

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

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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

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¹In 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:

$$Y_t = b_0 + b_1Y_{t-1} + b_2X_1 + b_3X_2 + b_4X_3 + e \quad [1]$$

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 Variable (Y_{t-1})	.27 (2.21)	.05 (.33)	.14 (.99)	.14 (1.03)
Party of Court (X_1)	.18 (3.81)	.15 (2.89)	.18 (2.56)	.16 (2.69)
Party of President (X_2)	.15 (3.92)	.18 (3.93)	.17 (2.92)	.15 (2.95)
Percent of Docket (X_3)	.87 (2.42)	.80 (1.95)	.66 (1.06)	.55 (1.20)
Constant	-.04 (-.36)	.07 (.63)	.02 (1.07)	.13 (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.

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

^bSpaeth=EWD model estimated with Spaeth data, using Spaeth's definition of "Criminal Procedure."

^cSchubert 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.

^dSchubert 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

²We 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:

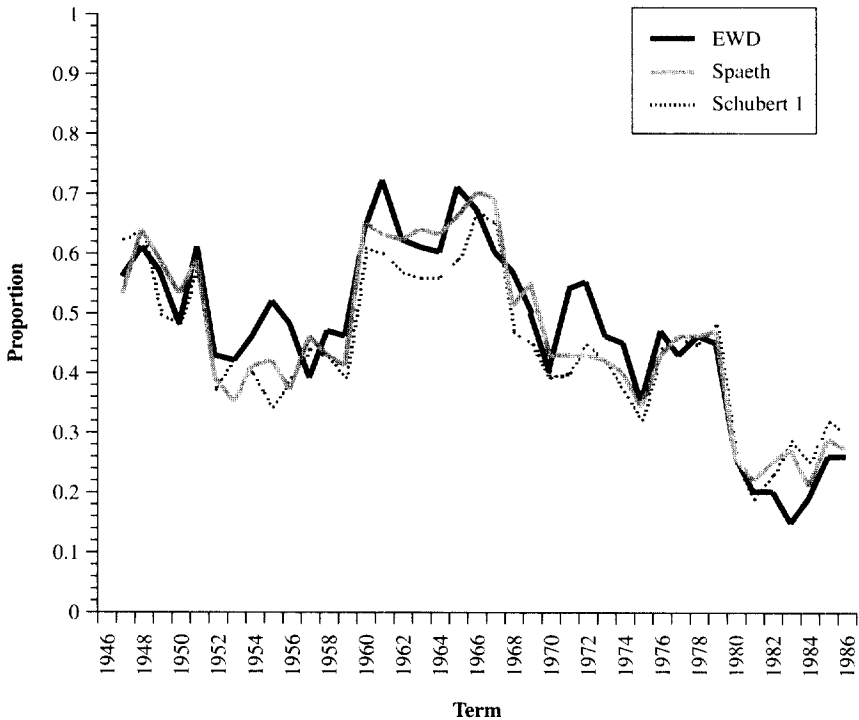
1. The Spaeth Definition. All cases coded by Spaeth as involving “criminal procedure” issues (see the Appendix).
2. Schubert 1. All criminal cases coded by Spaeth as involving the following issue areas: involuntary confession, search and seizure, self-incrimination, Miranda, right to counsel, cruel and 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

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

⁴He 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-

⁵Because 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); fluctuate 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: attitudinal 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 procedure" 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 explanations of measures, replication efforts are, in all likelihood, doomed to fail.

Another more general lesson of this study is this: Simply because scholars of judicial politics (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, 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 systematically the accumulated wisdom that has come to dominate the study of judicial politics.

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⁶We 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	117	stay of execution
017	search and seizure, vehicles	118	timeliness, including statutes of limitation
018	search and seizure, Crime Control Act	119	miscellaneous
020	contempt of court	120	Federal Rules of Criminal Procedure
021	self-incrimination		
022	Miranda warnings		
023	self-incrimination, immunity from prosecution		*statutory construction of criminal laws
030	right to counsel	161	assault
040	cruel and unusual punishment, death penalty	162	bank robbery
041	cruel and unusual punishment, non-death penalty	163	conspiracy
050	line-up	164	escape from custody
060	discovery and inspection	165	false statements
070	double jeopardy	166	financial
100	extra-legal jury influences, miscellaneous	167	firearms
101	prejudicial statements or evidence	168	fraud
102	contact with jurors outside courtroom	169	gambling
103	jury instructions	171	Hobbs Act
104	voir dire	172	immigration
105	prison garb or appearance	173	internal revenue
106	jurors and death penalty	174	Mann Act
107	pretrial publicity	175	narcotics
110	confrontation	176	obstruction of justice
		177	perjury
		178	Travel Act
		179	war crimes
		180	sentencing guidelines
		181	miscellaneous
*subconstitutional fair procedure		190	jury trial, right to
111	confession of error	191	speedy trial
112	conspiracy	199	miscellaneous criminal procedure

Note: In the interest of space, we have omitted Spaeth's coding notes on particular issue areas.

Source: Spaeth (1997, 64–5).

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