From Schubert's The Judicial Mind to Spaeth's U.S. Supreme Court Judicial Data Base: A Crossvalidation

Paul A. Djupe; Lee Epstein

From Schubert's The Judicial Mind to Spaeth's U.S. Supreme Court Judicial Data Base: A Crossvalidation*

Paul A. Djupe, *Washington University in St. Louis*
Lee Epstein, *Washington University in St. Louis*

Since 1990, when Spaeth made public his *U.S. Supreme Court Judicial Data Base*, scholars of courts and law have possessed a reproducible and reliable data set from which to conduct their analyses. Such was not always the case: many of the field's foundational studies relied on information that would not pass muster under current standards governing data collection. We crossvalidate a model from one of these studies (Epstein, Walker, and Dixon 1989), which relied heavily on data collected by Schubert (1976), with data derived from the Spaeth Data Base.

The crossvalidation was only a partial success, with a key variable (prior behavior) failing to obtain statistical significance. While this finding may carry important implications for scholarship on Supreme Court decision making, the more general lesson of our effort is this: Simply because judicial specialists (or those in other fields for that matter) now have outstanding public data bases, it does not follow that they can ignore issues of measurement, reproducibility, reliability, and verification. Too many of the seminal studies and important constructs evolved from data bases that were something short of outstanding. This suggests the need for more crossvalidations of older work against data gathered in accord with contemporary standards.

With the appearance of Spaeth's (1997) *U.S. Supreme Court Judicial Data Base* in 1990, scholars of judicial politics find themselves in the enviable position of having a public data base that is reproducible and reliable. Spaeth meticulously documents his data collection procedures, thereby enabling other analysts to generate the same data from the cases; and his data have known reliabilities, thereby meeting a threshold requirement of validity, namely, unless a data set is reliable, it cannot be valid.

But that was not always the case. Prior to the Spaeth Data Base, judicial specialists relied on several publicly-available data sets (such as Schmidhauser 1972; Schubert 1976; Ulmer 1978) or collected their own data. Either way, issues of verification, reliability, replication, and the like went virtually ignored; neither Schmidhauser's nor Schubert's nor Ulmer's documentation contain any statements about reliability or verification;[1] of

[1]In contrast, Spaeth (1997) devotes several pages of his codebook to issues pertaining to reliability.

the ten articles on judicial decision making published in the *American Journal of Political Science* in the decade prior to the appearance of the Spaeth Data Base (1980–90), only two were attentive to matters of replication or reliability (Epstein, Walker, and Dixon 1989; Gates 1987)—and, in all likelihood, neither would pass muster under contemporary standards.

Is there any reason to crossvalidate the results of some of the older studies with data collected in accord with contemporary criteria? The answer, we believe, is yes. These early works established virtually all the important constructs of the law and courts field and laid the groundwork for modern-day research. To see this point, we only need to consider Schubert's research (1965, 1974) which, according to Segal and Spaeth (1993, 67) "first provided a detailed attitudinal model"—now "a, if not *the,* predominant, view of U.S. Supreme Court decision making" (Segal et al. 1995, 812). But Schubert's work rested on a data set (Schubert 1976) consisting of variables with vague operational definitions and of unknown reliabilities.

In this replication note, thus, we seek to determine just how well explanations of Court decisions that invoked pre-Spaeth data hold up against the Spaeth data themselves. For the crossvalidation, we selected Epstein, Walker, and Dixon's (EWD) 1989 study, which appeared in the pages of this journal and offered an institutional model of Supreme Court decision making. We chose this particular piece because it relied both on public data (Schubert 1976) and data collected by the authors (EWD)—thereby combining typical pre-Spaeth data collection strategies. Moreover, EWD focused on criminal justice cases, arguably among the easiest to identify and code; and the model itself is a simple one, containing only four variables. In other words, if we have difficulty crossvalidating this model, then we may well have reasons to raise questions about some of the other earlier, more complex ones.

The Epstein-Walker-Dixon Model

Conceptually speaking, the EWD model views Court decisions as a function of four factors: the Court's political composition, generally stable attitudes, policymaking priorities, and the political environment. For estimation purposes, EWD represent their model in the following linear autoregressive form:

$$Y_t = b_0 + b_1 Y_{t-1} + b_2 X_1 + b_3 X_2 + b_4 X_3 + e \qquad [1]$$

where Y= proportion of criminal justice decisions favoring the interests of the accused observed at successive terms t and t-1 for the 1946–86 terms; X_1 and X_2 are dichotomies coded 1 when the Democrats controlled the Court and the presidency, respectively; and, X_3 is the proportion of the Court's plenary docket devoted to criminal cases. The EWD model expects parameters b_1 through b_4 to be positively signed.

