.3	13.5	9.9	15.6	12.1

Note: The RMSE is the root mean squared error of the bivariate regression equation of Civil Liberties and Economic Votes with Ideological Values.

Figure 1. Actual versus Predicted Support: Roosevelt-Truman Appointees

Civil Liberties



Economics

