

ABSTRACT

THE HUGHES COURT 1931-1936: PSYCHOLOGICAL
DIMENSIONS OF DECISION MAKING

By

Mary Ramona Mattingly

This is a behavioral study of the Hughes Court, whose general purpose is political analysis of decision making on the basis of voting behavior during the 1931-1936 terms. The analysis is part of an ongoing, trans-historical study of the Supreme Court, originally proposed by Harold J. Spaeth and outlined in his "Description of Proposed Research," 1967. This study itself is independent. In the larger research context, its findings are articulated to the higher analytic level of empirically determining Court behavior as continuous decision maker, both functionally and psychologically.

In contrast to nonbehavioral studies, analysis focuses on the behavioral, or voting component of Court decision making: i.e., the directionality of the justices' votes, in terms of +/-; yes/no. Opinion data is a supplementary, secondary tool only. The approach in this political analysis views Supreme Court justices as policy makers and accepts their policy making as a legitimate, inherent function in such a decision-making body as the United States Supreme Court.

making on the Hughes Court. This value system I have labeled "operational government," as it basically concerns Court attitude toward a particular, coexisting governmental apparatus, as well as Court perception as to how that government should execute its functional imperatives. The extremely intercorrelated nature of the data as well as the scalability of mass, gross categories of cases support this conclusion of a simple, one factor structure.

The value system contains two major and one minor value. One of the major values is "public welfare." It pertains to operational government as it exists/operates in public areas. The presence of governmental authority here, representing the general public, is accorded a legitimacy that may at the same time be denied to the actual exercise of its power. The other dominant component, the "private rights" value, is operative in areas where there is no fundamental consensus regarding even the presence of governmental authority. Its focus is the primacy of the individual. The minor component I have labeled the "judicial process" value. It involves a concern, on the part of the Supreme Court, over the conduct of judicial business by lower courts. It is a distinct, judicial kind of value implying a certain pride of court. This hierarchy thus constitutes the working value system of the Hughes Court. It contains those

The model proposed works from Court function (manifest behavior) to the psychological structure beyond. This hypothesized structure is conceptualized as a hierarchy of attitude system, value, and value system, elements which together constitute the psychological determinants of decision making. The basic theoretical constructs of this hierarchy are largely derived from attitudinal research in social psychology, in particular the work of Milton Rokeach. Spaeth's adaptation of Guttman scalogram analysis is the methodology employed to get at the most basic level of the hierarchy (i.e., attitude system). Each scale itself is that construct operationalized. Using Kendall's tau, rank orders of the justices on each scale are computer-correlated, and the resulting intercorrelation matrix used as input for more complex, multidimensional varieties of analysis. The latter are chiefly principal axes factor analysis with varimax rotation, oblique factor analysis (oblimin III), and hierarchical cluster analysis. Linkages among scales (attitude systems) which these multidimensional techniques suggest allow specification of other levels of the hierarchy. The data consist of all dissensual cases (N = 189) from the 1931-1936 terms, treated within the stimulus-response context developed by Glendon Schubert.

The major findings of the analysis point to the conclusion that a single value system dominated decision

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psychological dimensions primarily motivating the decision making of the years 1931-1936.

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INTRODUCTION: A BEHAVIORAL STUDY
OF THE HUGHES COURT

General Purposes

This is a behavioral study of the Hughes Court. Its general purpose is the political analysis of decision making on the basis of voting behavior during the 1931-1936 terms. There are to date no major studies on this Court. Much impressionistic, unarticulated commentary does exist, due chiefly to the historical and political importance of the New Deal, whose earlier phases parallel and materially involve these terms of the Court. In particular this is true of the last year studied, 1936. There is also some brief behavioral treatment of that Court, though of a supplementary nature. This literature, both behavioral and nonbehavioral, is taken up in the background and concluding chapters. Its conclusions are set forth to give some indication of the kinds of previous hypotheses and analyses, most being nonempirical, literary interpretations of Court output.

By contrast, analysis in this study concentrates on the behavioral, or voting component, of Court decision making. In other words, it focuses on the directionality (+, -; yes, no) of the justices' votes, disregarding the

accompanying verbiage. Analysis of the impressionistic variety is used to develop and exploit richness of meaning from the opinion data, but it remains throughout a decidedly secondary and supplemental technique.

The study is also a political analysis, recognizing the Court as a body whose decision makers are indeed policy makers and whose judicial decisions are the stuff of politics within the federal system. Recognition of this fact prevails among Court watchers of all persuasions. This approach, however, accepts policy making as a legitimate, indeed inherent function of a decision making body such as the United States Supreme Court. Court policy making is perceived as a vital part of the larger political reality, essential to the functioning of government, rather than an aberration to be decried by critics or disavowed by the Court itself.

An equally important purpose of the study is explanation and interpretation of Court decision making. As regards its structure, the explanation is given in an empirically ascertainable manner, such that replication is possible and empirical validation of results a process open to any researcher. The steps of the decision making process (both for Court as a whole and for individual members in particular) are in great part beyond the researcher's grasp. Vital data on the conference periods, intracourt communiques, and successive drafts of opinions

are all cases in point, though even now more information, through biographies and publication of private papers, is available. Lack of definitive interpretation, given such incomplete information, need not preclude greater sophistication and reliability in interpretation than heretofore. The basic raw data of the votes and rationales written in opinion form suffice to this, if placed within some plausible theoretical framework. This framework must meaningfully integrate the data (i.e., explain) in terms of the fit between theoretical model and empirical findings. In other words, the explanation is as good as the approximation between theory proposed and results empirically observed. This is the kind of explanation aimed at.

In particular, explanation of Court behavior, given a plethora of discrete, ostensibly unique cases, requires scientific parsimony. This is necessary to avoid fragmentation and allow meaningful generalization. Regarding this aspect, the hypotheses and findings of the study tend toward the more general end of the spectrum, both in terms of the Hughes Court as one instance and the Supreme Court as general case. Presumably, in this way a more satisfactory explanation of Court behavior and resulting output is obtained. Overall tendencies and directions are ascertained. Long-term results are indicated. Obviously this could not be done on the basis of one case, or even

a number of cases treated discretely. A fairly representative sampling of data containing sufficiently numerous instances alone can get at objectives such as these. This is a working hypothesis here.

Nature of Research Proposed

Phenomenon Studied

For purposes of this study, the unit of analysis is only one of the Supreme Courts of the United States, that of Charles Evans Hughes. The terms under observation, 1931-1936, start with the first full term of Hughes as Chief Justice (appointed February 13, 1930) and terminate with the 1936 term, the latter portion of which witnessed the so-called "revolution." Within this span of years, beginning with a new chief justice and ending with a new policy, there is considerable continuity of both personnel and policy: an ideal condition for observation. Total membership throughout the period was ten, but Oliver Wendell Holmes is excluded, as he sat for a minimal number of cases during the first half of the 1931 term, and resigned January 11, 1932. The stable personnel thus include: Hughes, Chief Justice; and Associate Justices Brandeis; Butler; Cardozo (commission ordered recorded March 14, 1932); McReynolds; Roberts; Stone; Sutherland; and Van Devanter.

Context of Research

The analysis occurs in an ongoing, transhistorical study of the Supreme Court, originally proposed by Harold J. Spaeth and outlined in his "Description of Proposed Research," 1967. Use of a common model to get at the determinants of Court decision making ensures a comparative frame of reference. This study itself is independent. Fitted into the larger context, however, its findings are articulated to the higher analytic level of determining empirically the Court's behavior as continuous decision maker both functionally and psychologically. The model proposed works from Court function (manifest behavior) to the psychological structure(s) beyond (conceptualized as a hierarchy of beliefs, attitudes, values, and value systems). Similarity of model in various research contexts thus establishes the degree of likeness that obtains between both function and psychological structure of successive Courts. Comparison can then be profitably made and scientific, systematic knowledge of Court decision making hopefully advanced.

Major Variables

The model used to get at the psychological structure of the Court is much indebted to recent findings of social psychology. Major variables in the model are the components of the psychological structure: the constructs

of attitude, value, and value system. So ordered, this hierarchy forms a kind of psychological pyramid. The base component, attitude, is theoretically reducible to beliefs, though the model in the study is not so constructed as to determine beliefs per se. Attitudes and beliefs are distinguished on the level of generality, attitudes being formed by a clustering of related beliefs. In any case, all constructs in the hierarchy are structurally analogous.

Attitude is the essential construct throughout. The conceptualization derives chiefly from Milton Rokeach (1968). Stress is laid on the behavioral component of attitude; in particular, the behavioral component taken as the empirically determinable response to attitude object or situation. Attitude toward object and attitude toward situation together determine the parameters of social behavior, and so specified become the data base for the psychological structure hypothesized.

Positioning substantive content (i.e., scale categories) within the various levels of the psychological model is in great part dependent upon interpretation. This is true especially in distinguishing among levels of constructs once operationalized and, on the highest level of generalization, integrating the resultant components into a psychological hierarchy for the Court as a whole. The presence of a working value system is

assumed: the empirical question is its specific composition. While objection might be taken to this inference, it seems a fair hypothesis that the Court brings to its collective and individual decision making a psychological pyramid of the type hypothesized. Certainly the nature of the judicial task demands a coherent cognitive map in which some directive psychological hierarchy inheres. The imperatives of Court decision making, in terms of volume and variety, require this. Naturally, which factors dominate a Court's decisional process and what their combination in an hypothesized value system are matters for empirical investigation.

Current theory emphasizes the "relatively enduring" nature of attitudes. Thus it accords with the hypothesis that a Court's value system does not vary with each case. Other things being equal, such a value system tends to be, if not invariant, at least stable over time. The assertion does not preclude exceptions explicable in terms of other variables and does not exert a deterministic influence on research. A Court can change internally, in terms of personnel turnover, conversions and/or defections from groupings of contemporary membership; externally, in terms of pressures from, for example, competing interest groups, intragovernmental relationships, and public opinion. The policy changes of the Hughes Court amply illustrate this.

In relation with Festinger (1957), this value system is viewed as a more or less well integrated and rationally ordered psychic structure. This means, of course, qualitative differences in the distinct modes of psychic economy and mental equilibrium, both for each justice and for the Court in toto. A fairly high degree of integration and order can be anticipated in both cases, given the fact that the structure pertains to a body of such rational, articulate respondents as Supreme Court justices.

Data and Manner of Collection

To ascertain existence of the psychological structure described, the suggested methodology takes as raw data all dissensual cases (N = 189, excluding expansions and duplication from the 1931-1936 terms. As in Schubert's model (1959), these cases are treated within the stimulus-response condition peculiar to the Court. The case constitutes a stimulus in terms of activating attitude object or situation; the respondent justice becomes a meaningful conversion unit; and the response is registered in terms of a positive or negative vote (i.e., the behavioral component only). The cases are initially classified by impressionistic content analysis, after which successive permutations of scalograms are constructed, using Spaeth's adaptation of the Guttman method (1967 and 1965). Such

scalograms specify the content of each category (of cases), according to attitude toward object (AO) and attitude toward situation (AS) as evidenced by respondents' voting behavior. Even after refinement of the data within categories, the complexity of the scales prevents their representing so basic an element of the psychological structure as attitude. They more plausibly represent attitude systems, the next general level between attitude and value. Previous research suggests the appropriateness of this modification of the original model. As a result, the construct "attitude" (attitude system) has been operationalized as a set of cumulatively scalable cases (i.e., a Guttman scalogram). As these scales are the basic data for all subsequent analysis, their validity is crucial to determining the key psychological factors in decision making on the Hughes Court.

Various computer programs, chiefly principal axes factor analysis with varimax rotation, oblique factor analysis (oblimin III), and hierarchical cluster analysis, have been utilized. The input matrix for these consists of tau correlations originally computed from the rank orders of each justice on each scale constructed. The general effect is to largely sacrifice the individuality of justices and cases to the generality of "the Court." In this way, however, it is possible to construct the working value system of the Court, a much more important

form of knowledge, in terms of level of generality, empirical simplification of a mass of data, and explanatory power.

The merits of this methodology lie in its simplicity, directness and order. The more notable instances of misfit between data observed and the hypothesized relationship prove the model no procrustean bed, as is also true of the "reality out there" which it proposes to approximate.

Summary

In sum, I propose a political analysis of the decision making process of the Hughes Court. The theory used to direct this endeavor postulates a psychological structure, hierarchical in form, of belief, attitude, attitude system, value, and value system--elements which together constitute the psychological determinants of decision making. Spaeth's adaptation of Guttman scalogram analysis is the basic methodology employed to get at the most basic level of this hierarchy in our modification of the original: the construct of attitude system. The scales themselves are that construct operationalized. Using Kendall's tau, rank orders of the justices on each scale are correlated by computer, and the resulting inter-correlation matrix used as input for more complex, multi-dimensional varieties of analysis. Linkages among scales

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(attitude systems) which the multidimensional techniques suggest allow the specification of other levels of the hierarchy. In practice, attitude systems, values and value system are the levels treated: the last two levels derived from more intensive research on the first.

Regarding decision making on the Hughes Court, one might generally hypothesize that:

As for the Court's value system:

given the nature of the majority of cases coming to the Court during the 1931-1936 terms, Court response generally is in terms of an attitude toward governmental activism. In other words, most cases tap response based on attitudes toward governmental regulation of economic activity. This in turn implies that the working value system of the Hughes Court is predominantly economic in content and geared towards those aspects of political life.

As for the actual decision making context of this Court:

that the psychic structures of individual justices may be shown to be stable over time in terms of the persistency of voting alignments. The general effect of individual stability is, under usual conditions, predictability of the output of the whole Court. Such predictability is, of course, consequent upon stability in the value systems of component members. If, however, this stability is disrupted, explanation lies in the temporary dominance of

an external variable(s). One can predict that should this dominance become permanent, the psychological structure will change accordingly, thereby reducing dissonance and restoring a psychologically consonant situation within.

Examination of these broad hypotheses, in terms of the theory and methodology roughly indicated in this introduction, seems capable of specifying the nature of decision making on the Hughes Court and isolating some of its determining factors. The results should be able to both explain, and in some manner predict, the kind of decisions characteristic of the Hughes Court. Subsequent chapters detail the theory and model, as well as describe the empirical data and the methodology used in their analysis.

CHAPTER I

INTRODUCTION TO THE HUGHES COURT

Setting

Legal, Intellectual Ambience

That the Court functions within a larger society subjects it to various forms of extracurial influence. The intellectual milieu is one of these. It embraces broad, influential currents of contemporary thought that relate to pivotal areas of society. It is composed of kinds of thought generally exercising a persuasive, effective force. These form more or less well-integrated ideologies which enable men to rationally encompass their world and meaningfully interpret the cosmic givens. The two-way influence between men and ideas thus constitutes an important contextual variable. The following examines such a milieu, first in terms of generally dominant ideas of the period; second in terms of specifically Court-related ideas. Pertinent in the first category are capitalism, the business ideology, and law.

At any historical period, the form of capitalism (structure of the economic system) in great part

determines the nature of raw data presented to the Court. Adopting Max Lerner's (1933, pp. 678+) terminology, the forms of capitalism influencing the Hughes Court were industrial, 1840-1880, which saw the philosophy of competition and entrepreneurship become society's working hypothesis; monopoly, 1880-1914, in which economic power reached unprecedented concentration, while disenchantment with capitalism itself became prevalent; and finance, 1914-about 1930, wherein financial control became the new area of dominance, displacing industrial organization as the source of power in the capitalist system. The first two chronological periods seemed to corroborate a prior faith in individual initiative and entrepreneurship. The last shattered the structure of the old organizational context but left its faith surprisingly intact. The relevancy of that faith was then a matter of differing perceptions, if indeed perceptions entered into it at all. The capitalism of the thirties, following these older forms, was just evolving purposes and techniques. Its tentative nature probably enhanced the older, individual-focused ideology, which formed the substructure for the preceding forms of capitalism. In any case, the new form had yet to supplant the old faith, though there were already breaches in the wall.

Business as an integral value of capitalist ideology prevailed throughout these periods, its argot unchanged,

implying that certain basic capitalist beliefs had not changed through time, though vast changes had taken place in the society and economy. Optimistic commitment to the national ideals of individual freedom and a philosophy of fair play led naturally to advocacy of a restrained government and a pro-system orientation (Prothro, 1954, pp. 81-88, 115). This pro-system orientation was, in effect, pro status quo, which meant minimal government intervention and maximum freedom of enterprise.

Government's functions were protection of life and property, and rule maintenance in an otherwise free-wheeling game. The dualism in this restricted concept of governmental power was the public-private distinction. Business ideology was elitist, individualist, materialist, and antipopulist (Ibid., pp. 115, 118, 178-184, 219). The answers it developed were variations on these basic themes.

Yet there were ideological differences within, and perhaps much can be made for the case of small businessmen as the hard-core faithful (Bunzel, 1962, pp. 124+). Big business, on the contrary, had not the same inflexible devotion to the pre-industrial values. Its ambivalence to government brooked considerable traffic with the enemy. Especially after the 1930's, big and small business went separate ideological ways. The former came to terms with the latest form of American capitalism,

especially its consequences in terms of human organization, as the latter never could.

American law also propagated a legalistic version of lay individualism (Lerner, 1957, pp. 428+). Law and society celebrated the same attributes of property ownership, liberty, and the primacy of reason in the average man. The law was no stratified code of abstract right and wrong. Its structure was rather a labyrinth of concrete, discrete instances bounded by uncodified but compelling "American " principles. Legal craftsmanship focused on maintenance of individual freedom and protection of acquisitive rights in a property-minded economy.

The American Bar Association itself, influential public of the Court mediating between it and society, in the sense of interpreting Court to public and in providing an available source of outside contact for the Court, had been organized in 1878 by an elite of American lawyers. Its representative member suggests the ABA indeed functioned as a kind of "sweing circle for mutual education in the gospel of laissez-faire" (Corwin, 1941, p. 85). Certainly, as Corwin notes, its proselytizing influence reached the Court, notably by association members-become-justices (e.g., Brewer and Sutherland) (Ibid., pp. 84-87).

Above these ideas were American translations of liberal and conservative traditions. Both constitute

distinct thought patterns while drawing from the same humanist, individualist symbols (Lerner, 1957, pp. 727-730). Making its version of individualism accord with the natural order, conservatism very nearly preempted the high ground of principle but fell short on the lower level of practice, a fact excruciatingly apparent by the second and third decades of the twentieth century. Considerably more attentive to the necessities of the lower level, liberalism also had its defects. Among these were an atomistic intellectual heritage incapable of linking individuals into a society, and an overly sanguine conception of human nature. The added tendency for a pragmatic orientation to become autonomous worked havoc with liberal standards and objectives.

Impressions and hypotheses abound regarding the mystique of the Court. Recent scholarship stresses the psychological, with the Court perceived as fixed point in an excessively fluid society; sure source of truth among a welter of counterclaimants; necessary authority figure.¹ That some public reverence given the Constitution transfers to its named guardians is hardly contestable. But this state of affairs is variable, witness the educative decade of the 1930's.

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Courts also operate from end positions in funnels of causality, where the legal heritage conditions both judge-respondent and response. Certain legal concepts prominent since the latter nineteenth century set the terms of bench-bar dialogue. Due process of law is one example.