Table 1. Crossvalidation of EWD Model with Spaeth Data

	Alternative Operational Definitions of Criminal Justice Cases			
Variable	*EWD*[a]	*Spaeth*[b]	*Schubert 1*[c]	*Schubert 2*[d]
Lagged Dependent	.27	.05	.14	.14
Variable (Y_{t-1})	(2.21)	(.33)	(.99)	(1.03)
Party of Court (X_1)	.18	.15	.18	.16
	(3.81)	(2.89)	(2.56)	(2.69)
Party of President (X_2)	.15	.18	.17	.15
	(3.92)	(3.93)	(2.92)	(2.95)
Percent of Docket (X_3)	.87	.80	.66	.55
	(2.42)	(1.95)	(1.06)	(1.20)
Constant	−.04	.07	.02	.13
	(−.36)	(.63)	(1.07)	(1.33)
adj. R^2	.59	.44	.35	.37
standard error	.12	.13	.17	.15
F	15.32*	8.74*	6.21*	6.80*
N of Cases	40	40	40	40
correlation between EWD predicted values and those produced by alternative definitions		.90*	.92*	.93*

Note: t-values are in parentheses.

[a]EWD=EWD model estimated with EWD data (Schubert 1976/original data), using Schubert's definition of "Fair Procedure."

[b]Spaeth=EWD model estimated with Spaeth data, using Spaeth's definition of "Criminal Procedure."

[c]Schubert 1=EWD model estimated with all criminal cases coded by Spaeth as involving the following issue areas: involuntary confession, search and seizure, self-incrimination, Miranda, right to counsel, cruel and unusual punishment, double jeopardy, confrontation, right to jury trial, and speedy trial.

[d]Schubert 2=EWD model estimated with all criminal cases coded by Spaeth in the above issue areas (Schubert 1), plus the following issue areas: habeas corpus, plea bargaining, retroactivity, contempt of court, line-up, and discovery and inspection.

*$p \leq .01$.

To derive their estimates, EWD relied on data from Schubert (1976) (for cases decided between the 1946 and 1968 terms) and "parallel" data that they collected for the remaining eighteen terms (i.e., from these sources EWD obtained the information necessary to animate Y and X_3). Their results are displayed in the first column of Table 1.[2]

[2]We reestimated the EWD model with their data; the results were identical to what they report. We thank William J. Dixon for supplying the data.

The Crossvalidation

Central to a successful crossvalidation of the EWD results is a clear operational definition of criminal justice disputes: Only by identifying these cases can we obtain the dependent variable (Y) and two of their four independent variables (Y_{t-1}, X_3). As was typical in the pre-Spaeth days, Schubert does not give such a definition; "nowhere," as Spaeth writes, "does Schubert define 'fair procedure' in a replicable fashion."[3] Rather (and in direct contrast to Spaeth, who provides a detailed list of the kinds of cases that he believes constitute criminal justice disputes in the documentation of his data set [see the Appendix]), Schubert (1976, 16) simply says that fair procedure cases "are substantially equivalent to what has now come to be called criminal justice policy."[4]

After considering various alternatives and consulting with Spaeth, we developed three distinct definitions of criminal justice disputes:

1. The Spaeth Definition. All cases coded by Spaeth as involving "criminal procedure" issues (see the Appendix).

2. Schubert 1. All criminal cases coded by Spaeth as involving the following issue areas: involuntary confession, search and seizure, self-incrimination, Miranda, right to counsel, cruel and unusual punishment, double jeopardy, confrontation, right to jury trial, and speedy trial. By focusing only on constitutional criminal cases, this definition may (according to Spaeth) come the closest to Schubert's.

3. Schubert 2. All criminal cases coded by Spaeth in the above issue areas, plus the following, which Spaeth says that Schubert may have included: habeas corpus, plea bargaining, retroactivity, contempt of court, line-up, and discovery and inspection.

Using the Spaeth Data Base and invoking these different definitions of "criminal justice disputes," we reestimated the EWD model [eq. 1

---

[3]E-mail communication from Harold J. Spaeth to the authors, March 24, 1997.

[4]He is somewhat more specific in his research based on the public data set. In *The Judicial Mind* (1965, 159), for example, he writes that the fair procedure category includes "claims based upon most of the Fifth, Sixth, and the Eighth Amendments" and excludes some Fourth Amendment claims, which fall under the "right to privacy." But the documentation to his data set is unclear on this last point, as this rather ambiguous statement reveals (1976, 16): "In earlier stages of the study an additional scale value, the right to privacy, was sometimes referred to as a subscale of the C scale; a better considered and subsequent view is that evidence from multidimensional scaling confirms the preferability of considering privacy to be a separate scale. In content privacy covers a broad range, extending from wire-tapping and other aspects of search and seizure, to the use of contraceptives, the right to abortion, the use and control of drugs, and the questions of euthanasia and biogenic engineering." In other words, it is simply unclear as to whether Schubert excluded all Fourth Amendment cases from his definition of fair procedure.

