

# Tom Clark and Benjamin Lauderdale, “Locating Supreme Court Opinions in Doctrine Space”

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## 1 Citation

Tom Clark and Benjamin Lauderdale. 2010. “Locating Supreme Court Opinions in Doctrine Space” *American Journal of Political Science*, Vol. 54 (4): 871-890.

## 2 Abstract

Clark and Lauderdale develop a novel approach for orienting Supreme Court opinions in unidimensional policy space. They argue that the most important portion of a Court’s opinion is not its judgment in favor of one party or another, but its reasoning, for it is this reasoning that becomes binding law and shapes the path of American legal development. The authors thus measure the policy orientation of a court’s opinion on the basis of how it cites precedents - that is, whether it cites a given precedent favorably or negatively. Since Court opinions frequently cite the same precedents, this approach allows Clark and Lauderdale to discriminate the policy orientation of a given opinion. They leverage this method on an original dataset of all 851 search and seizure opinions and all 217 freedom of religion opinions proclaimed by the Warren, Burger, and Rehnquist courts. They subsequently devise their own measure of justices’ ideal points on the basis of whether the justices joined the majority opinions that Clark and Lauderdale had already oriented in unidimensional policy space. Clark and Lauderdale then leverage their estimates of opinions’ policy positions and justices’ ideal points to test three theories of intra-Court bargaining: The median voter model, which assumes that Court opinions will mirror the ideal point of the Court’s median justice; the author monopoly model, which assumes that Court opinions will mirror the ideal point of their author; and the median majority coalition member model, which assumes that Court opinions will mirror the ideal point of the median member of the majority coalition. The authors find the strongest support for the median majority coalition member model, moderate support for the median voter model, and no support for the author monopoly model.

## 3 Theory

Clark and Lauderdale argue that many extant methods attempting to measure the policy orientation of a Supreme Court case erroneously focus their attention on the judgement itself - on which party the Court sides within in a particular case. For example, Harold Spaeth classifies Court judgments using a dichotomous coding - liberal vs. conservative - based on the identity of the winning litigant in the case (Clark and Lauderdale 2010: 873). Yet the Court does not just provide a judgment - it also provides a reasoning for said judgment - or a *ratio decidendi* (Ibid: 871). This, in fact, is likely to be the most impactful output of a Supreme Court opinion: “Supreme Court opinions are important precisely because of the doctrine - or law - that they make. After all, the Court does not just announce the result of its vote; rather, it offers an opinion - often more than one - with reasoning, justification, and principles of law. It is this part of the Court’s decision - the reasoning, justification, and principles of law - that is binding on lower courts and other institutions. In fact, it is this part of a Supreme Court decision in which political scientists are usually - at least implicitly - interested” (Ibid: 873).

So how is one to measure the orientation of an opinion’s reasoning? Clark and Lauderdale argue that “a central feature of legal argumentation is the use of precedent to justify a decision. In fact, it is the use

of precedent to establish doctrine that defines a legal opinion and is often the subject of interest to almost everyone - save, perhaps, the particular litigants in a case” (Ibid: 874). For example, one could say that if one opinion affirms a precedent from group  $A$ , a second opinion affirms a precedent from group  $B$ , and a third opinion affirms precedents from both groups  $A$  and  $B$ , then it is reasonable to identify the latter opinion as “between” the former two (Ibid: 874). Hence the model that Clark and Lauderdale develop leverages citations within a Court opinion.