Considerably expanded from its procedural origins, substantive due process represented an updated natural rights argument, mainly for use against the flood of social welfare legislation.¹ Such works as Cooley's Treatise also aided in this shift from personal to property rights and the corollary right of liberty of contract. Due process was both applied doctrine and legal underpinning for laissez-faire economics. Courts using it in effect became guardians of the negative state (Fine, 1956, pp. 140-141).

Until the turn of the century, such guardianship pertained mainly to state legislatures. Confrontations between laissez-faire and the welfare state tended to involve lower levels of the federal structure. However, the substantive interpretation came from the highest Court and, together with Cooley's doctrine of implied

¹A historico-legal approach: Dorsey, 1953, II, 374+.

limitations, could be applied to the federal government as well.¹

Given the divergent course of constitutional doctrine, the Court, especially in the twentieth century, had two equally authoritative traditions and could choose either. Thus Corwin sees the judicial review of the period as involving maximum jural freedom (1934, pp. 180-183). But choice of options is the heart of the decision making process, judicial or whatever. Corwin's misleading statement, which seems to imply jural freedom as an unusual condition unique with the Hughes Court, is better taken from the standpoint that each tradition had equally impressive antecedents. In that sense neither choice could damage Court prestige by its parvenu character. But choice as usual still remained.

These ideological strains were part of the background of the Hughes Court. They represent the lowest common denominator in its intellectual heritage and as such, a commonly held source of influence.

Though influence is differentially received, any milieu distributes roughly the same kinds of influence in the sense of circulating common ideas, beliefs;

¹A different view: Warren, 1926, II, 741-750, who sees the Court as "bulwark of the State police power." The reference is to nineteenth and early twentieth century decision making.

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fostering certain similar kinds of attitudes, in the public generally. Some of these have been indicated here.

Court Administration

In the administrative area, the Hughes Court was an early beneficiary of the 1925 Judiciary Act. Passed after Taft's extensive lobbying (Murphy, 1964), it represented the latest in a thirty year span of jurisdictional limitations and effected a notable difference in the kinds of cases coming to the Court. Common law matters and federal specialities no longer were prominent. The new topics centered instead upon questions of public law, particularly the relationships of government and economic enterprise. The Court's case matter thus diverged from that of state courts (Sprague, 1968, pp. 70-73). The old norm of unanimity was gradually surmounted by a new one which emphasized divisive tendencies, another consequence of the new act (Frankfurter and Landis, 1928, pp. 299-303). Certain administrative characteristics of the 1931-1936 terms might here be mentioned.

Despite a narrowing of obligatory jurisdiction, the Court voluntarily increased its discretionary load. At the 1931 term, Federal Employees Liability Act cases met surprising success in petitions for certiorari. Such a "wasteful" situation seemed due to the statute itself and

to the fact that demand by even three members could force acceptance (Frankfurter, 1932, pp. 238+).

The following term the number of certioraris increased while appeals decreased,¹ indicating that the Court was availing itself of a new area of control. Such power over input allowed the Court to determine the kinds of cases adjudicated. In practice, this meant more cases pertaining to government. The decrease in state court cases to 33% of total adjudications, and increase of cases decided with opinion, were both attributed to the Act. To general approval, the Court was now properly attentive to the instruction of lower courts and the bar, setting forth in reasoned, instructive opinions, some rationale for the result attained.

The 1933 term saw further increase in litigation, much from depression conditions and the administration of federal tax law. Socioeconomic enactments of state legislatures were still a future though certain source of Court business. Unnecessary litigation now, especially in the area of certioraris, derived from the insubstantial nature of cases submitted. This suggested the need of a bar better instructed in the nature of the writ and more selective in judging the merits of cases to be submitted (Frankfurter and Hart, 1934, pp. 244+).

¹Granted certioraris accounted for 74% of full opinions, Frankfurter and Hart, 1933, pp. 268-269.

The Court stayed abreast of its docket: 1934 marked the sixth consecutive year. The volume of certiorari cases again indicated the growing importance of discretionary, and the relative decline of obligatory, jurisdiction. One out of every five petitions for certiorari was accepted, which in itself represented a relatively high ratio of acceptance. This also indicated the Court's willingness to allot these a decisive weight in its total business. In view of these conditions, the Court's use of memorandum orders proved administratively and substantively beneficial. The burden of numerous full opinions and imprecise nature of per curiams were both avoided (Frankfurter and Hart, 1935-1936, pp. 69-76).

The 1935 and 1936 terms continued preceding trends: a mounting number of certiorari cases and the problem of a miscellaneous bar, in contradistinction to a specialized bar practicing solely before the Court. Denials of the writ which did occur were consistently upon the basis of insubstantiality, and suggested some maladjustment between bench and bar. Agreement regarding substantiality was still lacking.

In the larger context, these were the administrative pieces of the political-constitutional controversy which penetrated all levels of the federal system. Lower courts' restraining orders against execution of

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TABLE 1A.--Hughes Court: Volume and some parameters of court business, 1931-1936 terms.

Year	Completed Cases Out of Total Docketed	Adjudications: Full Opinion and per curiams	Mode of Arrival ¹			Subject Matter of Opinions ²	Discretionary Review	
			a. dst cts	b. cir cts	c. highest state cts		Obligatory Jurisdiction	Discretionary Jurisdiction
1931	883 of 1003	262	a. 40 or 17% b. 94 or 40% c. 102 or 43%	N = 236	federal taxation 32 of 150 or 21%	125 or 47.7%	137 or 52.3%	
1932	906 of 1016	247	a. 41 or 19% b. 107 or 49% c. 70 or 32%	N = 218	federal taxation 40 of 168 or 24%	104 or 42.1%	143 or 57.9%	
1933	1021 of 1113	270	a. 39 or 15% b. 116 or 45% c. 102 or 40%	N = 257	federal taxation 24 of 158 or 16%	132 or 48.9%	138 or 51.1%	
1934	926 of 1022	242	a. 29 or 13% b. 121 or 53% c. 79 or 35%	N = 229	federal taxation 22 of 156 or 14%	92 or 38.0%	150 or 62.0%	
1935	986 of 1076	256	a. 39 or 16% b. 118 or 49% c. 84 or 37%	N = 241	federal taxation 30 or 146 or 21%	109 or 42.6%	147 or 57.4%	
1936	941 of 1039	260	a. 32 or 14% b. 107 or 46% c. 96 or 41%	N = 235	federal taxation 23 of 149 or 15%	121 or 46.5%	139 or 53.5%	

¹Most-used channels noted: "b" includes appeal, certiorari and certificate; "c" includes appeal and certiorari.

²Subject category containing largest number of cases, compared with total number of cases so classified.

congressional acts reached an unprecedented high, adding to the strained relationship between Court and Congress at the top. To ameliorate the situation, Senator Black of Alabama, 1935, introduced a bill routing such restraint cases directly from district courts to the Supreme Court, bypassing circuit courts. Hughes' objections to these "compulsory" aspects insured failure. The later Judiciary Act of 1937, passed after the Court-packing furor, provided for direct participation by the federal government in litigation where formerly it had no standing, and required a three-judge court to forestall operation of congressional statutes (Frankfurter and Hart, 1937-1938, pp. 592-619).

Administratively, the Hughes Court was transitional. The effects of the 1925 Act were beginning to evidence themselves, though any full assessment, in terms of impact on the Court, would have been premature. Certainly it played its part in turning the Court to the great matters of public law, a fact of tremendous consequence when confrontations between Court, Congress, and Executive result.

Court as Collegial Body

Regarding the Court as collegial body, it seems amazing that even as late as 1930, reputable scholarship was just beginning to talk in terms of the fact and

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fiction of judicial decision making (e.g., Haines, 1932, pp. 529-535). There was no theory to hold this reality together, though the fact (adjudication is policy making) was distinguished from the fiction (courts exercise judicial power only).

Progressive sophistication attended the meaning, if not the theory, behind this reality (Jackson, 1955, pp. 61-80). Obviously the Court as a political institution could and did administer justice. Obviously too, such justice was not of the majoritarian kind associated with legislatures, issuing as it did from an independent, professional, elite institution, the least democratic branch of all. Politically important consequences for society followed. More positive interpretations tended to stress the long-term congruence between judiciary and public will and to correlate the trend of judicial decision with public temperament (Alfange, 1937).

Another perspective bypassing the whole political-nonpolitical melee focused on the Court's more momentous responsibility: continuing adjustment of constitutional law to contemporary ideas (Swisher, 1947, pp. 225-233). This argument derives from the simple exigencies of self-preservation. The Constitution is revered as its principles reflect current ideas of rightness and fair play. It is not revered, hence less influential, in proportion to the divergence between its principles and public ideas.

Guardians of the Constitution share its fate. Hence the Court, to insure power and reverence of both, at all times had best look to the alignment.

Embedded in each of these views is a value judgment of the judiciary based on what the Court has done empirically and on what it should do normatively. The Court is a composite of its membership: something more than a small group of individuals and something less than the inevitable reification called "the Court."¹

As for this particular Court, four members had come out of the frontier, living proofs of Frederick Jackson Turner's theses; five from the brahmin cultures of Boston, Philadelphia and New York. All were lawyers. All at very least tried their hand at politics. Among their company were: one national committeeman; one senator; one governor, defeated presidential candidate, and secretary of state; two attorneys-general; one straight judge; and three straight lawyers (Curtis, 1947, pp. 98-99).

Personnel

The following are brief biographical entries of the nine justices constituting the chief decision makers during the 1931-1936 terms. Informational sources are

¹An interesting "comparative" study of Courts, in terms of aggregate data, is Ewing, 1938.

an amalgam of biographical reference materials, biographies, obituaries, and standard reference works, all of which are indicated in the bibliography. These listings in no way purport to be definitive, but merely indicative.

Louis Dembitz Brandeis (November 13, 1856 - October 5, 1941) was born in Louisville, Kentucky, but generally regarded as from the state of Massachusetts. He was of wealthy parentage: his father, a native of Prague in Bohemia, had been a successful grain merchant in Louisville, and a Union sympathizer during the Civil War. Brandeis' formal education included preparatory schools, both public and private, in Louisville; the University of Louisville; Annen-Realschule in Dresden, Germany; and an LL.B. from Harvard, 1877. His career structure includes positions as law school lecturer and professor at Harvard and MIT; counsel for both municipal and federal governments; private law practice in Boston and associate justice of the Supreme Court. An expert on railroads, he had been counsel for the ICC. A public-minded corporation lawyer, his chief interests were railroads, finance, public utilities and insurance. He was nominated by Woodrow Wilson to replace Lamar: the date of appointment January 28, 1916; the date of commission, June 1, 1916 which represented an unprecedented interval of 124, as opposed to the average sixteen days. His partisan affiliation was Democratic. Brandeis claimed no formal

religious association, but among his nonlegal associational ties were:

Provisional Committee for General Zionist Affairs,
Chairman, 1914-18
Zionist Organization of America, Honorary President,
1918-20
Public Franchise League, Boston

After twenty-two years on the Court, Brandeis retired February 13, 1939.

Benjamin Nathan Cardozo (May 24, 1870 - July 9, 1938) was born in New York City. His ancestors were Portuguese Jews who, upon expulsion from that country, immigrated to Holland, then to Great Britain, before settling in New York. Cardozo's father, a judge on the Supreme Court of New York City, resigned under corruption charges at the collapse of the Tweed ring. The Cardozos had been a prominent Jewish family, socially, professionally, and historically, in that city since 1752. The early education of the justice was by private tutors, among whom was Horatio Alger. His formal education consisted in a B.A., 1889, and an M.A., 1890, from Columbia College in New York. He also attended Columbia Law School, 1890. His career structure included election to the Supreme Court of New York; private practice as a barrister specializing in commercial cases; appointment to the New York Court of Appeals as judge, then Chief Judge; and ultimately, appointment as associate justice of the Supreme Court. A Hoover nominee, he was appointed

in February, 1932 to replace Oliver Wendell Holmes, and commissioned March 2, 1932. His religion was Jewish, and he himself a member of Shearith Israel Congregation. His partisan affiliation was Democratic. Some associational ties were: in the legal profession, the American Law Institute under a Carnegie Corporation grant; in the nonlegal area, a trustee of Columbia University and of the Hebrew University in Palestine; also member of the American Jewish Committee. Cardozo served but six years on the Court, until his death.

Harlan Fiske Stone (October 11, 1872 - April 22, 1946) was born in New Hampshire of parentage of the New England yeoman type. His preparatory education came from public schools near Amherst. He attended the Massachusetts Agricultural College but went on to Amherst, graduating in 1894. His LL.B., 1898, was from Columbia. The career structure of Harlan Stone included positions as: Columbia Law School lecturer and professor; member of federal boards, federal appointive office; private practice; then associate justice of the Supreme Court and chief justice of the United States. He had been dean of Columbia Law School; a member on the federal board of inquiry regarding conscientious objectors during World War I; attorney-general of the United States, 1924; associate justice, 1925-1941; chief justice, 1941-1946. In private practice (New York law firms) his speciality

was equity and trusts. Calvin Coolidge appointed him associate justice January, 1925 to replace McKenna. He was commissioned February 5, 1925. Stone was an Episcopalian and a member of the Republican party. Regarding associational ties, some legal, professional ones were:

Institute of International Affairs, Columbia University
 Association of American Law Schools, President, 1919
 American Law Institute
 American Bar Association; New York Bar Association

Among the nonlegal were:

Phi Beta Kappa; Alpha Delta Phi
 Republican Club at Amherst, President
 Board of Trustees, National Gallery of Art
 Chancellor, Smithsonian Institute
 Chairman, Folger Shakespeare Library

Stone served sixteen years as an associate justice; five years as Roosevelt's appointed chief justice.

Charles Evans Hughes (April 11, 1862 - August 27, 1948) was born in New York of a Dutch mother and a Welsh father who was a Baptist pastor. His preparatory education was received at the public schools of Newark, New Jersey. He attended Colgate University, graduated from Brown, 1881; in 1884 he received an LL.B from Columbia. His complex career structure includes elective office on the state executive level; unsuccessful candidate for elective federal office; law school lecturer and professor; federal appointive offices; counsel for

state/municipal government; private practice; international courts and arbitration; and, like Stone, service as both associate and chief justice on the Supreme Court. He had a New York law firm; was professor at Cornell Law School in Ithaca; twice Governor of New York; 1916 Republican presidential candidate; secretary of state under Harding and Coolidge. Hughes had resigned as associate justice, 1916, to campaign unsuccessfully against Woodrow Wilson. He also served on both the Permanent International Court of Arbitration and Permanent Court of International Justice. On February 3, 1930, Hoover appointed him chief justice to replace Taft; the commission was ordered February 13. Hughes' associational ties included, in the legal, professional vein:

Legal Aid Society
 National Advisory Committee of the Institute of
 Law, Johns Hopkins
 President, American Society of International Law
 President, American Bar Association; New York
 State, County and City Bar Associations
 President, American Judicature Society

Among the nonlegal were:

World Council of Christians and Jews
 Trustee, University of Chicago
 Fellow, Brown University
 American Academy of Arts and Science
 American Philosophical Society
 National Geographic Society
 Delta Upsilon
 Honorary Bencher, Middle Temple, London, England

In all, Hughes served five years as associate justice (1910-16) a Taft appointee; eleven years as chief justice, 1930-41, in which latter year he resigned.

Owen Josephus Roberts (May 2, 1875 - May 18, 1955) was born in the Germantown section of Philadelphia, his father a hardware merchant originally from Carnarvonshire, Wales. His preparatory education was obtained from Germantown Academy in Pennsylvania and both his undergraduate degree, 1895, and his LL.B., 1898, were obtained from the University of Pennsylvania. His career structure included periods as law school lecturer and professor; counsel for the federal government; private practice; and eventual appointment as associate justice. Specifically, Roberts was on the University of Pennsylvania law faculty and was essentially a Philadelphia corporation lawyer. In 1918 he was special deputy attorney general, and later was appointed special federal attorney in the Teapot Dome investigation. Another Hoover candidate, Roberts was appointed May 9, 1930, to succeed Sanford and his commission ordered May 20. His religious affiliation was Episcopalian; his partisan affiliation, Republican. Among his legal, professional associational ties were:

Pennsylvania State Bar Association, President, 1947
American Bar Association
Council of American Law Institute 1924-36

Law Association of Philadelphia
 Philadelphia World Court Committee, Chairman,
 1929

The nonlegal ties were:

Board of Directors of City Trusts of Philadelphia, 1920-27
 Director of Real Estate Land Title and Trust Co.
 Director of Franklin Fire Insurance Company
 Director of Bell Telephone of Pennsylvania
 Director of Equitable Life Insurance Society of the U. S.
 Director of AT & T
 Phi Beta Kappa, Psi Upsilon
 Union League of Philadelphia; University Club of Philadelphia
 Trustee, Jefferson Medical College; University of Pennsylvania; and Lincoln University
 American Philosophical Society, President, 1952
 National Council of Boy Scouts of America, Chairman, 1946
 United Negro College Fund 1947-48
 Regent, Smithsonian Institute

Roberts served a total of fifteen years on the Court, resigning July 7, 1945.

James Clark McReynolds (February 3, 1862 - August 24, 1946) was born in Kentucky although his association was with the state of Tennessee. He was the son of a fairly well-to-do doctor of Scotch ancestors who had come from Ireland to Virginia in 1740. McReynolds' preparatory years were spent at Green River Academy in Elkton, Kentucky. His undergraduate degree was from Vanderbilt University, Tennessee, 1882, and his B.L. from the University of Virginia, 1884. The career pattern of the justice contains positions as law school lecturer and professor; counsel for the federal

government; federal appointive office; private law practice; and ultimately, appointment to the Supreme Court. Specifically, McReynolds had been private secretary to Howell Jackson, who later became a Supreme Court justice and was a senator from Tennessee. He set up law practice in Nashville, Tennessee; was a member of Vanderbilt law faculty; and served as assistant United States attorney general in antitrust prosecutions, 1903-07, then as United States attorney general, 1913-14. He was appointed by Wilson to fill Lurton's place, August 19, 1914 and commissioned August 29. He was a member of the Christian Church and of the Democratic party. His salient professional, legal tie was the Tennessee Bar Association; the chief nonlegal involvement, Save the Children Fund. McReynolds resigned from the Court January 31, 1941, after twenty-six years of service.

Willis Van Devanter (April 17, 1859 - February 8, 1941) was born in Indiana of Dutch-Irish parentage. His own father, Isaac, was a wealthy attorney. In his early manhood, Van Devanter went West, so Wyoming more properly claims him. He spent his preparatory years in the public schools of Marion, Indiana; graduated from what is now De Pauw University, Indiana, 1878, and received an LL.B. from the University of Cincinnati, 1881. His career structure variously includes: political party office; elective state office on the legislative level; attorney

for municipal government; federal appointive office, private law practice and membership on the Court. In particular, Van Devanter had been city attorney for Cheyenne; chairman of the Republican State and National Committees, 1894 and 1896 respectively; an arbitration commissioner; chief justice of the Wyoming Supreme Court both Territorial and State; assistant attorney general of the U. S.; and judge on the U. S. Circuit Court (8th circuit). He was appointed by Taft, December 12, 1910, to succeed Moody; his commission ordered three days later. The chief nonlegal associational ties were his previously mentioned political party offices. He retired, somewhat spectacularly, June 2, 1937, after twenty-six years of service on the Court.