**Figure 1. Comparison of Predicted Proportions of
Supreme Court Decisions Favoring the Accused**
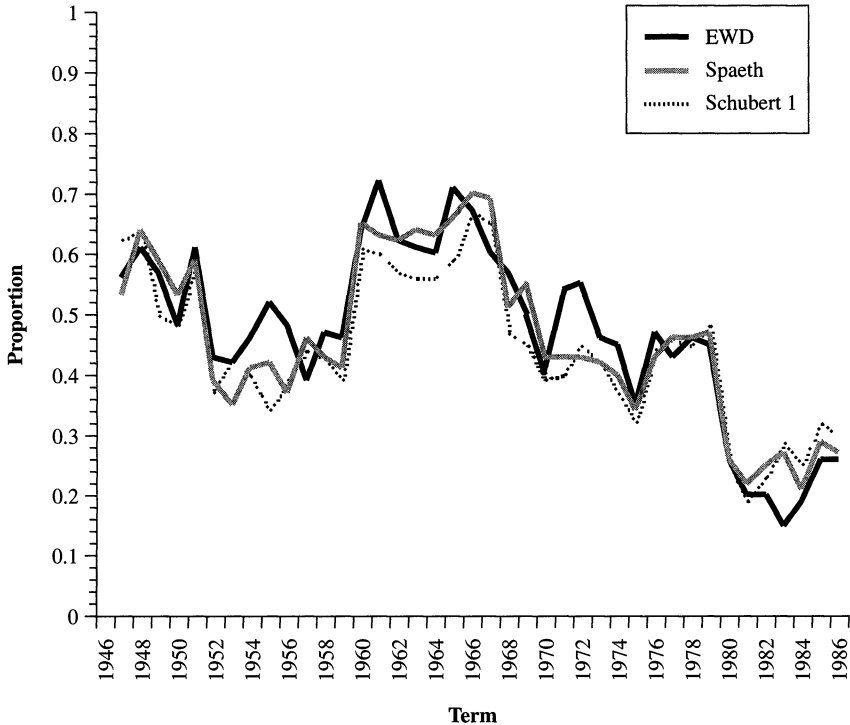
Note: For purposes of presentation, we omit Schubert 2 (the correlation between the values predicted by Schubert 1 and Schubert 2 is .99).

above].[5] Table 1 lists the results in the second, third, and fourth columns. Note, on the one hand, that the estimates for three of the four independent variables (at least under the Spaeth definition) nicely parallel the EWD findings. Also note, as the last line of the table indicates, that the predictions from the Spaeth Data Base (regardless of the definition of criminal procedure) correlate highly with those generated by the EWD model. On the other hand, the lagged dependent variable—a nontrivial predictor of Court-level votes in the EWD formulation—produces an insignificant coefficient when estimated with the Spaeth Data. Moreover, as Figure 1 shows, the differences have a decided impact on the predictions generated by the alternative definitions. They may track over the four-decade period, but the EWD predictions occa-

[5]Because we were unsure if Schubert excluded Fourth Amendment cases (see note 4), we also estimated Schubert 1 and Schubert 2 without those cases. The results, available at http://www.artsci.wustl.edu/~polisci/epstein/, mirror those displayed in Table 1.

sionally move in different directions from the other two (in the 1950s); fluc-
tuate while the others remain stable (in the 1970s); and, generally, are more
liberal than those produced by the Spaeth/Schubert 1 definitions.[6]

Discussion

In their model of institutional-level decision making, EWD included
Y_{t-1} to reflect a well-entrenched finding in the micro-level literature: attitu-
dinal consistency among justices of the Supreme Court. Given the results
depicted in Table 1, should we now conclude that stability does not exist in
Court decision making?

No—or, at least, not yet. Based on this one crossvalidation effort, we
would be loathe to reject such an important piece of conventional wisdom.
Still, we have no hesitation in suggesting that scholars ought to reconsider
notions of attitudinal stability and that they base their reassessments on the
Spaeth Data Base. After all, those data not only have known reliabilities but
Spaeth collected them in accord with very clear operational definitions, as
well.