## 4 The Model

### 4.1 Estimating the Policy Orientation of a Court Opinion

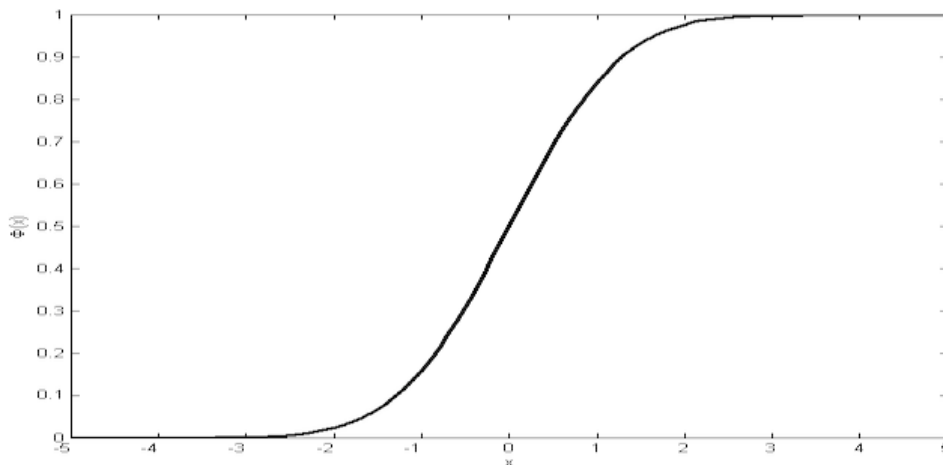
Clark and Lauderdale develop a Bayesian model of opinion citations relying on three assumptions. First, each opinion can be located along a single policy dimension; Second, the more proximate an opinion is to a given precedent, the more likely it is to affirm it (producing a “positive” citation), whereas the farther an opinion is to a given precedent, the more likely it is to dispute it (producing a “negative” citation) (Ibid: 875). Clark and Lauderdale assume that “directionality” does not matter - that is, the farther from the opinion is a given precedent, the more likely it is to be negatively cited, regardless if it’s to the ‘left’ or to the ‘right’ of the opinion (Ibid). Finally, they assume that “missing data” - that is, precedents that are not cited - are missing at random (Ibid: 876).

Leveraging the foregoing assumptions, Clark and Lauderdale posit that the probability of a positive citation can be modeled as follows:

$$P(\text{positive citation}) = \Phi(\kappa - \lambda(x_k - x'_k)^2)$$

Where  $\Phi$  is the standard normal CDF (see Figure 1);  $x_k$  is the location of opinion  $k$ , where  $0 < x_k < 1$  (and  $x_k$  is normally distributed);  $x'_k$  is the location of the precedent, where  $0 < x'_k < 1$  (and  $x'_k$  is normally distributed);  $\lambda$  captures the rate at which the distance between the policy orientation of the opinion and the precedent reduces the probability of a positive citation, where  $0 < \lambda < 10$  (and  $\lambda$  is uniformly distributed); and  $\kappa$  captures the probability of opinion  $k$  positively citing a precedent espousing an identical policy position, where  $-10 < \kappa < 10$  (and  $\kappa$  is uniformly distributed).

Figure 1: *The standard normal cumulative density function (CDF), denoted  $\Phi(\cdot)$*



Hence, for example, if the probability of an opinion positively citing a precedent espousing an identical policy position is medium (in our scale from -10 to 10, let’s say 0), the rate at which the distance between the policy orientation of the opinion and the precedent reduce the probability of a positive citation is fairly

high (i.e. the court is unlikely to positively cite divergent precedents; so on the scale from 0 to 10 let’s say 8), the position of the opinion on a scale from 0 to 1 is 0.8 and the position of the precedent on the scale from 0 to 1 is 0.6, then the probability of a positive citation evaluates to:

$$P(\text{positive citation}) = \Phi(0 - 8(0.8 - 0.6)^2) = \Phi(-0.32) = 0.37 \quad (\text{or a 37\% probability})$$

Whereas, if the same scenario above holds, but the precedent diverges more so from the opinion (say, instead of being 0.6 on a 0 to 1 scale, it instead is 0.4), then the probability of a positive citation evaluates to:

$$P(\text{positive citation}) = \Phi(0 - 8(0.8 - 0.4)^2) = \Phi(-1.28) = 0.10 \quad (\text{or a 10\% probability})$$

Basically, the foregoing model is then used to estimate  $x_k$  - the policy location of the opinion, on the basis of hand-coding precedents cited in a subset of Court opinions as either “positive” or “negative” citations (see next section).