George Sutherland (March 25, 1862 - July 18, 1942) was born in Buckinghamshire, England, but his parents immigrated to Utah territory when he was yet a child. There he attended the public schools of Salt Lake City; graduated from Brigham Young Academy in Provo, and attended the University of Michigan at Ann Arbor when Thomas Cooley held forth. Sutherland's career pattern included: unsuccessful candidate for elective state office; holder of elective state office in the legislative branch; elective office in the federal legislature; political party office; ABA office (he became president after a year's membership); private practice;

U. S. counsel; and membership on the Court. Specifically, Sutherland had been unsuccessful mayoralty candidate in the Utah territory; territorial representative; state senator; M.C. 1898-1900, then member of the U. S. Senate, 1905-17. Harding appointed him, September 5, 1922, to replace Clarke; confirmation was the same day. After fifteen years' tenure, he resigned from the Court January 17, 1938. Another associational tie (besides the ABA) was official participation in Republican National Conventions, 1900-16.

Pierce Butler (March 17, 1866 - November 16, 1939) was born in Minnesota of Irish immigrant parents. All of his formal schooling was obtained from nearby Carleton College in Northfield, Minnesota, from which he graduated, 1887. Butler's career pattern includes: unsuccessful attempt at state elective office; counsel for municipal government; federal appointive office; service in international arbitration; and membership on the Court. Butler was a supremely successful corporation lawyer of the Northwest, chiefly for the railroads; railroad counsel; county attorney; unsuccessful candidate for state senate; and president of the Minnesota Bar. Harding appointed him November 23, 1922 to replace Day. His commission was ordered December 21 of that year. In addition to bar association ties, Butler served on the Advisory Committee of Harvard University Institute of Comparative Law, 1929.

He died in the judicial office after sixteen years of service. His religious affiliation was Roman Catholic; his partisan attachment, the Democratic party.

The Political Context and
the Hughes Court

It was treatment of New Deal legislation that brought unprecedented publicity to the activities of the Hughes Court. Of equal importance was Franklin Roosevelt's role as antagonist, both in providing grist for the Court's mill and a plan of reconstruction for its personnel. Under other circumstances, the Court would have gone quietly about its institutional business, sustaining, striking down, effecting policy in the mode appropriate to judicial bodies. In other words, it is not so much the ultimate results but rather the unique exposure of the process by which those results were achieved which distinguishes the Hughes Court.

The time span of the controversy was brief. Not until February, 1934 did the Court actually pass upon any New Deal legislation. Even then, the program itself was in a second phase, when the peak energy of depression days was wearing off, and the hectic pace and wondrous cooperation of the Congress slackening not a little (Schlesinger, 1940, pp. 47-48). The Democratic party was neither of one mind nor of one piece, and the Court

packing plan of February, 1937 considerably widened the rift within.¹

Certainly much New Deal legislation was jerry-built. The administration's legal staff had mistakenly counted upon the emergency situation to compensate for poor draftsmanship and worse tactics. But in most instances efforts were made to relate enactments to specifically enumerated powers; separability clauses employed; the exercise of delegated power made discretionary rather than mandatory (Ellingwood, 1934, pp. 735, 749, 750-751). Admittedly many of the new concepts which that legislation embodied were revolutionary in scope. Thus it encountered, in the words of Thrumman Arnold, "emotional difficulties" (1934, p. 937).

But to treat these concurrences as causative or at least determinative factors in the response of the Court seems at least a bit naive.² The chief objection to such analyses is an apparent disregard of any intra-Court change, the better to prove the preferable case of a changeless institution above political fray.

There obviously was some kind of change in policy, despite the constancy of membership. If the function of

¹In terms of the larger political scene, see C. and M. Beard, 1939, III, 351-367.

²Illustrative are such contemporary analyses as Pusey, 1937, and Eriksson, 1941.

the Court had not changed, and clearly it had not, then that change came from within. I am purposely avoiding here any correlative or causal chain as to possible external forces motivating that internal change. But examination of the voting and decisional output lends empirical clarity to a verbally complex situation. That the change was, as Spaeth notes, "only at the doctrinal level" (1966, p. 12), in no way detracts from its import either in terms of decisional output or in terms of the light shed upon the nature of the judicial process.

I do not suggest that the behavioralist alone is the voice crying out in this wilderness or that behavioral methodology alone can discern that the rulings of the latter portion of the 1936 term (e.g., West Coast Hotel; Jones-Laughlin; Carmichael; Steward Machine Co.) were somehow different from those previous (such as Morehead; Jones v. SEC; Butler; and Carter v. Carter Coal). If anything, a cacophony prevailed, made up of suggestions by those well aware of Court decisions and their larger impact. Exegetes and publicists, concentrating on the nature of judicial output, praised/condemned by turns the Court's successive verdicts on the New Deal.¹ Those

¹For a sampling of those pro Court receptivity to the New Deal (the liberal camp) see Carr, 1936; Brant, 1936; Jackson, 1949; and Mason, 1953. For the antis (the conservative camp), see Eriksson and Steel, 1941.

more activist went beyond the rulings to consider the remedy.¹

What I do suggest, however, is that to date the behavioral approach alone seems capable of putting the whole episode into proper perspective within the operative context of the Court and of basing this assignment on acceptable theoretical and empirical grounds. No other approach even attempts as much.

There are some behavioral treatments of the Hughes Court as collegial body, though no full-length analyses as such. Pritchett and Schubert author two of the most reputable. Pritchett's analysis (1948, pp. 1-35, 248-249), done basically in terms of the average ranges of agreement of each justice with every other in dissensual cases, is among the earliest. His findings indicate that prior to 1936, the most cohesive center group was fairly close to both left and right wings, blunting any cleavage-type alignment. In 1936, the center (Hughes perhaps more than Roberts, thus making Roberts "swing man") entered an adherent relationship with the left. With the right

¹Examples are: Fite and Rubinstein, 1937, pp. 762-788, who conclude as to the futility of any proposal not dealing with the heart of the problem, i.e., judicial review; Herman, 1937, pp. 821-841; Fraenkel, 1937, pp. 212-226. For the historical approach into the effects of nullifying decisions (though New Deal cases are omitted), Edgerton, 1937, pp. 299-340, who finds that on the basis of typical judicial output from 1922 on, only the well-to-do minority would advocate judicial control.

maintaining high intra-agreement, the natural result was high polarization of the Court as a whole.

Schubert deals with this Court, using it almost by way of exemplifying the methodological techniques of game analysis (1959, pp. 192-199), and bloc analysis (1960, pp. 160-168). The former involves three players: the left liberal bloc; the right conservative bloc; and a center moderate bloc (Hughberts). Game analysis postulates the objectives of Court unity and maximization of leadership by the Chief Justice, and makes participation in minimal winning coalitions the optimal strategy. So doing, its results remarkably approximate overt judicial behavior in the 1936 term. Use of bloc analysis, though a bit more gross, underlines the nature of decision making majorities. From 1931-1935, a six-man majority prevailed, with Sutherland-Van Devanter as nucleus, Butler-McReynolds to the right; Hughes-Roberts to the left. With the 1936 term the balance of power changed with a shift of the left wing in the former majority to the right position in the former minority. Hughes and Roberts engaged in majority formation with the left rather than with the right. The result was a majority of the left.

The immediate consequences of the switch were lasting enough, given that very shortly the personnel would radically change: a new chief justice, indeed a new Court, would hold forth. Substantive due process,

preserved largely as Brewer formulated it, gave way to an assumption of legislative reasonableness regarding what was statutorily permissible (Schwartz, 1957, pp. 191-197). In short, procedural due process was revived and the literally unstatable powers of the substantive version contracted. All done voluntarily on the part of the Court.

Federal relations constituted another central area of renovation. Conceivably, now Congress was empowered to do as much nationally as state legislatures could locally (Corwin, 1941, pp. 78-79). General purposes--in other words, legislation embodying social policies of stated objectives--were no longer verboten.

Important too, laissez-faire was clearly a "dissolving concept" thoroughly discredited, at least as a viable philosophy for Court decision makers. The consequences of adamantly holding it were made quite clear, particularly by the 1936 election and the presidential plan of 1937. What is axiomatic now was visibly demonstrated then: that the Court cannot indefinitely run counter to a dominant national alliance; that to effectively promulgate or even maintain policy and position, it must eventually accord and work within that national alliance of legislative, executive, and popular majorities. Historically, the American people have looked to

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the Court for eternal verities but they simultaneously insist these verities be kept up-to-date.

There is merit in the criticism of government by lawsuit (Jackson, 1949, pp. 286-315): that while constitutional lawsuits contain the stuff of national politics, the legal procedure necessarily encasing them is inadequate in the extreme. Typically, the adjudicative scene is that of lawyers at the bar arguing before lawyers on the bench. Thus the legal profession ultimately passes upon the direction of national policy. In other words, the argument states that the big issues of social policy ought not, as questions of constitutional law in "case or controversy" form, be brought before a body administering judicial justice alone. This assumes a generic difference between social and judicial justice which I think subsequent history proves at least questionable. This is not to deny the problematic aspects of the supreme judiciary dispensing social justice. That function was not ostensibly the original objective but it inheres in the consequences of assigned functions such that to dispense with the former, one apparently dispenses with the latter as well: a case comparable to throwing out the baby with the bath. To accept the situation and admit "that's the way it is" does not close the matter. Rather it puts the actors in a different

perspective and opens the way for new recognitions about the Court, its members, and the judicial process itself.

CHAPTER II

THEORY AND METHOD

Theory

A basic requisite of scientific research is a theoretical substructure to establish guidelines and objectives of research; suggest hypotheses; and provide some a priori model with which to compare the reality subsequently observed. The heuristic properties of the theory and of the model it suggests are clearly dependent upon their isomorphic qualities (in other words, approximation to the data empirically observed) and upon what follows closely from this, their ability to accurately predict or reproduce, as the case may be, that reality expressed by the data.

To determine the psychological factors dominating Court decision making, the theory and model used in the study owe much to the current research in social psychology, particularly in the area of attitudes, their origin, maintenance, and change. The author whose conceptualization is of major influence here is Milton Rokeach.

Rokeach defines attitude as: "a relatively enduring organization of beliefs around an object or situation predisposing one to respond in some preferential manner" (1968, p. 450). Attitudes are relatively enduring in that they do not easily change, and tend to maintain themselves over time. Thus attitudes contribute to a psychic economy. They provide the individual with pre-constructed guidelines to response that serve in myriad, dissimilar situations. They contribute to internal, psychological equilibrium by insuring that the individual need not build new mental structures in order to cope with each situation: a state which would reduce psychic integration and equilibrium to a minimum, if not complete chaos. Instead, it is the nature of attitudes to insure an almost automatic, essentially effortless response, especially given the presence of external stimulus. Such mental sets as attitude derive generally from the accumulation of past experiences. They are learned.

Rokeach sees the anatomy of attitudes as a composite of more basic elements, beliefs. These latter he defines as "any simple proposition, conscious or unconscious, inferred from what a person says or does, capable of being preceded by the phrase 'I believe that . . .'" (Ibid.) This composite of beliefs then clusters in some ordered relation to form an attitude. Our model (Spaeth, 1967, pp. 2+) builds upon this foundation but is structurally

more complex. In it, beliefs are accepted as the basic, irreducible components, with attitudes on the next level of generality in the hierarchy. Attitudes again are formed from the interrelationships of various beliefs. The model, however, postulates other additional levels in the hierarchy. In ascending order, they are: attitude system, value, and value system. Level of generality distinguishes among them, each successive level formed by a clustering of the preceding constructs.

Milton Rokeach specifies the components of belief as: cognitive, affective, and behavioral. In our model, all constructs (from belief to value system inclusive) are conceptualized as being structurally analogous, hence possessing these three components.

The cognitive component refers to the knowledge aspect of the construct. Regard of that knowledge entails such considerations as: differentiation, which pertains to the kind of knowledge possessed, whether it allows detailed specification of the object, or, at the other extreme, whether it suffices merely to distinguish the object; and degree of certitude. Knowledge of the object in turn enables judgment of varying correctness as to the goodness/badness, falsity/truth of that object.

The affective component refers to a potential for arousing feeling states (or affect) about an object (towards which the belief is directed); about persons

taking positive or negative positions with regard to that object; and about the belief itself. A valence effect, in terms of positive attraction or repulsion, is characteristically activated by this component. Such an effect may, of course, have a behavioral counterpart which is externally manifest and observable to that degree. But this goes beyond the affective per se and into the behavioral (or, if you will, "action") component.

The behavioral component follows from the fact that belief itself is a kind of agenda for action, a predisposition that lacks only the appropriate stimulus to be converted into action. In other words, belief is seen as behavior in potential. What kind of behavior will actually ensue as response to a specific stimulus will depend, of course, upon the content of the belief. For the purposes of our own model, the behavioral component is viewed as the most important: indeed the only component of the three that is utilized. This is so particularly because of the practical constraints in empirically ascertaining the cognitive and affective components. One can, however, make some inferences as to the nature of these, on the basis of information from observation of the behavioral component. Thus concentration on the behavioral component alone appears to yield sufficient information about the belief, attitude,

or whatever construct in the hierarchy, in all its components. Any loss in explanatory power through neglect of the cognitive and affective components has, in the practice of studies such as this, proven negligible.

Part of this effect is also due to the fact that the components themselves are so highly interrelated. To empirically isolate a single component for observational purposes is, practically speaking, impossible. As in any research design, however, original distinctions remain analytically necessary, if only the better to study and "separate out" the elements of a complex, otherwise unanalyzable phenomenon. Hence, though the methodology in the study is geared to the behavioral component, a certain unearned increment flowing from the interrelationship of components justifies inferences and hypotheses as to the cognitive and affective components as well.

Organization refers generally to a more or less ordered arrangement of parts within any whole. In this particular case, it is characterized by degree of cognitive differentiation and integration. On one hand, differentiation is synonymous with complexity, assuming this complexity increases with quantity and quality of information. On the other hand, integration is the ordering of this complexity into a comprehensible, internally consistent whole. This requires that

compartmentalization or isolation of cognitive elements within this structure be minimal and their integration maximal. The result is a cognitively consonant state for the individual, enabling optimal functioning of the personality in life situations.

As theorized, this organization itself occurs about or in relation to an object or a situation. In other words, attitude formation is at least initially dependent upon the existence of an object or a situation toward which it can be directed. As far as empirical observation itself is concerned, object and situation are necessarily present as stimuli activating some response which is attitudinally directed. In no other way can the behavioral component be observed, save by motivated response which is externally manifest in some manner.

Social behavior (i.e., the observable behavioral component of belief, attitude, etc.) then minimally involves both an attitude toward an object (AO) and an attitude toward a situation (AS). AO and AS together specify the context within which the stimulus is offered. As will be seen, they also, in some manner to be empirically determined, set the bounds for subsequent response, and in that sense importantly relate to the predictability potential of the model.

AO and AS correspond roughly to the figure-ground distinction in psychology. AO centers chiefly about

persons, institutions, or an agent who acts or is acted upon, while AS refers essentially to the context, or setting, within which the agent is placed. Conceivably, observed social situations admit of varying levels of complexity, in which case, more than one AO and AS may be present. These should be specified to achieve refinement of response categories.

The definition of attitude also refers to preferential response, given the presence of an AO and AS. This implies merely that a particular response is the respondent's choice out of a number of possible response patterns. It does not specify whether this response is affective (involving an emotional, like/dislike component) and/or evaluative (involving a judgment as to goodness/badness; rightness/wrongness). Such response itself may be directed, not only at the AO and AS, but also to other related objects not immediately involved, and to maintenance of the attitude itself.

Adapting the foregoing theoretical elements from Rokeach, our model of decision making is a psychological structure which graphically resembles a pyramid. The elements of this structure, in ascending hierarchical order, are: belief; attitude; attitude system; value; and value system (Spaeth, 1967). Attitude system is an added modification. Methodological development at the present stage allows behavioral research on a level no

lower than that of attitude system. In effect, the methodology developed to get at this hypothesized psychological structure focuses on the level of attitude system as area of observation. Observation itself is done chiefly by a simple, unidimensional technique called scalogram analysis. Linkages among the primary correlations obtained from such analysis can be established by more complex, multidimensional analytic techniques; and values and value system reconstructed therefrom. In short, from the level of attitude system, one can literally build up the psychological pyramid on the ascending end of the spectrum. Empirically, however, there is as yet no way to strip these more complex levels down to their more elementary levels of attitude and belief. One can, of course, establish the last mentioned by extrapolation, but this hardly requires a methodology.

To repeat, each level of this hierarchy is structurally analogous, having the same three components Rokeach attributes to beliefs. In our conceptualization, each level is functional to the other, and represents a new synthesis, on a higher level of generality, of interrelationships on the preceding levels. In the context of Supreme Court decision making, we stress in particular the enduring quality of attitude which Rokeach noted. It seems reasonable to do this, given that to the usual behavioral manifestation of attitude, in the case of a

Supreme Court justice a kind of public commitment is added. The public nature of this commitment, which itself issues from a prominent governmental site, could not but strengthen even the normal tendency of attitudinal stability across time.

In addition, certain norms of the Court and of the legal profession as well put a premium on stability. Certainly practitioners of at least that profession have the highest regard for the predictability consequent upon stability through time. In short, the relatively enduring hypothesis about the nature of attitudes should in high degree pertain to the United States Supreme Court and to its member justices.

AO and AS are vital aspects of the model. They are specified within each decision making context. In the study, that context consists in nine respondent decision makers (i.e., voters), presented with N kinds of stimuli (cases), to which they must respond, positively or negatively. Focusing on the behavioral component, their voting is seen as a function of the attitude toward object and attitude toward situation ($B = f[AO, AS]$). In this manner, the decision making process as it occurs on the Court is conceptualized as occurring within a simple stimulus-response model. The model is not, however, of the primitive, mechanistic type developed by early behaviorist psychology. Instead, the respondent justice is

seen as the meaningful conversion unit intervening between stimulus and response, guiding the latter that it appropriately, in terms of his own criterion, be directed to the former. The stimuli (cases) are (j) points; each respondent-justice is conceptualized as occupying some psychological space by virtue of his ideal point (i). This (i) point constitutes the locus beyond which, attitudinally, his vote will not go. In other words, at this locus and beyond, the response evoked by the stimulus will be negative. Where this locus is, given a series of stimuli, is the empirical question. Whatever, that locus will normally vary with the respondents, and with different stimuli presented to the same respondent.

There are inevitably cases where the reality does not correspond with exactitude to the theory. Pertinent here is the recurring fact of nonscalar responses: cases where the justice does respond inconsistently after his threshold has supposedly been reached. There are, of course, plausible reasons why this should occur (Spaeth, 1965, pp. 302-303).