To be sure, scholars might quibble with Spaeth's definitions, asking
whether this or that case really should be classified as a "criminal proce-
dure" dispute. The very fact that analysts can raise these sorts of questions
provides yet another reason for our endorsement of Spaeth's data. For such
debates demonstrate the social-scientific community's acknowledgment that
replication is also concerned with measurement; without detailed explana-
tions of measures, replication efforts are, in all likelihood, doomed to fail.

Another more general lesson of this study is this: Simply because schol-
ars of judicial politics (or those in other fields for that matter) now have out-
standing public data bases, it does not follow that they can ignore issues of
measurement, reproducibility, reliability, and verification. Too many of the
seminal studies, too many of our important constructs evolved from data
bases that were something short of outstanding. This suggests the need for
more crossvalidations of older work against data gathered in accord with
contemporary standards. Only by so doing will we be able to reassess sys-
tematically the accumulated wisdom that has come to dominate the study of
judicial politics.

[6]We performed one additional check on the data. Because EWD collected their own data for
terms subsequent to 1968, we reran the models using only the 1946–68 terms (that is, only for the
terms included in Schubert's study). Because the party of the Court was constant over this period,
that variable dropped out of the equation. Otherwise the results are identical to those depicted in
Table 1 (e.g., for EWD, the lagged variable produced a significant coefficient; for the others—
Spaeth, Schubert 1, and Schubert 2—it did not).

APPENDIX
Cases Spaeth Codes as Involving Criminal Procedure

010	involuntary confession	113	entrapment
013	habeas corpus	114	exhaustion of remedies
014	plea bargaining	115	fugitive from justice
015	retroactivity	116	presentation or admissibility of evidence
016	search and seizure		
017	search and seizure, vehicles	117	stay of execution
018	search and seizure, Crime Control Act	118	timeliness, including statutes of limitation
020	contempt of court	119	miscellaneous
021	self-incrimination	120	Federal Rules of Criminal Procedure
022	Miranda warnings		

•statutory construction of criminal laws

023	self-incrimination, immunity from prosecution	161	assault
030	right to counsel	162	bank robbery
040	.cruel and unusual punishment, death penalty	163	conspiracy
		164	escape from custody
041	cruel and unusual punishment, non-death penalty	165	false statements
		166	financial
050	line-up	167	firearms
060	discovery and inspection	168	fraud
070	double jeopardy	169	gambling
100	extra-legal jury influences, miscellaneous	171	Hobbs Act
		172	immigration
101	prejudicial statements or evidence	173	internal revenue
		174	Mann Act
102	contact with jurors outside courtroom	175	narcotics
		176	obstruction of justice
103	jury instructions	177	perjury
104	voir dire	178	Travel Act
105	prison garb or appearance	179	war crimes
106	jurors and death penalty	180	sentencing guidelines
107	pretrial publicity	181	miscellaneous
110	confrontation	190	jury trial, right to

•subconstitutional fair procedure

		191	speedy trial
111	confession of error	199	miscellaneous criminal procedure
112	conspiracy		

Note: In the interest of space, we have omitted Spaeth's coding notes on particular issue areas.
Source: Spaeth (1997, 64–5).

REFERENCES

Epstein, Lee, Thomas G. Walker, and William J. Dixon. 1989. "The Supreme Court and Criminal Justice Disputes: A Neo-Institutional Perspective." *American Journal of Political Science* 33:825–41.

Gates, John B. 1987. "Partisan Realignment, Unconstitutional State Policies, and the U.S. Supreme Court: 1837–1964." *American Journal of Political Science* 31:259–80.

Schmidhauser, John. 1972. *United States Supreme Court Justices Biographical Data.* Ann Arbor, MI: Inter-university Consortium for Political and Social Research, published as study #7240.

Schubert, Glendon. 1965. *The Judicial Mind.* Evanston: Northwestern University Press.

Schubert, Glendon. 1974. *The Judicial Mind Revisited.* New York: Oxford University Press.

Schubert, Glendon. 1976. *The Judicial Mind.* Ann Arbor, MI: Inter-university Consortium for Political and Social Research, published as study #7289.

Segal, Jeffrey A., Lee Epstein, Harold J. Spaeth, and Charles Cameron. 1995. "Ideological Values and the Votes of U.S. Supreme Court Justices Revisited." *Journal of Politics* 57:812–23.

Segal, Jeffrey A., and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model.* New York: Cambridge University Press.

Spaeth, Harold J. 1997. *United States Supreme Court Judicial Database* (updated annually). Ann Arbor, MI: Inter-university Consortium for Political and Social Research, published as study #9422.

Ulmer, S. Sidney. 1978. *The Supreme Court Certiorari Study.* Ann Arbor, MI: Inter-university Consortium for Political and Social Research, published as study #7611.