## 4.2 Estimating Justices’ Ideal Points

In the latter half of the paper, Clark and Lauderdale wish to test various intra-court bargaining models to see which ones best predict the policy orientation of the Court’s opinions. As a result, they also come up with their own measure of a Supreme Court Justice’s ideal points. These ideal point estimates are calculated by positing that the probability that a justice  $j$  joins a majority opinion is:

$$P(\text{justice joins majority opinion}) = \Phi(\alpha_j - \beta_j x_i)$$

Where  $\Phi(\cdot)$  is the standard normal CDF again;  $x_i$  is the justice’s ideal point, ranging from 0 to 1;  $\alpha_j$  captures the probability that justice  $j$  will join an opinion that perfectly mirrors his/her ideal point (where  $\alpha_j$  is assumed to be normally distributed with mean 0 and standard deviation=5); and  $\beta_j$  captures the rate at which the distance between the policy orientation of the opinion and justice’s ideal point reduces the probability of joining the majority opinion (assumed to be normally distributed with mean 0 and standard deviation=5).

Basically, the foregoing model provides the probability that a given justice will join a majority opinion. To assess the justice’s ideal point, Clark and Lauderdale first leverage the previous method to orient Court opinions in unidimensional policy space. They then aggregating all of the justice’s votes related to the opinions within their dataset to compute the justice’s ideal point. For example, justices that are particularly likely to join majority opinions that Clark and Lauderdale’s citation method suggests are liberal opinions will have more liberal ideal points.

## 5 Data

Clark and Lauderdale estimate the content of Court opinions by gathering an original dataset of all 851 search and seizure opinions and all 217 freedom of religion opinions proclaimed by the Warren, Burger, and Rehnquist courts (Ibid: 878). For each of these opinions, non-procedural precedents were coded as either “positive” or “negative” citations: “Positive citations include instances of reliance on a standard or logic that was followed or developed in a precedent, or analogizing from the facts of the instant case to the facts of the precedent. Negative citations include distinguishing a precedent from the instant case, declining to follow a precedent, or contrasting the current case with the precedent” (Ibid: 879). Since Court opinions frequently cite the same precedents, this approach allows Clark and Lauderdale to discriminate the policy orientation of a given opinion.

## 6 Analyses: Assessing Intra-Court Bargaining Models

Clark and Lauderdale first underscore that their estimates of the justices’ ideal points are strongly correlated with the well known Martin-Quinn scores, which lends credibility to their method (Ibid: 879). Next,

they compare some of the opinions that their method suggests are “liberal” but that Spaeth labels conservative to show that “where [Clark and Lauderdale’s estimates] appear to be inconsistent with [Spaeth’s liberal/conservative] code, a qualitative examination of the opinion’s content suggests that [Spaeth’s] code is itself misleading” (Ibid: 883). The authors thus assert their confidence in both their estimates of opinions’ positions and justices’ ideal points.

Next, Clark and Lauderdale run some preliminary assessments of the theoretical predictions of intra-court bargaining models. The first model, the *median justice model*, “assert that . . . because the median is pivotal in any vote, all opinions will be located at the median justice’s preferred policy” (Ibid: 884). The second model is the *author monopoly model*, which asserts “that the opinion author should have some degree of influence over the opinion location” (Ibid). The final model is the *median of the majority coalition model*, which “predicts that the median member of the majority coalition will control the locations of opinions” (Ibid: 885).

Based on Clark and Lauderdale’s estimates of opinion policy orientations and justices’ ideal points, the median of the majority coalition model emerges as the most accurate. Among search and seizure cases, only 30% of majority opinions possessed estimated locations that are statistically distinguishable from the coalition median’s ideal point (the figure is 18% for freedom of religion cases). In short, in some 70 to 82% of search/seizure and freedom of religion cases, respectively, the majority opinion was congruent with the ideal point of the median member of the majority coalition (Ibid: 886-887). Conversely, 28 to 54% of majority opinions could be distinguished statistically from the ideal point of their author, and 20 to 36% of the majority opinions could be statistically distinguished from the ideal point of the Court’s median justice (Ibid: 885).