These include perceptual confusion of the respondent justice; persistency of a subelement throughout inconsistencies, which suggest the justice is indeed, at least for a particular class of cases, marching to a different drummer; as well as presentation of issues

simultaneously complex and unfamiliar. All of the foregoing are primarily bases for assigning inconsistencies, as well as plausible reasons for nonscalar responses. In the former case (assignment of inconsistencies), however, one can mention three additional guidelines: previous rank of the justice across similar issues; consistency of the respondent generally; and length of service on the Court.

Method

The following is the description of the methodology used to get at the psychological determinants of decision making on the Hughes Court. It is sequentially ordered and includes only the methodology used in this particular research.

As mentioned, attitude system is the construct initially focused on, and pivotal throughout as the source of the basic data for subsequent methodological phases. Observed behavior (i.e., responses in terms of yes/no votes on case stimuli) at this level enables one to get at the vital portion of the psychological structure. An attitude system is operationalized as a Guttman scalogram (Stouffer et al., 1950, IV, Chp. 3) in form modified by Spaeth (1967; 1965).

All dissensual cases (ones enabling the researcher to discriminate among respondents) are initially

categorized according to legal, semantic content by an impressionistic content analysis. The perspective throughout is longitudinal, rather than cross sectional; in other words, the data are not isolated or compartmentalized by term, but variously combined without regard to the time element.

Scales are then constructed, using these initial categories as data. Revisions are made as the resultant scales seem to warrant. The scales represent a departure from the Guttman method in two major respects. Instead of an N of at least ten being requisite for each scale, we have lowered the number to at least three, stressing instead the value of refinement of data and preserving the uniqueness of cases where such seems justifiable. Also, Spaeth's modification has required a rigorous ordering of cases included within each scale category such that the item marginals are ordered from left to right, from most positive (liberal) to most negative (conservative). Such arrangement ideally forms a perfect U curve, with (8-1) on the extreme left, (5-4) (4-5) in the bend of the curve, and (1-8) on the extreme right.

Such an arrangement thus orders responses as rigorously as Guttman would order respondents such that ". . . if a person endorses a more extreme statement, he should endorse all less extreme statements if the statements are to be considered a scale" (Stouffer et al,

1950, IV, p. 62). Cases are ordered in the first instance so as to obtain the least number of inconsistencies without crossing marginal lines. They are secondarily ordered along the sequence of their consideration by the Court.

The extent to which a Guttman scale measures what it is supposed to (i.e., unidimensionality of the category content, or universe of items sampled) can be determined by the coefficient of reproducibility (R) and the minimal marginal reproducibility (MMR). The size of the R reflects approximation of observed response pattern to a theoretically perfect scale. It is determined by the formula:

$$\frac{\text{denominator minus number of nonscale responses,} \\ \text{excluding cases of solo dissent}}{\text{sum of the item marginals, excluding} \\ \text{cases of solo dissent}}$$

An R of $\geq .95$ is the desideratum: an R of at least $\geq .90$ is minimally required for a respectable scale. The MMR yields "the mean of the ratios of the modal frequency to the sum of the marginals for each respondent" (Spaeth, 1967, p. 11). It is derived by summing the modal frequencies for each justice and dividing by the total number of justices. Ideally, the MMR should be $\leq .80$.

The social behavior evidenced within the bounds of the scale category, in accord with Rokeach's theory, is

conceived of as resulting from the AO and AS, which themselves are determined by the content of the scale. AS tends generally to specify, or set up, a particular context about the AO, which, on the contrary, usually tends to be quite general. AO and AS together describe scale content, with greater or lesser degree of specificity.

Each Guttman scale conforming to at least minimum specifications represents a unidimensional universe: that is, all items (cases) within, despite perhaps a seeming disparity of content, in essence form a stimulus activating one common attitude system. Thus a valid scale is itself proof of the unidimensionality of the universe it comprises. There are those who contend that such a unidimensional world is too simplistic to represent any kind of reality. They prefer multidimensional models as more heuristic and better approximating the rich complexity of the reality "out there" (e.g., Schubert, 1965). Much, however, can be said as justification for the use of unidimensional models, though both kinds are utilized in the course of the study. As Spaeth suggests (1965), the limitations of time, resources, and the human condition, together with the work volume, require a certain psychic economy on the part of the justices. Far from seeking to compound the situation, the necessity is simplification. Hence in the decision making context, a justice's response to the numerous, multifaceted, and

discrete cases must be as automatic and as nearly effortless as compatible with the task, if the judicial process is to function at all. If each case evoked extensive soul-searching on the part of the decision makers, the old axiom about justice delayed would represent the working reality of Court decision making.

Thus our model takes attitude (attitude system) as univariate, an organic whole which also behaviorally manifests itself as a whole. This says, in effect, that the judge respondent more plausibly perceives the case stimulus as a solid entity, rather than as a composite of various elements to be balanced by an internal mechanism hypersensitive to consonant and dissonant states. In terms of behaviorally manifest attitude, the justice's own response is likewise univariate.

On the basis of their votes in each scale, each justice is assigned scale scores (ratio of the majority of his votes, positive or negative, to the total number of his votes), which allow a rank ordering of all justices in each scale, from most positive (liberal) to most negative (conservative). Ties in the rank ordering are generally undesirable (they mean there is much less discrimination among the justices), but are sometimes unavoidable. In such cases, one merely assigns the ties the average of the ranks which they would have been assigned had there been no ties (Siegel, 1956, p. 217).

From this point, clerical operations end, and the methodology becomes computer dependent in terms of the programs required. All the ranks derived from the scales constitute input for the initial nonparametric statistics program yielding a matrix of tau correlations (Morris, 1967). Kendall's rank correlation coefficient (tau) only is used in the study as being preferable to Spearman's rho (Siegel, 1956, pp. 213+; and Hays, 1963, pp. 647+).

The resultant intercorrelation matrix of tau coefficients constitutes the input for subsequent computer programs:

principal axes factor analysis with quartimax and varimax rotations, which carries with it the assumption of orthogonality (independence) of the factors obtained (Williams, 1967).

oblique factor analysis (oblimin III) or FACTOR C, which assumes the existence of relationships among the factors (DeTemple and Williams, 1968).

hierarchical cluster analysis or LAWS (Price, 1969).

FASCALE, a routine developed by Guthery, Spaeth, and Thomas (1968) specifically for such Court-related data as found herein, yields three multidimensional scaling routines, MDSCAL, SSA-I, AND TSCALE, also a principal axes factor analysis. However, the "nonmetric" techniques (SSA and MDSCAL) are not used because of the weakness of the monotone criterion, which is the heart of these algorithms. The original algorithm which Lingoes used in his scaling routine, SSA, did not take into

consideration the case where the distance between two points on all dimensions under observations was zero. This case does obtain with the Hughes Court data. As a result of this situation, the 3600 cannot cope with them: in effect, it is unable to divide by zero, operating within the directions of the present program.

These programs were also run on various permutations of the original correlations among fifty-six variables. There were three subsequent permutations of thirty-seven, twenty-five, and twenty-one variables, respectively. In addition, plotting (by computer) was done, on the basis of factor loadings out of Factor C programs for fifty-six and twenty-one variables respectively, to allow graphic representation of the positioning of factors in relation to each other, and to facilitate the determination of related clusters.

To say that the point at which computer programs are completed, analysis begins indicates an erroneous concept of what computers do. In very non-technical terms, they do only what they are told, upon reception of coded instructions and data completely free from error. It is banal to assert that analysis is requisite in each phase which the methodology requires. Computer output is only as good as the input, which (input) has somehow to be thoughtfully assembled and meaningfully ordered. Resulting output is quite useless unless it

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can be reasonably interpreted. Interpretation is a task completely independent of computer, but equally dependent upon such substantive knowledge of the raw data as is brought to the task.

In sum, the more mechanistic, computer dependent aspects of the methodology should be recognized for what they are: more precise, objective, quantitative representations of qualitative data to which meaning is assigned by knowledge of substantive content on the part of the researcher. That such configurations are external to the researcher, derived by processes not so amenable to the researcher's feeling and/or cognitive states insures a degree of objectivity otherwise unattainable. Such quantification also allows, to greater extent than heretofore, a scientific approach to this area of the discipline. In other words, it begins the development of a systematic, ordered accumulation of empirically observed findings and their subsequent integration into a coherent body of knowledge. In a word, a science. Absent quantification, the whole endeavor becomes an art only, atomized by practitioners who go the way of their own untrammelled inspiration.

Number and Type of Computer Programs Run
(ordering chronological)

NPAR for 56 variables: input of rank orders of justices on IBM cards output of tau correlations, the input intercorrelation matrix for subsequent factor analyses

FACTOR A for 56 variables: input of tau correlations from NPAR for 56 variables; output of orthogonal factors, from 1 to 4 dimensions

FACTOR C for 56 variables: input of tau correlations from NPAR for 56 variables; output of oblique factors, 1 to 4 dimensions

Plot of FACTOR C for 56 variables: input of factor loadings in 1 to 4 dimensions; output of plotted points in a sample space, indicating relative position of factor loadings

NPAR for 37 variables

FACTOR A for 37 variables

LAWS program for 37 variables: input of rank orders of justices across the 37 variables, in a square matrix; output of sets of increasingly more inclusive clusters, the clustering itself based on degree of similarity among components

NPAR for 25 variables

FACTOR A for 25 variables

LAWS program for 25 variables

NPAR for 21 variables

FACTOR A for 21 variables in 2 dimensions

FACTOR A for 21 variables in 4 dimensions

FACTOR C for 21 variables

Plot of FACTOR C for 21 variables

LAWS program for 21 variables

CHAPTER III

EMPIRICAL DATA

The focus of this chapter is a description of the scales constructed by Guttman scalogram analysis. It details the construction, content, and rationale of the four successive sets of the scales forming the basis for analysis in this study. Although some analysis is presented, the emphasis tends toward description. Multi-dimensional analysis, based on the scales described here is the subject of the following chapter.

Throughout this chapter, reference is made to Appendix A which contains the description of the Guttman scalograms. Reference is facilitated by use of an alphanumeric code composed of the following elements. The appendix contains the four successive sets of variables:

- I. Fifty-Six Variable Sets
- II. Thirty-Seven Variable Sets
- III. Twenty-Five Variable Sets
- IV. Twenty-One Variable Sets

Each of these four sets is further subdivided into:

- J scale set, containing N (variable number) scales
- C scale set, containing N (variable number) scales
- E scale set, containing N (variable number) scales
- F scale set, containing N (variable number) scales

The N (variable number) scales in each scale set (J, C, E, or F) depends upon the location of that J, C, E, or F

scale set in variable sets I, II, III, or IV. The scales within each variable set (I, II, III, or IV) are numbered sequentially in arabic numbers, starting with the J scale set, through C, E, and to the F scale set. Thus a sample reference (I-C-6) would refer to the fifty-six variable set, C scale set, the sixth scale (the combined master scale of all C cases). The reference includes information on:

number of cases in the scale
 case content
 item marginals
 scale score and rank for nine justices
 R; MMR; NSR

The scales are taken up sequentially, in the order in which they were constructed and used. Hence progression is from the initial, more expansive fifty-six variable sets, to the ultimate, more contracted twenty-one variable sets. Both expansion and contraction were carried out with the same data. Expanding meant stressing the multifaceted aspects, or complexity of data (cases) by positioning them in as many different categories as could be reasonably justified. In this manner, cases might be duplicated, i.e., appear a number of times in different categories within the same scale set, and/or appear in different scale sets. Contracting the number of variables (scales) meant, in essence, employment of another standard in data manipulation: scientific parsimony. Data were viewed here in their simplest, in

the sense of noncompounded, most wholistic state. Contracting was done in successive phases. At time it meant combination of various scales into one composite scale, usually on the basis of clusters obtained from hierarchical cluster analysis (Price, 1969), or extrapolation therefrom. At other times it meant deleting all duplications (i.e., positioning a case in one scale set only) or reducing them to an absolute minimum: an action which in either case considerably reduced the number of cases and ultimately, the number of variables (scales), as the difference between fifty-six and twenty-one demonstrates.

As indicated, progression of the four sets of scalograms is from most expansive to least. In this manner, the opportunity is provided for the data freely to manifest all their dimensions. Certainly any conclusions drawn carry additional weight and reliability from these repetitive testing procedures, particularly if such procedures appear to corroborate the same kinds of conclusions. Not to be ignored is the fact that, in the context of this kind of research, finding the best fit for the data is in large part a trial and error proceeding. This is true not only among the scales themselves, but within the scales, in terms of their specific content. Even the scales herein described are some experimental distance from their initial compilation in purely conventional, legal categories.

Throughout, the justices' votes are indicated by + or -. The meaning of these two symbols in each set (J, C, E, F) is based on previous behavioral research in these areas. Specification of + and - is found notably in Spaeth (1962, 1963, 1965, 1966); Schubert (1962, 1965, 1967); and Ulmer (1960). In J, a + vote upholds the supervisory authority of the Supreme Court over the judicial system, and in that sense is assertive of Court control. In C, a + vote upholds the civil liberties claims of the individual against government. The individual claimant in this context urges Bill of Rights or statutory guarantees. In E, a + vote is pro union; anti business (if it is business against individual); pro employee in claims against employer; pro competition (hence anti monopoly); and pro small business as it contends against big. The F category involves monetary clashes between individual taxpayer and government. Here a + vote upholds the tax power as exercised by government (national, state, or local). The directionalities described hold true generally. In those instances where they do not, qualifications or modification of any kind are explicitly noted.

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I. The Fifty-Six Variable Sets

J Scale Set

The J or Judicial Scale concerns the courts, in particular federal courts in a single-minded, focused fashion. Generally, the central consideration is the position of the Supreme Court on jurisdictional questions, vis-à-vis litigants petitioning Court jurisdiction, or lower courts, state/federal, and the susceptibility of their rulings to Court jurisdiction. The following scales comprise this set.

The J-Jurisdiction scale (I-J-1) has two AOs and ASs (cf., Chapter II, pp. 50-51), one concerning relations between court and litigant; the other, between court and court. A + vote represents an expansive, activist posture regarding matters perceived by the Court as sufficiently important to merit federal jurisdiction. Thus it asserts federal court jurisdiction (which means either taking up the question judged worthy of consideration, or at times, dismisses it as unworthy of consideration by the Court). Cases included as reasonably relevant, with issue indicated, are:

77/413	entrapment as available defense in federal criminal trial
78/1160	state supreme court on state policy toward insolvent foreign corporations
81/21	Indian claims; federal court following state law
76/389	district court jurisdiction to punish in patent suit

- 80/54 right to challenge seizure by Alien Property Custodian, in federal court; gov't. consent to be sued
- 81/843 right to appeal, plea for new trial from D.C.
- 81/1229 Wis. labor statute as a substantial federal question
- 77/131 Miss. redistricting statutes; dismissal of bill for want of equity
- 77/652 state courts as ultimate interpreters of state statutes; corp. activities across state boundaries
- 79/1530 review of state court judgment; presence of federal question in Ga. insurrection statute
- 76/1253 prosecution of prohibition agent; federal court jurisdiction in removing criminal prosecution from state to federal court
- 77/1148 assertion of jurisdiction involving dismissal of bill claiming unfair competition; copyright question (odd ruling, but retained)
- 77/1292 extradition warrant between states; state court jurisdiction in question of federal right in habeas corpus proceedings
- 79/1546 original jurisdiction but no justiciable controversy between U. S. and W. Va. therefore dismiss

Nonscalars (NSRs) occurred in: 80/54 (3 NSRs); the expansion of 77/652; 76/1253/ 77/1292, suggesting other aspects besides the jurisdictional dominate these cases for certain justices. Regardless, their inclusion still seems warranted, on the basis of the other votes, as well as legal content.

The J-State cases scale (I-J-2) is, in effect, a subscale of (I-J-1), consisting in those cases originating in state courts. Nonscalars still occur in 76/1253 and 77/1292. In the former, Brandeis votes negatively, against federal court jurisdiction, against the government agent's petition for removal of prosecution to a federal court, though leaves the door open by allowing

amendment of a petition he considers faulty. In the latter, Sutherland votes positively to uphold the jurisdiction of the state court in refusing to honor an extradition warrant from another state. This case is a borderline inclusion in J, as its dominant aspects position it more securely in C. Its subspects did include jurisdictional considerations, thus it was positioned here as well.

The J-Federal cases scale (I-J-3) is a subscale of those cases out of lower federal courts that were included in (I-J-1). The only nonscalar is 80/54, wherein both McReynolds and Butler vote positively, upholding the individual's right to challenge, in federal court, government seizure of property, this being the only available remedy under Trading with the Enemy Act. The decidedly pro individual consequence of upholding federal jurisdiction probably accounts for their vote. The case itself is problematic, but to delete it decreases discrimination, hence retention seems preferable.

In the J-Full Faith and Credit scale (I-J-4), + votes give extensive scope to full faith and credit requirements, supporting and/or enforcing positive interstate relations. The Court is seen as umpire of equitable dealings among states: - votes uphold one state's determination of its relation (generally a superordinate

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one) with another (state). Pertinent cases, with issue indicated, include:

- 79/1100 conflict of laws; order to N. J. courts to take jurisdiction as full faith and credit requirement
- 80/9 Cal. claim to tidelands; rights between Cal. and U. S.
- 78/1160 state against insolvent foreign corp.; supremacy of local policy
- 80/220 income tax due from Ill. company to Wis.; comity
- 78/1206 diversity; Utah citizen and Ill. corp.; lien on insurance policy
- 78/269 divorce suit; rights claimed under records of different states

Cardozo's - vote in 79/1100 is the only nonscalar. A + vote is anti state in that it forced New Jersey courts to take the case, in accord with full faith and credit requirements, whereas a - vote is pro state court determination to deny resort to its forum by a bank superintendent of another state.

The J-Jurisdiction Subscale on Federal Cases and C-Subscale on Subconstitutional Fair Procedure scale (I-J-5) is one including, in the J portion, all cases from the jurisdiction scale, involving the jurisdiction of various federal courts (Supreme, district, etc.); and in the C portion, all those cases in the subconstitutional fair procedure scale that came from federal courts. An important factor here is federal intercurial relations, in particular, some idea of intercourt comity. Nonscalars involve:

- 76/356 a C case in which Butler's - vote supports a new trial for one convicted under the National Prohibition Act, against jury verdict
- 77/1148 a J case in which Brandeis' + vote (a difference rather than dissent) follows the majority vote, but without modification limiting court jurisdiction in one phase of the case
- 77/439 a C case in which Cardozo's + vote would allow Court review of a federal trial court in the name of orderly administration of justice
- 79/1546 a J case in which Brandeis' + vote (distinction) would allow the U. S., bringing suit against W. Va., to amend the bill such that there be a justiciable question over which Court could take jurisdiction

C Scale Set

The C or Civil Liberties set concerns cases involving noneconomic, civil rights of the individual. Civil liberties on the Hughes Court in the 1930's were, however, quite different from civil liberties on the Warren Court in the 1960's. The 1930 variety was distinctively pro individual in the sense of individual vs. state type context. For this reason, then, some of the most conservative members of the Court take at times surprisingly pro civil liberties stances. It is the individualism implicit in those civil liberties dealing with constitutional, individual guarantees that accounts for this rather anomalous situation. Such conservative individualism is of the kind that notably does not brook the guaranteeing of social-economic rights of individuals by government. Thus a + (pro C, pro individual) vote here, though more often than not can be equated with a liberal vote, is

basically a plus in terms of a Manchester style liberalism. As such, it tends to nullify government action in order to protect the individual. Pro individual votes can contain a very negative attitude towards governmental activism. The ostensible, legal process by which such pro C votes are effected appears, in most instances, to be via strict, narrow construction of the statute or constitutional phrase. In some cases, however, directionality is complicated due to the intrusion of other variables, which may represent civil liberties writ large: for example, state action to insure the integrity of the civil liberties of the general public. These variables may also juxtapose supraindividual rights to individual rights, as in cases involving international treaties, questions of international comity. In such instances, the + vote, generally representing the most liberal, is assigned the broader interest.

The C-Combined Master Scale of all C cases (I-C-6) combines case subject subcategories of fair procedure (fp) involving generally impartiality in the trial phases; jury trial (jt); due process (dp) cases explicitly or impliedly referring to, and concentrating on, the phrase "due process of law"; statutory construction (sc); and constitutional interpretation (ci). Such content is broken into the state-federal dichotomy as well. Cases included, with issue noted, are:

- 77/413 defense of entrapment to violator of National Prohibition Act; jt and sc
- 78/484 sufficiency of indictment charging conspiracy to violate Federal Corrupt Practices Act; fp
- 78/968 reentry permit for alien; immoral purpose under 1917 Immigration Act; sc
- 76/356 question of reexamining jury verdict; fp
- 76/843 filthy letters within meaning of U. S. Criminal Code; sc
- 77/159 inherent right to counsel under XIV amendment, dp; Negro trial in Ala.; dp
- 78/369 federal court's application of common law permitting wife's testimony in criminal prosecution of spouse; fp
- 81/843 right to jt under VI amendment; jt and ci
- 77/64 international treaty vs U. S. liquor laws; seizure of rum runner on high seas; sc
- 78/315 international extradition treaty; surrender of citizen to criminal prosecution in England; sc
- 81/78 VI amendment right to trial by impartial jury; gov't. employees as jurors
- 76/784 action of state delegates (executive committee of Democratic party under statutory authority) as vs XIV amendment; voting rights; sc
- 78/674 Mass. court procedure re a view; rights of accused under XIV amendment, jt and ci
- 81/1066 Ga. statute on subversive utterances as vs. freedom of speech and assembly, XIV amendment; dp, sc and ci
- 77/131 Miss. redistricting statute and requirement of compactness and population equality; sc
- 79/603 VI amendment requirements; constitutional right to jt and jury verdict; jt
- 76/1054 doctrine of res judicata; the justice of a system of procedure; dp
- 79/1530 timeliness in preparation of a federal question; Ga. insurrection statute as denial of fundamental liberties; dp, sc, and ci
- 77/212 IV amendment search and seizure; conviction under National Prohibition Act; sufficiency of affidavit; sc, ci and fp
- 77/260 probable cause for government's issue of second warrant, IV amendment, search and seizure; sc, ci and fp
- 77/439 Court review of federal trial court re new trial for error of fact; fp
- 78/381 instructions to jury; information on deductions on federal income tax form; V amendment rights in refusing to answer jury; jt, sc and ci

Nonscalars include:

- 77/413 McReynolds' - vote, vs allowing the individual the defense of entrapment
- 78/484 McReynolds' - vote, a partial dissent, that all alleged counts (vs individual charged with failure to file statement of political campaign contributions) rightly demurred; that no man should go to trial under allegations so controversial (Directionality in this case is complicated by the added factor of the Federal Corrupt Practices Act and its protection of the larger public by guarding the presidential election process. Hence a + directionality for the majority vote, seen as pro this larger public, and the - vote for McReynolds, seen as pro individual accused but against larger public rights in that sense.)
- 76/843 Butler's + vote in an expansive interpretation of the amended U. S. Criminal Code, holds filthy letters as within its meaning
- 77/64 McReynolds' + vote is pro international comity and anti U. S. gov't. in the sense of yielding U. S. right to enforce liquor laws to an international treaty
- 78/315 Brandeis' and Roberts' - vote would deny citizen's extradition to England for acts not criminal in place of asylum
McReynolds' + vote, while anti individual, is pro international comity in asserting U. S. duty to comply with the treaty and honor England's request
- 78/674 Brandeis' and Roberts' - vote upholds the accused's right to be present at trial, vs the state procedural provisions; McReynolds' and Van Devanter's + vote upholds a state's freedom to regulate the proceedings of its courts unless offensive to fundamental principles of justice; justice also to the accuser
- 77/131 Hughes' - vote upholds Miss. redistricting statute, despite omission of requirements of compactness and equal population

C-Federal Cases in C Master (I-C-7) includes all federal cases in the C master scale, with two cases (78/315 and 77/131) having both state and federal aspects, hence positioned in both this federal scale and

the following state scale. This is a scale of duplicates. The nonscalars include: 77/413; 78/484; 76/843; 77/64; 78/315; and 77/131, all of which are noted in (I-C-6).

C-State Cases in C Master (I-C-8) consists of duplicates, i.e., all state cases out of the master scale (I-C-6). The majority involves pleas under XIV amendment and the nonscalars, already detailed, include 78/315 and 78/674.

C-Procedural Cases in C Master (I-C-9) represents a combination of due process, unconstitutional fair procedure and jury trial cases. Among the nonscalars are: 76/356, explanation (I-J-5), and 78/674, explanation (I-C-6).

C-Jury Trial Scale (I-C-10) exemplifies the problem of assigning directionality, and the different meaning attached to C directionality in the 1930's. A - vote here tends toward application of jury trial guarantees in the manner more beneficial to the individual as individual, pitted against society/state/legal system. A + vote has seemingly the idea of jury trial as sacred liberty, application of which demands worthy bases. It tends to represent more an assessment of case facts against jury trial standards (i.e., sufficiency of facts vis-à-vis the constitutional guarantee). Jury trial is held up as an ideal and the Court is to maintain its integrity against possible indiscriminate application. The outlook of

Court liberals here tends towards conservative, if conservative means less pro individual, in the sense that if the procedure is just, its results should not be nullified upon the complaints of disappointed litigants. The conservatives tend to be very pro individual in the sense that individuals should reap every benefit from jury trial, even if it takes a new jury trial to do it. The already mentioned nonscalars are: 78/674, explanation (I-C-6), and 79/603, in which Brandeis' + vote upholds an expansive interpretation of VII amendment, thereby increasing courts' discretion with regard to the procedure they prescribe. Cases here involve, generally, VI, VII, and XIV (due process) amendments.

C-Combined Due Process and Subconstitutional Fair Procedure (I-C-11) is, as indicated, a composite of: C-Subconstitutional Fair Procedure Subscale (I-C-12) and of C-Due Process Subscale (I-C-13). All cases are duplicates and involve mixed statutory, constitutional considerations. A + is a pro individual vote, save in cases: 76/356 and 77/260, where the more liberal direction is pro-government enactment, i.e., National Prohibition, and 78/484, pro requirements under the Federal Corrupt Practices Act. There is one nonscalar: 78/484, where Butler's + vote upholds the requirements of the Corrupt Practices Act and the sufficiency of conspiracy counts against the political committee. The content of

the subconstitutional fair procedure subscale (I-C-12) involves U. S. district courts in every case save 78/484 and 77/260, which concern the supreme court of D.C. The only nonscalar, 78/484, is as before. The due process subscale (I-C-13) has no nonscalars. The National Prohibition Act and XIV amendment are generally prime activators in these cases.

C-Substantive Cases in C Master (I-C-14) include those cases in the master involving statutory construction and/or constitutional interpretation. Nonscalars are:

78/968	McReynolds' + vote upholds a narrow interpretation of the 1917 Immigration Act re moral aspects of alien's purpose of entry; pro alien
76/843	explanation, (I-C-6)
77/64	explanation, (I-C-6)
78/315	explanation, (I-C-6)

C-Statutory Construction cases from C Master (I-C-15) consists totally of duplicates. Its content cases are not purely concerned with statutory construction but contain additional aspects such as jury trial, constitutional interpretation (when, for example, a statute is contested as contravening a constitutional right, which in some cases tends to bring on a lengthy discussion of just what the Constitution does mean in the area of relevance), fair procedure, and due process. The nonscalars are identical with (I-C-14). Statutes construed were, in general, the National Prohibition Act;

Federal Corrupt Practices Act; U. S. Criminal Code; extradition treaties with England; Texas statute on political parties; Georgia criminal statute and penal code; Mississippi redistricting acts, and provisions from the 1926 and 1928 revenue acts.

C-Constitutional Interpretation of cases from C Master (I-C-16) is notably small and contains all duplicates. Constitutional interpretation is here taken in its loosest, most broad sense (i.e., the meaning of a general constitutional phrase in the case at hand). In the practical process of interpretation, it means, at least verbally, juxtaposing statute and constitutional phrase--the slot machine concept. The only nonscalar is 78/674, explanation (I-C-6), with the difference that in the structure of this scale, Van Devanter's inconsistency drops though the vote is unchanged. The constitutional provisions construed are mainly amendments I, IV, VI and XIV.

C-Federal Substantive cases from C Master (I-C-17) are those federal cases involving statutory construction and constitutional interpretation. As with most of the foregoing scales deriving from the master, all manner of permutations are employed regarding the data. These permutations, as is evident, involve classifications from the more specific (e.g., a specific legal concept) to

the more generic (e.g., statutory construction). Non-scalars here (I-C-17) are:

78/968 McReynolds' +, explanation (I-C-14)
 Butler's - as anti alien entry; strict interpretation of 1917 Immigration Act
 77/64 explanation (I-C-6)
 78/315 explanation (I-C-6)

Case 77/131, while essentially a state case, is included because it involves the congressional reapportionment act of 1911 and a subsequent Mississippi redistricting act based on it.

Within C-Federal Procedural cases from C Master (I-C-18) are those duplicate cases involving due process, unconstitutional fair procedure, and jury trial. Butler's - vote in 76/356 is the one nonscalar: a case involving the National Prohibition Act in which Butler supports petitioner's appeal for a new trial on grounds of inconsistent jury verdict. The majority of cases in this scale arose from court procedures either in the enforcement or trial phases surrounding convictions under the National Prohibition Act.

C-Federal Cases involving Statutory Construction (I-C-19) generally involve such statutes as were mentioned in (I-C-15). Nonscalars were noted before (78/968; 77/64; 78/315): the first explained in (I-C-17) and the last two in (I-C-6).

C-Federal Cases involving Constitutional Interpretation (I-C-20) includes four federal cases: two

regarding amendment VI guarantees; two, the search and seizure provisions of amendment IV. The two search and seizure cases derive from the National Prohibition Act; the other two, from D. C. statutes. There were no non-scalars.

C-State Substantive Cases (I-C-21) involves both statutory construction and constitutional interpretation. Each of the five cases concerns a state statute (e.g., Illinois criminal law; Georgia penal code; Mississippi redistricting act; Texas statute on political parties), and the majority relate to XIV amendment guarantees. One nonscalar, 78/315, here drops to only two inconsistent responses, Brandeis' and Roberts' - , denying England's right of treaty to the surrender of a U. S. citizen for action not criminal in the place of asylum, Illinois.

C-State Procedural Cases, involving due process, subconstitutional fair procedure, and jury trial (I-C-22) contains six duplicates, five of which involve amendment XIV, due process and one, amendment I per XIV. Five involve Negroes; three in regard to assistance of counsel; two in regard to Georgia's statutes on insurrection and subversive utterances. The odd one (78/674) concerns a state's right to regulate its court procedure, especially, the right of the accused to be present at a

view. It is also the only nonscale response, identical to that in (I-C-16).

In C-State Cases involving Federal Constitutional Interpretation (I-C-23) all three cases relate to XIV amendment. The marginal case from the viewpoint of inclusion is 79/1530, as Cardozo's dissent is long on the clear and present danger test and the libertarian angle but the majority views it chiefly as a question of timeliness in preparation of a federal question. Nonscalars include:

- 78/674 Brandeis' - upholds as fundamental the right of the accused to be present at his trial and at the view
- 81/1066 Roberts' + holds the Ga. statute on subversive utterances a dragnet; so vague as to contravene XIV amendment

C-State Cases involving Statutory Construction (I-C-24) has all duplicates, and all concern state statutes. Case 78/315 is borderline because it is actually a very federal case with state aspects, though certain of these latter dominate also (e.g., Illinois criminal code requirement as against international comity). This case is also responsible for the only nonscalar, explanation (I-C-6), although only Brandeis' and Roberts' votes constitute inconsistencies here.

E Scale Set

The E or Economic scale is a title which seems sufficiently descriptive. Its basic aspects concern, in

the main, taxation and regulation by both state and federal governments, and the constitutionality of the powers these governments rely on in the exercise thereof. A + directionality in general upholds state/federal governmental action, therefore is liberal in the sense of an adaptive constitutionalism which adjusts the requirements of constitutionality to new, expanding uses of governmental powers.

E-Combined State and Federal Regulation (I-E-25) is a mass composite of sixty-six cases, variously derived from other E scales on: state regulation (sr); antitrust (a); ICC; commerce regulation (cr); and federal regulatory/administrative agencies (ra). To expedite explanation, the usual pattern of immediately indicating cases and issues is not followed. This is instead reserved to the separate consideration of each of the five scales.

Among the purposes of such a composite as this is to ascertain the stability of ranks across the largest possible number of similar cases, and to compare the resulting ranks with the other, smaller, more refined scales. Equally important, if it can be empirically shown (as in this instance it is), is that so many varied cases, capable of being so separately classified, evoke basically the same kind of attitudinal response on the part of the justices. In other words, they are unidimensional by

the very fact that upon combination they do scale. Non-scalars in (I-E-25) are:

76/1184 (ICC) Butler's - vote against ICC determination of reparations

77/288 (sr) Butler's - vote against state regulation of its highways; truck freight lines

81/659 (ra) Sutherland's - would uphold suit to set aside Secretary/Commerce order cancelling steamship rate schedules

81/1186 (ICC) McReynolds' + upholds ICC order for carriers to desist from spotting cars on industrial plant tracks

77/706 (ra) Roberts' - upholds lower court's setting aside FTC orders; Butler's + upholds FTC orders re unfair competition though admitting the suppression of trade names to be excessive

80/54 (ra) Roberts' - would deny Court jurisdiction without government's consent to be sued McReynolds' and Butler's + upholds right of the individual challenger to recover proceeds from gov't. seized property

77/1180 (sr) McReynolds' + upholds district court's dismissal of bill enjoining enforcement of gas rate order of Cal. Ry. Commission

76/999 (a) McReynolds' + yields 3 NSRs; upholds regulation and restraint on combination under Sherman Act; pro competition

79/1451 (ICC) Cardozo's - yields 2 NSRs; upholds rail carrier retaining profit under ICC approved rates; indirectly upholds ICC but is more pro carrier than pro ICC Roberts' + yields 2 NSRs; upholds second ICC order as reasonable but charges that carrier has no right to collect sums exacted, thus is obliged to restitution; upholds state's own lawful tariff existing prior to ICC order

80/688
(ra & cr, exp) Roberts' + denies even stockholders' standing to challenge, in Court, the Ala. Power Co.'s contract with TVA

81/1223 (sr) Roberts' + upholds Ga. supreme court ruling sustaining a state law separately classifying insurance companies for licensing purposes

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81/1223 (sr) Roberts' + upholds Ga. supreme court ruling sustaining a state law separately classifying insurance companies for licensing purposes

77/114 (ra) Brandeis' - upholds dismissal of bill requiring Court to determine exclusive rights of patentee (a gov't. employee) to his invention
Hughes' + holds that the public should benefit, therefore is pro gov't. right to cancel patents

78/260 (sr) Brandeis' - is against Va. delegation of power to highway commissioner to abolish grade crossing as violating XIV amendment
Hughes' + upholds the delegation

77/652 (ra, exp) Cardozo's - would not defer to state court's interpretation but on the more technical grounds that corporation directors failed their fiduciary duties

76/348 (ICC) Brandeis' + would uphold ICC award of reparations

78/1353 (ra) Stone's + would allow deductions from veteran's pension by hospital caring for him

AOs and ASs in this scale more properly might be taken as the AO and AS for each of the five subscales individually.

In E-State Tax (I-E-26) a + is supportive of state tax measures. The content cases involve such matters as: franchise tax on foreign corporations; intergovernmental tax immunity; chain store tax; succession; and tax on items such as corporate shares, other intangible properties, or items bought by the U. S. The similarity of a number of these cases resulted in several subscales: E-Intergovernmental Tax Immunity (I-E-27); E-Fourteenth Amendment, Equal Protection (I-E-28); and E-Chain Store Tax (I-E-29). Cases in the state tax scale, with issue indicated, include:

76/1102 domicile as basis for taxation by state
76/1136 state tax on company in hands of receivers;
construction of state franchise tax law

- 81/666 state tax on income from lands (and mortgages thereon) in another state
- 81/814 state tax on use within state of personal property
- 76/893 state tax as violating its constitutional contractual obligation
- 79/780 chain store license tax applied to filling stations for gasoline
- 81/1245 Ala. social security act; equality of taxation and uniformity
- 81/1193 La. chain store tax; license fee
- 76/815 federal taxation but also involves Okla. right to tax private leases
- 78/1411 Ill. seeking to tax Wis. insurance company in Ill.
- 76/248 taxing husband on wife's income
- 76/313 succession tax; stock in domestic corporation owned by nonresident
- 77/710 franchise tax on foreign corporation selling intrastate
- 77/929 chain store tax; occupation tax graduated according to number of stores under one ownership
- 79/1054 Ky. gross sales tax; four suits to enjoin enforcement
- 79/1520 tax on interest represented by land trust certificates (intangible property)
- 80/91 state tax on corporate shares which include federal securities in assets
- 80/299 state income tax law exempting dividends of corporations paying state franchise tax
- 80/402 injunction to restrain collection of assailed tax, authorized under a 1935 amendment of the AAA (N.B., a federal tax case, inadvertently included here because it is a memorandum case which did not specify the kind of tax, which kind was only later discovered by reference to an adjudicated, related case Rickert Rice Mills v. Fontenot 80/513, involving eight companion cases, one with the plaintiff in 80/402)
- 80/532 assessment of railroad properties in each county of N. Dakota, for purposes of 1933 taxes
- 80/1236 Ala. tax on storage of gas sold to the U. S.
- 81/22 state tax on merchants (A & P, Walgreen, etc.); 1935 Iowa chain store tax
- 81/239 Mass. taxing contingent interests under statute enacted after creation of trust; succession tax

Nonscalars are:

- 76/1102 Van Devanter's - only a partial dissent re majority's statement on amendment XIV not requiring rigid rules of taxation by states
- 76/893 McReynolds' + upholds Cal. Bank and Corporation franchise tax as applied to income from federal securities
- 78/987 McReynolds' + upholds state statute providing added liability if insurance company fails or delays in payment of claims
- 76/815 (exp) Cardozo's - (literally given a - vote by the fact that he does not join Stone and Roberts in Brandeis' most liberal dissent, calling for frankly overruling an erroneous stare decisis. He had, however, along with Roberts and Brandeis, joined in Stone's liberal dissent).

E-Intergovernmental Tax Immunity (I-E-27) is a sub-scale previously mentioned, containing all duplicates. Of the nonscalars: 76/893, explanation (I-E-26); and 80/1236, Roberts' - would strike down the Alabama tax on storage of gas sold the U. S.; gas being so essential. E-Fourteenth Amendment, Equal Protection (I-E-28) in great part contains those cases involving chain store tax, but also succession taxes, gross sales tax, valuation for taxation, attorney fee as taxable; unemployment compensation tax. Nonscalars include 76/1102 and 78/987, both of which are detailed in (I-E-26). E-Chain Store Tax (I-E-29) contains all duplicates and no nonscalars, but yields only four ranks. Involved are chain store taxes in West Virginia, Louisiana, Florida and Iowa.

In E-State Regulation (I-E-30) a + vote upholds state regulation and state legislative determination mainly with regard to business activity, save in the case

of 77/652, which is pro national, rather than pro state, regulation. Cases herein are:

- 77/288 state power to condition use of its highways therefore regulation of transport
- 78/1160 reviewable decision; liquidation of assets of foreign corporation; full faith and credit
- 80/220 income tax due from Ill. company to Wis.
- 76/500 N. Carolina tax act (A & P as object)
- 77/1180 review of rate order (under Cal. Railroad Commission) by Court; gas rate, public utilities
- 78/940 N. Y. Agriculture and Markets law, regulating milk prices; XIV amendment, dp
- 79/1070 state laws differentiating domestic from foreign insurance corporations; equal protection, XIV amendment
- 80/669 N. Y. Milk Control Act, differential favoring dealers of less well-known trade names
- 81/703 Wash. state minimum wage legislation; XIV amendment
- 81/835 Va. milk commission, licensing law and price regulation
- 81/1229 Wis. labor code allowing peaceful picketing
- 80/1347 N. Y. minimum wage law insuring a just minima for women employees
- 81/573 state regulation of corporations in interstate commerce; power to regulate public utilities
- 81/1223 reasonable basis of classification (mutual and stock insurance companies) in statute
- 77/652 deference to state courts as ultimate interpreters of state statute
- 78/260 statute empowering highway commissioner to order abolition of grade crossing
- 79/1365 assessment by municipality against street railway, in accord with state statute, without hearing
- 79/1640 valuation of public utilities plant by Md. Public Service Commission; requiring use of property without adequate compensation
- 80/233 Ala. tax on unlawful business; statute as part
- 80/241 of enforcing machinery of XVIII amendment; both state and federal regulation here as the Revenue Act of 1926 put a \$25 excise tax on all retail liquor dealers and a special excise of \$1000 on such dealers when they did business against laws of state or municipality

- 80/675 Milk Control statute; benefits enjoyed by those in business before enactment
- 76/747 police power; Okla. statute requiring license to enter ice business
- 79/949 police power; validity of statute as dependent on fact; state commissioner's assessment of railroad for a portion of cost of underpass

Among the nonscalars are:

- 78/1160 Butler's + upholds state supreme court right to determine local policy re insolvent foreign corps
- 77/1180 McReynolds' + upholds state rate making order by favoring dismissal of bill to enjoin enforcement
- 81/1223 Roberts' + upholds reasonableness of state's classification of mutual and stock companies
- 78/260 Brandeis' - holds state delegation of power to highway commissioner unconstitutional
Hughes' + upholds commissioner's order
- 77/625 (exp) Cardozo's - because his dissent, though with a liberal result, is on more technical grounds (i.e. breach of fiduciary duties rather than necessity of national control over corporations, as Stone's dissent suggests)

E-State Regulation of Milk Prices (I-E-31) is a small subscale yielding three ranks only. It has no nonscalars.

E-State Police Power and Regulation of Public Utilities via Commissions (I-E-32) is a subscale having one nonscalar, 78/260, explanation (I-E-30), though Brandeis alone has an NSR. All cases here consider state power under the limitations of due process, XIV amendment, save 77/1180, which invokes no constitutional provision.

E-State Provisions for Labor (I-E-33) is a subscale involving the Washington and New York minimum wage laws, the Wisconsin labor code, and an expansion. There are no nonscalars. E-State Regulation of Foreign Corporations

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(I-E-34) involves out-of-state insurance companies and state taxation of corporations in interstate commerce. There are no nonscalars. These four subscales under the state regulation scale were constructed to achieve finer discrimination among the ranks, and to "catch" those distinctions possibly submerged by the larger scale.

In E-Commerce Regulation (I-E-35) a + vote upholds commerce regulation by state and/or federal government.

The complete universe of cases is:

- 80/688 stockholders' suit to set aside corporation contract with federal gov't.; scope of federal commerce power; TVA
- 81/893 congressional power under commerce clause; relation of manufacturing to commerce; Jones-Laughlin violation of NLRA by unfair labor practices affecting commerce
- 81/953 press relation to interstate commerce; NLRB status re freedom of the press; AP
- 79/1468 congressional power over commerce to provide compulsory retirement and pension system for carriers subject to Interstate Commerce Act
- 80/1161 congressional power to regulate bituminous coal industry; commerce power; wages and hours provisions
- 81/573 state regulation of corporations in interstate commerce; railroad suit to recover fees paid under protest to state (an oddity because involving state power to regulate interstate commerce)
- 79/446 oil industry provisions of NIRA; executive orders prohibiting transport of petroleum (hot oil cases)

The only nonscalar is an expansion of 80/688, in which Hughes is assigned a - because he would not go so far as to say (with Brandeis, Stone, Roberts, and Cardozo) that the plaintiff had no standing to challenge the contract. The bulk of cases herein came out of New Deal legislation:

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NIRA, NLRA, Railroad Retirement Act, Bituminous Coal Conservation Act, and executive orders.

For the E-Interstate Commerce Commission scale (I-E-36), in general a + upholds an ICC order/action, taken under the authority of the Interstate Commerce Act. Universe of cases consists in:

81/1186	ICC orders to carriers; sufficiency of findings to support order
76/1184	enforcement of ICC order for reparations (paid merchants by stockyards)
77/248	mandamus to compel ICC specifically to value trackage and terminal rights (N. Y., N. Haven and Hartford Railroad)
79/1451	ICC power to give reparation if discriminatory intrastate rates; state schedule vs that of ICC
77/1410	ICC order removing prejudicial discrimination by carriers between certain points
79/1382	ICC findings and orders <u>re</u> stockyards
77/588	ICC power to compel extension of service by a rail and navigation company
76/177	ICC order <u>re</u> car hire settlement rules
76/243	validity of <u>ICC</u> rate division order
76/348	ICC power to award reparations; involves shipments under approved rates
81/643	reviewability of ICC order annulling tariff extending switching limits

Notable are Cardozo's two inconsistencies in case 79/1451, but perhaps this is more due to the limitations of the simplistic +/- code for directionality. Cardozo's majority opinion advises the Court to stay its hand in this rate dispute between carrier and shippers, though upholds the ICC insofar as to say its schedule is not unreasonable. The burden of proof is placed on the claimants. This in effect supports the action of the carrier under ICC order, thus is much more directly pro carrier than pro ICC.

E-Contracts (private; insurance); Bonds; Contract Systems (I-E-37) is a rather mixed principals scale. There is a variety of litigants, perhaps excessively so for a good scale. Nonetheless, + generally identifies an anti business vote (usually in cases where it is insured [individual] v. insurer [insuring company]). In cases where it is a company (the insured) v. insurer (insuring company), + usually means interpretation of contract favorable to insurer, not to aggrieved business. Federal jurisdiction obtains in these cases usually due to diversity proceedings. Included are:

- 81/659 suit to set aside order of Secretary/Commerce cancelling steamship rate schedule (charging higher rates to shippers not under contract); Merchant Marine Act
- 80/105 surety bond of gov't. contractor; claims against it by materialmen
- 76/490 release of surety; a union's attempt to recover loss
- 76/648 presence of prohibited article on insured premises (stills)
- 81/678 private contract for payment of gold (provisions for payment of rentals); Gold Reserve Act (an oddity but related; a gold clause case, it concerns a contract of a private nature though the Court judged its subject matter within congressional control [rent payment in gold bullion])
- 78/1206 interpleader suit, by insurer, vs insured and vs creditor; insurance policy
- 81/720 surety company suit; effect of federal court decree, extinguishing the judgment preventing recovery; Texas insurance company in La.
- 77/197 requisites of contract; oral agreement; D.C.
- 78/999 insurance coverage, death benefits
- 78/934 insurance claims; death by accidental means (sunstroke while golfing)

Nonscalars are:

- 81/659 Sutherland's - opposes the Secretary/Commerce order cancelling steamship rate schedules allegedly discriminatory
- 80/105 Roberts' - holds that materialmen have no priority over each other's claims and no right to a lien on the fund or contract (bond)
- 77/197 Brandeis' + holds the Court should dismiss the writ as improvidently granted, the question not being of general interest
- 78/934 Cardozo's + is pro the insured because his action (golfing) is not ordinarily dangerous

E-Insurance Contract (I-E-38) and E-Non Insurance Contract (I-E-39) are both subscales of (I-E-37). The first scale (I-E-38) accounts for the only missing data of the study. The few cases on which to rank Cardozo give a completely jaundiced view, hence the justice is not ranked at all. The second (I-E-39) has two nonscalars:

- 80/105 Sutherland's +, against the surety company, which is to pay creditors of the gov't. contractor
- 81/678 Roberts' + upholds congressional power to invalidate private contracts for payment in gold.

E-Contract Clause in Federal/State Constitutions (I-E-40) regards + as upholding the action of state and/or federal government which allegedly contravenes the contract clause in state/federal constitutions: i.e., the contract clause is accommodated to governmental action via + opinions. Some gold clause cases are included here, 79/907 and 79/912, as they involved U. S. gold certificates and the gold clause in U. S. bonds, respectively. The other gold clause cases were more concerned with

private contracts having no direct relation to governmental contractual obligations. There are no nonscalars.

Cases include:

- 76/893 contract obligation in Cal. constitution
- 79/907 U. S. gold certificates; orders requiring their delivery to U. S. Treasury
- 79/912 gold clause in gov't. bonds; Liberty Bonds as federal obligations
- 78/413 construction of contract clause, U. S. Constitution; Minn. Mortgage Moratorium law
- 80/1309 federal Bankruptcy Act; impairing obligation of contract; validity of provisions for municipal debt adjustment
- 76/866 corporation contract, right to enforcement as within protection of contract impairment clause, Art. I, sec. 10, and XIV amendment, U. S. Constitution, or subject entirely to state law
- 81/1239 Mass. succession tax on trusts as violating Art. I, sec. 10, and XIV amendment, U. S. Constitution; Sarah E. Lawrence will case

E-Gold Clause Cases (I-E-41) reference a + as pro government action concerning the monetary system. Case 79/912 is noted, in that + means contractual obligations of government in Liberty Bonds hold but the Court is powerless to remedy the individual injustice done when government does not honor its obligations. Joint Resolution #10, June 5, 1933, source of cases herein, nullified the gold clause in all extant contracts of public and private debt, in effect requiring said contracts be discharged in current legal tender. The sample includes:

- 79/885 gold clause in private corporation contracts; medium of payment; congressional power over monetary system (3 cases considered)
- 79/907 governmental power to appropriate gold and U. S. gold certificates

- 79/912 gold clause in Liberty Bonds (This opinion is expanded because of Hughes' opinion that the joint resolution, insofar as it attempted to override the obligation created by the bonds, was beyond Congress. Stone was most positive of all, holding that government could abrogate gold clauses in both public and private contracts)
- 81/678 provision in private contract for payment of rentals in gold bullion; power of Congress to validate this; Gold Reserve Act and joint resolution as overriding

There were no nonscalars.

E-Antitrust (I-E-42) contains cases under the Sherman and Clayton Acts. A + upholds government's contention about antitrust violation, although 77/825 is an exception: a just-in-case decision asserting jurisdiction but temporarily suspending definitive judgment as to whether the corporate action is prohibited by antitrust legislation or not. The district court was to retain jurisdiction, even though government had not shown adequate grounds for injunction at the time. The directionality here is problematic, which probably accounts for McReynolds' NSR.

- 77/825 suit to enjoin attempted monopoly, creation of exclusive sales agency as against Sherman Act
- 76/999 power of courts to modify injunction decree against combination violating Sherman Act
- 78/1007 FTC power to dissolve merger effected pending proceedings; Clayton Act
- 80/1300 commodities clause of ICA as prohibiting certain relations between holding company (U. S. Steel) and subsidiaries (railroads and industries)

The only nonscalar is McReynolds' - vote in 77/825, holding that an injunction (of attempted monopoly of

bituminous coal industry) should be immediately granted, thus is pro U. S. suit to enjoin combination.

E-Federal Government Regulatory/Administrative Agencies (I-E-43) involves, for example, such alphabet agencies as FTC, SEC, TVA, as well as the U. S. Shipping Board, the Tariff Commission, Veterans' Bureau, Bureau of Standards and Alien Property Custodian. A + upholds the governmental agency concerned but 80/54 is exceptional, as + here means the Court has jurisdiction and the individual the right to challenge government action. The sample universe consists in:

- 81/659 Court review of determination of administrative agencies (Shipping Board and Maritime Commission); Secretary/Commerce order cancelling rate schedules
- 77/796 investigation by Tariff Commission of production costs in U. S. and abroad; disclosure of data, rights affected
- 80/688 U. S. power to generate and sell electricity; government corporation (TVA); government in business
- 77/706 FTC order suppressing trade names and unfair competition
- 80/54 suit to recover proceeds of property seized by Alien Property Custodian
- 78/1007 FTC power to dissolve mergers under Clayton Act
- 80/1015 institution of stop-order proceedings; court duty to protect Securities Act of 1933 (section requiring registration)
- 77/1114 patents of U. S. employees; nature of the right conferred; gov't. ownership of employee's invention
- 78/1353 veteran's pension as subject to deduction by hospital for board and maintenance

Nonscalars include:

- 81/659 Sutherland's - would set aside Secretary/Commerce's order

- 80/54 McReynolds' + upholds individual right to challenge action of Alien Property Custodian
 80/688 Roberts' + joins Brandeis' concurrence, with
 (exp) Stone and Cardozo, holding plaintiffs without standing
 77/1114 Hughes' + would give the public the benefit of the invention; upholds governmental right to cancel patent

A + in the E-Liability scale (I-E-44) is a vote for the individual who claims that liability attaches to the employer or company. Among the source legislation for this category are FELA, Harter Act, New Jersey Compensation Act, Longshoremen and Harbor Workers Act. Regarding the cases themselves:

- 76/903 proceeding for limitation of vessel owner's liability; negligence
 77/743 master and servant relationship; risk of track inspector; FELA
 78/348 exoneration of cargo owners where vessel not seaworthy; suit to recover security deposit
 78/216 admiralty jurisdiction; petitioner's right to lien on vessel for overpaid freight
 76/598 U. S. Employees' Compensation Commission; construing Longshoremen and Harbor Workers Act; federal courts honoring determination of commission
 81/720 prosecution of surety company in state court on appeal bond (Texas insurance company in La., the company itself in the hands of a Texas receiver)

Nonscalars include:

- 76/903 Sutherland's - would deny claims of worker groups (men discharging cargo, also those seeking employment when the ship docked) in #444
 76/598 Roberts' + would uphold the federal commission's determination and would deny a trial de novo
 81/720 Hughes' + would hold the surety company to its liability; pro individual claims

Van Devanter is surprisingly positive in this scale.

E-Bankrupt (I-E-45) is a small scale, containing no nonscalars and minimal discrimination, with only four ranks. A + represents a vote approving steps to remedy or ameliorate a bankrupt situation (whether by federal legislation or bargaining among the parties out of court).

The three cases are:

- 80/121 suit to compel restoration of illicit gains by receiver of insolvent corporation
- 80/1309 validity of provision for municipal debt adjustment; federal Bankruptcy Act permitting local gov't. units to become voluntary bankrupts; public debtors here
- 78/229 unpaid drafts as set-off (a form of unpaid drafts) available against claim of insolvent collecting bank; question of rights of ownership in these drafts

F Scale Set

F-Federal Taxation of Gifts (I-F-46) takes + as a vote for federal taxation, representing an expansive view and broad construction of the federal tax power regarding gifts. Succession and inheritances taxes motivate all cases but one, 79/367, which concerns deductions for charitable contributions. Included cases are:

- 77/844 federal estate succession tax on intangible property of non-resident decedent; due process, V amendment
- 77/784 deeds of trust taxable as gifts; trust created before IRA of 1924
- 79/369 taxpayer right to deductions for charitable contributions; IRA, 1921
- 79/372 taxpayer right to deductions because of amortization of bond discount
- 80/29 succession taxes; trust property subject to tax

- 80/35 succession taxes; trust property subject to tax; gift inter vivos as nontaxable
- 76/792 inheritance tax; inclusion of gifts in contemplation of death; federal statute placing death duties on all gifts within two years of death
- 76/793 IRA of 1926 creating conclusive presumption that certain categories of gifts are in contemplation of death

The only nonscalar: Sutherland's - , which would not allow federal tax on deeds of trust created before the IRA of 1924, a revocable trust prior to the act, which subsequently became irrevocable.

F-Combined State/Federal Tax scales (I-F-47) is another grand composite of three subscales: E-State Tax (I-E-26); F-Federal Tax Master scale (I-F-52); and F-Federal Taxation of Gifts (I-F-46). The whole sample, though gross insofar as data included, is a universe getting at a blanket attitude toward governmental tax power. The large N (75 cases) precludes specification of cases and issues until separate consideration of each subscale. Since E-State Tax (I-E-26) and F-Federal Taxation of Gifts (I-F-46) have already been specified, however, this leaves only (I-F-52). But nonscalars might be mentioned. Notable are McReynolds' and Roberts' decidedly maverick behavior. "S" denotes state; "F", federal, cases.

- 76/1102 Van Devanter's - a partial dissent; takes
(S) exception to statement that XIV amendment does not require a rigid rule of taxation by the state

- 76/365 Hughes' - would hold the widow a beneficiary
(F) of the trust and allow deductions by the trustees from the tax on the trust (an oddity, as three other cases decided with this were all unanimous)
- 81/1279 Butler's - is assigned as he is most negative,
(S) exp regarding the Social Security Act tax on employers of 8 or more as being against X amendment; federal intrusion into state power
- 81/1265 Roberts' - would allow trustee recovery of
(F) taxes as erroneously collected
McReynolds' + as pro gov't. retention of money received in payment of tax due
- 81/1272 Roberts' - would grant mandamus to compel
(F) tax refund
McReynolds' + denies mandamus here, as an ordinary suit would suffice
- 77/844 McReynolds' + upholds gov't. tax power on
(F) intangibles of nonresident decedent
- 79/367 } Roberts' - would uphold deductions
79/372 } McReynolds' + upholds ruling of the IRA
(F) commissioner disallowing deductions
- 77/748 McReynolds' + upholds federal gift tax on
(F) deeds of trust
- 80/500 Roberts' - would uphold suit to recover back
(F) income as unlawfully exacted
McReynolds' + upholds congressional power to tax proceeds of claims settlement even if received before March 1, 1913 (XVI amendment)
- 76/893 McReynolds' + upholds Cal. tax on corporation
(S) franchise
- 76/815 Hughes' - holds tax on income of private
(F&S) lessee (holding oil and gas lease of state [Indian] lands) is an imposition on the lease itself; pro business, anti government tax
- 76/815 Cardozo's - is assigned because he did not
(exp) join the most liberal dissent by Brandeis, urging frank overruling of a bad precedent
Roberts' + is assigned because he joins in both Stone and Brandeis dissents, the former being pro state and national power; the latter going even further in advocating overruling precedent
- 78/1361 Cardozo's - would strike tax on gain from sale
(F) of trustee's property (IRA of 1921) as discriminatory
Roberts' + pro tax power; for enforcement of IRA, 1921, to the letter

- 76/365 Hughes' - would hold the widow a beneficiary
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(F) of trustee's property (IRA of 1921) as discriminatory
Roberts' + pro tax power; for enforcement of IRA, 1921, to the letter

81/691 Brandeis' and Roberts' + would uphold federal
(F) tax on salaries of municipal officers and
employees; vs intergovernmental tax immunity
Stone's - concurs in exemption of municipal
officer's salary from federal tax but on non-
constitutional grounds that the officer was
under exemption prescribed by a valid treasury
regulation

F-Federal Tax Cases involving Statutory Construction
(I-F-48) is another scale category along more generic
lines. It derives from the combined E and F scale. Among
the nonscalars are:

77/844 Butler's - holds intangible property of non-
resident not subject to federal estate tax
Hughes' -, explanation, (I-F-47)
78/1311 McReynolds' - would set aside deficiency
assessment of income taxes against life
insurance company
81/162 McReynolds' - would strike tax on interest in
insurance company's bid on property on fore-
closure, as company's assets not increased
81/1143 McReynolds' - would have the Court entertain
suit for recovery of back taxes collected
under the nonconstitutional AAA of 1933
77/748 Roberts' + upholds federal gift tax
77/143 Roberts' + upholds tax on trusts to preserve
insurance policy (policy as property)
80/62 Roberts' + upholds tax on trust, even if
transferred, together with the power of revo-
cation, to another
78/1361 Cardozo's - and Roberts' +, explanation
(I-F-47)

F-Federal Cases involving Constitutional Challenge
(I-F-49) contains one problematic case from point of
inclusion: 80/500, a suit to recover back income as un-
lawfully exacted, profits being received before March 1,
1913. In it amendment XVI is interpreted, together with
the Revenue Act of 1926. Constitutional challenge by
taxpayer was less involved than constitutional

interpretation by Court, but on that basis I included

it. Nonscalars are:

- 80/500 Roberts' and McReynolds' -, explanation (I-F-47)
- 78/381 Brandeis' - upholds defendant (accused of withholding information on federal income tax form) and his refusal to answer jury on V amendment grounds; requires more proof from government to exercise a constitutional privilege as witness
- 81/691 Roberts' +, explanation (I-F-47) though here the nonscalars of both Brandeis and Stone drop

E-State Tax Cases involving Statutory Construction

(I-E-50) derives from the combined E and F tax scale, hence is E though now positioned in the F set and so coded. Classification is complicated here by the fact that statutory construction is hardly the best phrase to indicate what the Court did in some cases, e.g., the point at which extensive verbal kudos to state rulings and acceptance thereof as a given (in any one case) becomes statutory construction of a very positive, activist manner by the Court. In brief, when does quotation become interpretation become, effectively, redefinition? There are no nonscalars. In most instances, cases involve state tax statutes (e.g., on succession, corporate shares, sales, franchise, excise, chain store license, insurance).

E-State Tax Cases involving Constitutional Challenge (I-E-51) also derives from the E and F tax scale, and contains all duplicates. The constitutional challenge

of the cases here involve due process and equal protection, XIV amendment, interstate commerce clause, contract clause, privilege and immunities, and intergovernmental immunity. Twenty-two cases out of a total of thirty concern XIV amendment, the due process and/or equal protection clauses. The nonscalars are:

76/1102 Van Devanter's -, explanation (I-F-47)
 76/893 McReynolds' +, explanation (I-F-47)
 78/1411 Cardozo's - and Roberts' +, explanation (I-F-47)
 (exp)

F-Federal Taxation Master (I-F-52) takes + as a vote to uphold federal taxing power. The universe of cases, with issue indicated, is:

78/365 deductions permissible in ascertaining taxable income from testamentary trust
 77/844 federal estate (succession) tax on intangible property of nonresident decedent
 78/1311 direct tax re deductions made by insurance company; tax on insurance company gross income
 81/162 Revenue Act taxing income of life insurance company, rights of company as mortgagee (interest on mortgage bids here taxed)
 81/1143 construction of statute (Revenue Act, 1936) providing refund of cotton processing taxes collected under AAA, 1933
 81/1265 trustee right to refund of income tax, given that right to assess beneficiary is barred
 81/1272 mandamus to compel tax refund
 79/367 } taxpayer right to deductions because charitable
 79/372 } contributions and because of amortization of bond discount
 81/1307 stockholder suit challenging old age pension provisions imposing taxes (under Social Security Act)
 77/748 deeds of trust taxable as gifts
 77/1439 tax on life insurance policy as property; taxing trust preserving that policy, when title is not in the person taxed

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- 80/62 succession taxes; property subject to tax; transaction as testamentary in character, thus taxable
- 81/1279 tax imposed by Social Security Act (on employers of 8 or more) as vs X amendment
- 80/29 }
80/35 } succession taxes; property subject to tax; gifts inter vivos
- 76/815 intergovernmental tax immunity; taxation of state instrumentalities
- 78/1361 tax on gain from property sale by trustee
- 78/634 }
78/645 } overpayment to beneficiary through trustee's mistake; what subject to income taxes
- 80/83 character as "capital assets" of a property acquired from decedent
- 80/233 }
80/241 } state tax on unlawful business and federal excise tax on liquor dealers; power of those governments to tax thus
- 80/402 motion for injunction restraining collection of assailed tax (AAA); U. S. v. Butler was then pending
- 80/477 taxpayer right to question purpose to which tax proceeds appropriated (here U. S. claims against corporation in receivership, to obtain processing and floor taxes on cotton)
- 76/422 excise tax on oleo as proper exercise of tax power
- 76/772 }
76/793 } inheritance tax; inclusion of gifts in contemplation of death
- 76/793 Revenue Act 1926 creating conclusive presumption that certain gifts in contemplation of death
- 81/691 federal taxation of salaries of municipal officers and employees (odd case because of the extra variable of intergovernmental immunity, which complicates somewhat and makes the responses less unidirectional)
- 78/381 withholding information re deductions on federal income tax form; refusal to answer jury question on V amendment grounds
- 80/1268 computation of gain upon disposal of preferred stock; what subject to income tax
- 81/1324 amount of payment to assignor of oil and gas lease, income tax
- 79/623 propriety of remand to Board of Tax Appeals (upon taxpayer evidence showing IRS commissioner's finding arbitrary)
- 79/1343 computing capital gains and losses

Nonscalars include:

- 78/365 Hughes' -, explanation (I-F-47)

- 80/62 succession taxes; property subject to tax; transaction as testamentary in character, thus taxable
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- 81/1279 Butler's -, explanation (I-F-47)
(exp)
- 78/1311 McReynolds' -, explanation (I-F-48)
- 81/162 McReynolds' -, explanation (I-F-48)
- 81/1143 McReynolds' -, explanation (I-F-48)
- 81/1265 Roberts' -, explanation (I-F-47), though McReynolds' NSR drops
- 81/1272 Roberts' -, explanation (I-F-47), though McReynolds' NSR drops
- 79/367 } Roberts' -, explanation (I-F-47), though
79/372 } McReynolds' NSR drops
- 81/1279 McReynolds' -, one of the most negative dis-
(exp) sents against the Social Security Act, title IX (tax on employers of 8 or more); holds forth the doctrine of indestructible states
- 81/1307 McReynolds' -, that titles VIII and II (old age pension provisions) of the Social Security Act) are against X amendment
- 80/500 Roberts' -, explanation (I-F-47) although McReynolds' NSR drops
- 80/29 } Roberts' -, in both instances, is against
80/35 } federal succession taxes
- 78/1361 Cardozo's -, explanation (I-F-47), though Roberts' NSR drops
- 81/691 Cardozo's and Stone's - denies federal tax on salaries of municipal officers on non-constitutional grounds; exemption authorized under a treasury statute
Roberts' + would uphold the tax, anti inter-governmental tax immunity

Roberts seems to have a positive attitude here to whatever claims for refund, or remedy he considers well-founded. This exists alongside an equally positive "set" or presumption in favor of federal taxation. Perhaps there is involved some idea of fair play to both sides (government and taxpayer); an idea that federal tax power is not absolute but worthy, in most cases, of the benefit of the doubt. Some of the cases also suggest a sensitivity to V amendment claims in these cases.

F-Revenue Acts 1921 and 1928 (I-F-53) involves difficulties by virtue of the fact that in separating successive revenue acts to determine the peculiarity of each, the question remains as to whether the different wording in each means substantially the same throughout.

The 1921 Act includes:

- 78/1311 definition of gross income of insurance companies
- 79/367 } section where corporate taxpayers' privilege
- 79/372 } of consolidated tax return is subject to treasury regulation (same section also in 1924, 1925 acts)
- 78/634 } definition of what subject to tax (overpayment
- 78/645 } to beneficiary through trustee's mistake)
- section re depreciation deducted by trustee in his fiduciary return
- 78/1361 section re basis for determining gain from sale of stock (trust property)
- 78/719 Revenue Acts, 1921, 1924, 1926: question of beneficiary of a trust not being entitled to deduction because of depletion of mine leased by trust; 1921 act, tax on net income of property held in trust

The 1928 Act includes:

- 80/83 provision for taxing income of life insurance company: calculation of gross income
- 81/1265 tax on income of trust estate assessed; income taxable to beneficiaries, not trustees
- 80/1268 capital gains provisions; gain from sale of property (preferred stock here)

Nonscalars are:

- 78/1311 McReynolds' -, explanation (I-F-48)
- 81/612 McReynolds' -, explanation (I-F-48)
- 78/1361 Cardozo's - and Roberts' +, explanation (I-F-47)

F-Federal Tax for Reasons of Social Policy (I-F-54) includes, for the most part, New Deal enactments representing a new kind of policy and obligation undertaken

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F-Federal Tax for Reasons of Social Policy (I-F-54) includes, for the most part, New Deal enactments representing a new kind of policy and obligation undertaken

by the federal government: such policy and obligation as consonant with what the Beards (1939, III, p. 947) called humanistic democracy. Notable are, for example, cotton processing and rice taxes under the AAA, the federal Social Security Act, and state social security acts enacted under its authority. Case 76/815 perhaps could be omitted, but the issue is taxation of state instrumentalities (i.e., private company leasing state lands dedicated to the support of public schools). Companion cases 80/233 and 80/241 are also included because they involve excise tax on unlawful business (liquor) under state/federal laws, through IRA of 1925 also pertains. There are no nonscalars.

F-Federal Taxation involving Testamentary Trusts (I-F-55) generally involves cases taken up with: taxable income of trust; trustee right to refund; sale of trust; depletion of trust; capital assets of trust; federal estate tax on trust. The nonscalars are:

78/365	Hughes' -, explanation (I-F-47)
81/1265	Roberts' -, explanation (I-F-47) though McReynolds' NSR drops
80/29,	Roberts' - against federal succession tax; it
80/35}	is a gift <u>inter vivos</u>
78/1361	Cardozo's -, explanation (I-F-47), though Roberts' NSR drops

F-Federal Taxation involving Tax Refunds, Discounts, Permissible Deductions (I-F-56) includes such aspects as: refund of taxes collected under AAA; taxes erroneously collected; deductions for charity, for bond

discount amortized; recovery of back income; tax on gifts inter vivos; income improperly assessed; and depletion allowance. Nonscalars appearing are:

78/365 Hughes' -, explanation (I-F-47)
 81/1279 Butler's -, explanation (I-F-47)
 (exp)
 78/1311 McReynolds' -, explanation (I-F-48)
 81/1143 McReynolds' -, explanation (I-F-48)
 81/1279 Roberts' + upholds federal tax power (Social Security Act) taxing employers of 8 or more and upholds state agreement with Congress if the essence of statehood is unimpaired
 (exp) McReynolds' - holds up against this use of the tax power the doctrine of indestructible states
 81/1279 Roberts' +, see directly above

II. The Thirty-Seven Variable Sets

The fifty-six scales just described constitute the fifty-six initial variables. Each of the nine justices was ranked across each of the fifty-six variables, the one case of missing data (Cardozo's not being ranked in the insurance contract subscale) previously noted. The total number of ranks is thus 503, which ranks formed the data base for a FACTOR A and FACTOR C, for these fifty-six variables. These two programs, one yielding orthogonal, the other, oblique factors, were compared. The purpose was to isolate various clusters for data reduction, in terms of number of variables, and of more inclusive, hence grosser, categories. Corroboration of two kinds of factor analyses considerably increases the confidence level in such distinctive clusterings of the variables as appear.

A computer plotting of the FACTOR C loadings also was utilized in this endeavor. In connection with this, the four factors from the FACTOR C program were clerically drawn (as oblique angles) and transposed upon the nine-graph plot of FACTOR C loadings.

The general results of all these manipulations indicated the factors operative in decision making were evidently not pure. Indeed, they appear to be the extreme opposite: with few exceptions highly intercorrelated, the average tau of the fifty-six matrix being .7762. Added evidence of this is the fact that a normal FASCALE run was impossible, due to this very characteristic of the data. Use of a linkage analysis (McQuitty, 1965), on the basis of the NPAR program for fifty-six variables (i.e., the tau intercorrelation matrix of all 503 ranks) proved abortive. The nature of the data made the method unfeasible.

The method ultimately adopted was utilization of the original fifty-six scales themselves as guidelines. The principles adopted to direct combination dictated: no crossing of bounds among J, C, E, and F sets; proceed set by set; each set with a majority of items duplicated on other sets is to be combined (specifically, if more than one-half of the items on one set are duplicated on another, combine). One-half was an arbitrary criterion. It could have been lowered, but this was unnecessary.

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Scales not described in this section remain as before, identical with the fifty-six variable sets.

J Scale Set

J-Combined J-Full Faith and Credit and J and C Federal (II-J-4) is a combination based on high correlations. The nonscalars are:

- 76/356 Butler's - pro individual because jury verdict inconsistent (National Prohibition Act)
- 79/1100 Cardozo's - would deny N. Y. bank superintendent the right to resort to N. J. courts, thereby accepting N. J. courts' contention (suit to recover unpaid assessments)
- 77/1148 Brandeis' + perhaps a difference rather than dissent; agrees with majority but without its modification denying court jurisdiction on one contention regarding copyright
- 79/1546 Brandeis' + more activist; would allow U. S. to amend its bill such that a justiciable controversy is present (suit in original jurisdiction)

C Scale Set

C-Combined C-State and C-Procedural (II-C-6) represents the composite of two highly ($\geq .90$) correlated scales. Also highly correlated with these two were: C-State Procedure and C-Federal Procedure. Both were omitted, however, as the former is merely a subset of C-State; and the latter, a subset of C-Procedure. Resulting ranks exactly correspond with those of C-State (I-C-8). Nonscalars include:

- 76/356 Butler's -, explanation (II-J-4)
- 78/315 Brandeis' and Roberts' - would not honor the extradition treaty with England in the surrender of a U. S. citizen

- McReynolds' + upholds that treaty; pro international comity
- 78/674 Brandeis' and Roberts' - would hold the accused's presence at trial and view a fundamental right under XIV amendment
- McReynolds' + upholds Mass. freedom to regulate its own court procedure when there is no injustice
- 77/131 Hughes' - upholds the Miss. redistricting act, not requiring of it compactness and equality of population as was ordered in the older act

C-Combined C-Due Process/Subconstitutional Fair Procedure and C-Substantive (II-C-8) again indicates highly correlated scales. C-Due Process, also highly correlated, was omitted in this thirty-seven variable set as it is merely a subscale of C-Due Process-Subconstitutional Fair Procedure. Nonscalars include:

- 76/356 McReynolds' + upholds the jury verdict; Court is not to examine into it (National Prohibition Act)
- 78/968 McReynolds' + is pro alien immigrant; that purpose of entry itself is not immoral
- 78/315 Brandeis' and Roberts' -, explanation (II-C-6)
McReynolds' +, explanation (II-C-6)
- 77/641 McReynolds' + liberally interprets treaty as the expense of U. S. liquor laws (National Prohibition Act); seizure of rum runner on high seas

C-Combined C-Statutory Construction and C-Federal Substantive (II-C-9) consists of two scales which also correlated highly with a third (C-Federal Statutory Construction). The latter was omitted, however, as merely a subscale of C-Statutory Construction. Among the nonscalars:

- 78/968 McReynolds' +, explanation (II-C-8)
- 78/315 Brandeis' and Roberts' -, explanation (II-C-6)

McReynolds' +, explanation (II-C-6)
 76/641 McReynolds' +, explanation (II-C-8)

A few other changes also are contained in the C set for thirty-seven variables, differentiating it from that of fifty-six variables. The C Master correlated highly with C-Federal and with C-State, both of which were subscales of C Master. In this set, therefore, C Master alone is used (II-C-5) and the subscales omitted. C-State Substantive and C-State Statutory Construction are identical in content therefore become one scale (II-C-12). Also, C-Subconstitutional Fair Procedure correlated with C-Federal Procedure, but as C-Subconstitutional Fair Procedure was a subscale of C-Federal Procedure (which in turn was a subscale of C-Procedure) both C-Subconstitutional Fair Procedure and C-Federal Procedure were omitted. C-Procedure had already been combined with C-State (II-C-6).

E Scale Set

E-Combined E-Chain Store Tax and E-Contract Clause and E-Regulation of Milk Prices (II-E-18) merely evidences the intercorrelation of scales plausible enough, semantically, to merit combination. There are no non-scalars. AO and AS indicate the nature of the common relationship among these scales.

E-Combined E-Police and E-Labor (II-E-20) are both subsets of E-State Regulation in the fifty-six variable

set. E-Labor also correlated highly with E-ICC, but E-Police did not. Obviously all three could not then be combined. On the basis of test scales, and semantic plausibility, the E-Police and E-Labor set were retained. The only nonscalar is 78/260, where Brandeis' - is an anti state vote, holding Virginia delegation of power to the state highway commissioner arbitrary.

E-Combined E-Foreign Corporations and E-Commerce Regulation (11-E-21) is semantically plausible, in addition to being highly correlated. Nonscalars include:

- 80/688 Hughes' - is assigned because he does not join
(exp) the Brandeis, Stone, Roberts and Cardozo concurrence (which concurrence agrees with his conclusion on the constitutional question but holds, in addition, that plaintiff has no standing to challenge): TVA
- 77/652 Cardozo's - is assigned because though liberal
(exp) in direction, his dissent is based on more technical grounds (e.g., breach of fiduciary duties by directors); American Tobacco Co. case

E-Regulation State/Federal correlated highly with E-Liability but these scales hardly appeared to warrant combination, as practically, it would have meant adding seven cases (E-Liability) to sixty-six (E-Regulation). The high correlation is probably due to the fact that E-Regulation contains subscales on antitrust, ICC, commerce regulation, and E-Liability includes cases concerning such relevant variables as FELA and the Harter Act.

F Scale Set

F-Combined E-Statutory Construction and E-State Constitutional Challenge and F-Federal Constitutional Challenge (II-F-33) represents a total case number less than the sum of the three, given that twelve cases had previously been positioned in both E-State Statutory Construction and E-State Constitution Challenge. Non-scalars are:

- 76/1102 Van Devanter's - is a partial dissent from the majority's statement that XIV amendment, equal protection does not require of the state a rigid tax rule; is anti state in that sense
- 77/844 Butler's - would not hold federal estate tax applicable to intangible property of non-resident decedent
- 76/893 McReynolds' + upholds Cal. tax on corporation franchise
- 80/500 Roberts' - would grant recovery of back income taxes as unlawfully exacted; tax on proceeds which were settled before March 1, 1913, when XVI amendment went into effect
McReynolds' + upholds congressional power to tax such proceeds
- 76/815 Cardozo's - so assigned because he did not
(exp) join Brandeis' most liberal dissent calling for overruling of bad precedent, though he did join Stone's liberal dissent
Roberts' + as he joined both Stone's and Brandeis' dissents
- 81/691 Brandeis' and Roberts' + upholds federal tax on salaries of municipal officers; anti intergovernment tax immunity doctrine

F-Combined F-Refund and F-Federal Statutory Construction (II-F-37) has a total N of thirty-nine, of which thirteen cases were positioned in both scales prior to this. Among the nonscalars are:

- 78/365 Hughes' - anti federal tax power; would allow deductions on testamentary trust of widow, by trustees
Roberts' + upholds federal tax power; no exemption unless Congress so declares
- 78/1311 McReynolds' - would set aside deficiency assessments of income taxes against life insurance company, thus anti tax power
- 81/612 McReynolds' - anti tax power; would not tax insurance company on full amount of interest received as assets not augmented
- 81/1143 McReynolds' - would entertain suit to obtain refunds of taxes paid under AAA
- 77/844 Roberts' + upholds federal tax on intangible property of nonresident decedent
- 81/279 (exp) Roberts' + upholds Ala. Social Security Act and the federal act authorizing it
McReynolds' -, the most negative dissent; holds up doctrine of indestructible states
- 77/748 Roberts' + upholds federal tax on deeds of trust
- 77/1439 Roberts' + upholds federal tax on trusts to preserve insurance policies
- 80/62 Roberts' + upholds federal tax on trust even when transferred because such action is testamentary in character
- 81/1279 Roberts' + upholds Ala. social security statute and the federal counterpart authorizing it
- 78/1361 Cardozo's - is against federal tax on sale of trust property as penalty
Roberts' + upholds, to effect congressional intent in IRA, 1921

F Master was found to correlate highly with F-E and F Tax Scale. The former was simply deleted, however, as it is a subscale of the latter. The results of all of the foregoing combinations are as follows.

Combination of Scales: the
Composite after Reduction

J Scale Set

variables 1-5 in original 56 set
scales combined: (I-J-4) and (I-J-5)
resultant # of scales: 4

C Scale Set

variables 6-24 in original 56 set
scales combined: (I-C-8) and (I-C-9)
(I-C-11) and (I-C-14)
(I-C-15) and (I-C-17)
(I-C-21) and (I-C-24): identical
therefore
merged

scales omitted:
(I-C-12) because merely subscale of (I-C-18)
(I-C-18) because merely subscale of (I-C-9)
(I-C-22) because merely subscale of (I-C-8)
(I-C-13) because merely subscale of (I-C-11)
(I-C-19) because merely subscale of (I-C-15)
(I-C-7) because merely subscale of (I-C-6)

resultant # of scales: 9

E Scale Set

variables 25-45 in original 56 set
scales combined:
(I-E-32) and (I-E-33)
(I-E-34) and (I-E-35)
(I-E-29) and (I-E-40) and (I-E-31)

resultant # of scales: 17

F Scale Set

variables 46-56 in original 56 set
scales combined:
(I-F-56) and (I-F-48)
(I-F-49) and (I-E-50) and (I-E-51)

scales omitted:
(I-F-52) because merely a subscale of (I-F-47)

resultant # of scales: 7

New Totals after Combination:

Original Totals:

J Scale:	4	5
C Scale:	9	19
E Scale:	17	21
F Scale:	7	11
	<u>37</u>	<u>56</u>

Comparison Detailed

(II-J-4)		(I-J-4)		(I-J-5)	
4	NSR	1	NSR	4	NSR
.709	MMR	.758	MMR	.682	MMR
.988	R	1.0	R	.936	R

(II-C-6)	(I-C-8)	(I-C-9)	
8 NSR	7 NSR	4 NSR	
.755 MMR	.792 MMR	.761 MMR	
.950 R	.901 R	.992 R	
(II-C-8)	(I-C-11)	(I-C-14)	
6 NSR	1 NSR	7 NSR	
.764 MMR	.750 MMR	.752 MMR	
.966 R	1.0 R	.948 R	
(II-C-9)	(I-C-15)	(I-C-17)	
5 NSR	7 NSR	7 NSR	
.752 MMR	.750 MMR	.738 MMR	
.948 R	.943 R	.928 R	
(II-E-18)	(I-E-29)	(I-E-40)	(I-E-31)
0 NSR	0 NSR	0 NSR	0 NSR
.872 MMR	.932 MMR	.863 MMR	.966 MMR
1.0 R	1.0 R	1.0 R	1.0 R
(II-E-20)	(I-E-32)	(I-E-33)	
1 NSR	1 NSR	0 NSR	
.877 MMR	.885 MMR	.916 MMR	
.988 R	.980 R	1.0 R	
(II-E-21)	(I-E-34)	(I-E-35)	
2 NSR	0 NSR	1 NSR	
.831 MMR	.818 MMR	.871 MMR	
.981 R	1.0 R	.991 R	
(II-F-33)	(I-E-50)	(I-E-51)	(I-F-49)
11 NSR	0 NSR	4 NSR	6 NSR
.833 MMR	.937 MMR	.856 MMR	.806 MMR
.973 R	1.0 R	.986 R	.957 R
(II-F-37)	(I-F-56)	(I-F-48)	
16 NSR	7 NSR	12 NSR	
.773 MMR	.746 MMR	.781 MMR	
.960 R	.969 R	.968 R	

As for a comparison of kinds and number of cases in the original matrix of fifty-six variables and in the reduced matrix of thirty-seven:

Original		Reduction	
J Scale: variables 1-5		J Scale: variables 1-4	
original cases	26	original cases	26
duplicates	21	duplicates	21
expansions	<u>1</u>	expansions	<u>1</u>
	48		48
C Scale: variables 6-24		C Scale: variables 5-13	
original cases	24	original cases	24
duplicates	168	duplicates	83
expansions	<u>0</u>	expansions	<u>0</u>
	192		107
E Scale: variables 25-45		E Scale: variables 14-30	
original cases	113	original cases	113
duplicates	144	duplicates	143
expansions	<u>12</u>	expansions	<u>12</u>
	269		268
F Scale: variables 46-56		E Scale: variables 31-37	
original cases	71	original cases	71
duplicates	212	duplicates	94
expansions	<u>4</u>	expansions	<u>4</u>
	287		169
Total N of original cases	234	Total N of original cases	234
Total of duplicates	545	Total of duplicates	341
Total of expansions	<u>17</u>	Total of expansions	<u>17</u>
	796		592

III. The Twenty-Five Variable Sets

A FACTOR A of the thirty-seven variables (scales) just described was run. The results were, however, very similar to that for the fifty-six variables, average tau being .7397 (as compared to the previous .7762). Comparison of the fifty-six and thirty-seven sets suggests that though reduction of the number of scales was rather

Original		Reduction	
J Scale: variables 1-5		J Scale: variables 1-4	
original cases	26	original cases	26
duplicates	21	duplicates	21
expansions	<u>1</u>	expansions	<u>1</u>
	48		48
C Scale: variables 6-24		C Scale: variables 5-13	
original cases	24	original cases	24
duplicates	168	duplicates	83
expansions	<u>0</u>	expansions	<u>0</u>
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duplicates	144	duplicates	143
expansions	<u>12</u>	expansions	<u>12</u>
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F Scale: variables 46-56		E Scale: variables 31-37	
original cases	71	original cases	71
duplicates	212	duplicates	94
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appreciable, the actual number of cases involved tended to vary very little (the C and F scale sets respectively representing, perhaps, a slight exception). This then appears the major reason for the very minor difference in the average tau of the fifty-six variable matrix and that of the thirty-seven variable matrix. Because of the similarity indicated by FACTOR A for thirty-seven variables, a FACTOR C seemed unnecessary. Hence both factor analyses of the fifty-six and thirty-seven variable sets respectively lent themselves to the same kinds of conclusions as to factors involved in court decision making. Throughout two factors at most seemed prevalent, but notably lacking clarity and definitiveness.

For these reasons, and as an additional check, hierarchical cluster analysis or LAWS (Price, 1969) was employed, to eliminate the overlap between factors, thereby purifying them to as great a degree as possible. This program (LAWS) is computer dependent. It takes the same input data (rank orders) as does a factor analysis, requiring only that this input matrix be square, rather than triangular, as in the case of factor analysis.

Using the LAWS output as external criterion, I started a trial reduction of the E Scale Set, the largest. This meant reexamining each E scale, noting whether to retain it or not, both on the basis of its uniqueness (i.e., independence of other scales), as indicated by the

LAWS program, and on its semantic distinctness as well. The resulting modification (of E Scale Set of thirty-seven variables, containing seventeen scales and 268 cases) was twelve scales and 201 total cases. In deciding what to delete and what to retain, I acted under the principle that the master scales and combined master scales (which contained all cases in a set [J, C, E, F]) should be retained, precisely because they contain all the cases. In addition, if such scales were omitted, many cases would simply go by the board: among these, many originals (i.e., non-duplicates), which is not desirable.

Doing this reduction made clear another reason for so many duplications and interrelations: various small scales had been combined into one master, then that master further combined with another master scale. Result: each case is duplicated at least three times, and possibly more, if it be fitted into several of the smallest scales (subscales).

With the C scale, the working procedure differed appreciably from the reduction procedure of the E scale. This was so principally because in the latter, the LAWS program, pin-pointing the most unique variables (the majority of which were from the E scale), facilitated the task by providing a ready-made, external criterion as it were. I attempted to approach the C scale in like

LAWS program, and on its semantic distinctness as well. The resulting modification (of E Scale Set of thirty-seven variables, containing seventeen scales and 268 cases) was twelve scales and 201 total cases. In deciding what to delete and what to retain, I acted under the principle that the master scales and combined master scales (which contained all cases in a set [J, C, E, F]) should be retained, precisely because they contain all the cases. In addition, if such scales were omitted, many cases would simply go by the board: among these, many originals (i.e., non-duplicates), which is not desirable.

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manner, but found the same procedure unworkable here, chiefly because LAWS had indicated at most two variables from this scale as being unique. Another procedure was substituted.

Working from the thirty-seven variable reduced matrix, I began by examining individual scales, this time on the basis of semantic content, with the goal of reducing duplications, and placing each case within one scale only. On principle, as before, I initially retained the master scale, which contained all C scale cases. Analysis of three separate scales (jury trial; constitutional interpretation; state substantive and state statutory construction combined) convinced me that another procedure would likely be more efficient. But examination of those scales had indicated a pattern of the cases: that probably all could fall into one of three categories: statutory construction (state/federal); procedural (state/federal); and due process/subconstitutional fair procedure. On this basis, I reexamined each case (twenty-four total), assigning it to one, but no more than one, of the aforementioned categories. Thus duplicates (in the three subscales of the original master scale) were eliminated. There are twenty-four cases in the master scale, hence: statutory construction (N=7); procedural (state/federal) (N=8); and due process/subconstitutional fair procedure (N=9). Obviously, cases could fit into

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several categories, but in keeping with the overall purpose, were not. Consequently, a judgmental decision was made upon each case as to what constituted the most basic aspect of the three given alternatives there. This, then, determined position.

Thus, there is minimal reference to LAWS, save for variables notably unique. The overriding aim is to reduce duplication, positioning each case in one category only (with very few exceptions). This process, as it proved much more satisfactory than complete reliance on the LAWS output, was utilized in the construction of the twenty-five variable sets. Apparently, as the output of LAWS for thirty-seven variables indicated, the data structure needed tightening before LAWS itself could be meaningful throughout all sets, J, C, E, and F.

J Scale Set

On the basic principles of each case in only one scale; no duplicates within the set; no non-J cases within the set, the results of modification, were: three scales; eighteen cases total; zero duplicates. This, as compared to the J, thirty-seven variable matrix of four scales; forty-eight cases total; twenty-one duplicates. In the thirty-seven variable set, there was a J scale that included C cases. In this revision, only J scale cases per se were considered, hence in the total count of

cases, those C cases were not included. To compare the new J scales with originals in the fifty-six/thirty-seven variable matrices:

(III-J-2)		Originals:	J-Federal Cases
1	NSR	2	NSR
.685	MMR	.677	MMR
.944	R	.925	R

(III-J-3)		Originals:	J-Full Faith and Credit
1	NSR	1	NSR
.733	MMR	.758	MMR
1.0	R	1.0	R

J-Federal Jurisdiction (III-J-2) differs from its earlier counterpart in that it deletes:

77/413	defense of entrapment; more properly a C case
81/843	appeal for jury trial because of prejudicial error; more properly C

The only nonscalar is 80/54, McReynolds' + upholding the Court's jurisdiction over a suit to challenge, and recover from, government seizure of property.

J-Full Faith and Credit (III-J-3) differs in its deletion of case 78/1160, state against insolvent foreign corporation and supremacy of local policy. The case has many aspects, including full faith and credit; but this seems subordinate to other aspects which make E, rather than J, dominant. The only nonscalar is 79/1100, Cardozo's - which would deny New York's bank superintendent resort to New Jersey courts, effectively upholding New Jersey's contentions.

C Scale Set

The results of the reduction of the C set is as follows. The modification means four scales; forty-eight cases total, compared with the C in the thirty-seven variable sets of nine scales; 107 cases total. A more meaningful, detailed comparison can be made with the new C scales and the originals in the fifty-six variable matrix. There is no comparison with the thirty-seven variable reduced matrix set because ipso facto the combinations of scales there would make any comparative relations quite complex.

(III-C-4)		(I-C-15)	
5	NSR	7	NSR
.786	MMR	.750	MMR
.931	R	.943	R
(All cases in III are also in I)			

(III-C-5)		(I-C-9)	
1	NSR	4	NSR
.794	MMR	.761	MMR
1.0	R	.992	R
(All cases in III are also in I)			

(III-C-6)		(I-C-11)	
2	NSR	1	NSR
.755	MMR	.750	MMR
.975	R	1.0	R

In C-Statutory Construction State/Federal Mix (III-C-4), seven cases were deleted, leaving those cases primarily concerned with statutory construction:

78/968	Immigration Act 1917
76/843	U. S. Criminal Code: obscenity
77/641	U. S. Tariff Acts; consonance with treaty construed

78/315 U. S.-Britain extradition treaty (Dawes-Simon, 1932)
 76/984 Texas statute re political parties
 81/1066 Georgia Penal Code; subversive utterances
 77/131 Mississippi Redistricting Act

Among the nonscalars were:

76/843 McReynolds' - would quash indictment charging unlawful deposit of filthy letter
 Butler's + would hold "filthy letters" as within meaning of U. S. code
 78/315 Brandeis' and Roberts' - narrowly interprets extradition treaty, anti international comity, pro individual
 Sutherland's + anti individual: would grant extradition

That six out of a possible seven votes for Roberts is plus (thus giving him a number 2 ranking, along with Stone and Cardozo) seems rather a fluke, in view of the usual situation. His ordinary literalism seems much modified by a pro C bent here.

C-Procedural State/Federal Mix (III-C-5) includes a difficulty in extracting one common meaning of the directionality (+, -) in each case. In other words, + is not so directly pro individual and - the obverse. Rather, + is associated with a more flexible approach to what correct procedure requires at any one time (and this may, or may not, be pro individual). A - is associated with a kind of black letter interpretation of procedural guarantees which in practice, is not so much pro individual liberty as literal adherence to the written law. This seems to make sense, especially considering McReynolds' responses here (seven -, one +). Also, the

cases themselves are quite a miscellaneous lot, at least in terms of factual background. Cases included are:

- 77/413 entrapment as available defense: National Prohibition
- 78/484 sufficiency of allegations: Federal Corrupt Practices Act
- 76/356 inconsistency of jury verdict; National Prohibition
- 78/369 competency of wife as witness; National Prohibition
- 81/843 prejudicial error in previous trial; right to appeal for a jury trial
- 79/603 VII amendment procedural requirements; personal injury case
- 76/1054 doctrine of res judicata in settlement in inheritance; D.C.
- 77/439 jury verdict; new trial for excessive or inadequate damages awarded

The only nonscalar was 76/356, McReynolds' + upholding jury verdict against petitioner, as something not to be reexamined.

C-Due Process/Subconstitutional Fair Procedure (III-C-6) contains cases which could be, but are not, subsumed under the larger category of procedural. To qualify for this category, a case had somehow to involve: amendment XIV; due process; procedure guaranteeing the integrity of the federal criminal trial, specifically with mention of constitutional guarantees (amendments IV-VIII). Regarding directionality, + has probably more general association with liberal, flexible interpretation of the requirements of procedure. Sometimes this works to the advantage of the individual (e.g., 77/159, the Scottsboro cases); sometimes, against, but then it

usually means pro government (e.g., 77/212 and 77/260, both convictions under the National Prohibition Act, where + upholds the convictions on grounds that government did not employ improper procedure securing arrest, and that amendment IV is not violated). The universe of cases consists in:

77/159	XIV amendment, due process; right to counsel
81/78	impartial jury; VI amendment; V amendment, due process
78/674	XIV amendment, due process; Mass. court procedure
79/1530	XIV amendment, due process; Ga. Penal Code, insurrection provisions
77/212	IV amendment; affidavit; National Prohibition
77/260	IV amendment; warrant; National Prohibition
78/381	judge's instructions to jury on what constituted a violation of revenue acts; V amendment, self-incrimination

E Scale Set

Again, the basic principle of reduction is that given for the previous J and C sets. E-Liability (III-E-8) differs from its counterparts in the deletion of 81/720, a prosecution of a suit in state court on appeal bond against a foreign insurance company in receivership. It is more properly included in the scale on noninsurance contract cases (III-E-11). Nonscalars are:

76/903	Sutherland's - would reject claim of petitioners against vessel owners (#444)
76/598	Roberts' + is pro determination of U. S. Employees Compensation Commission; vs trial <u>de novo</u> in district court (Longshoremen and Harbor Workers Act)

E-Noninsurance Contract Cases (III-E-11) differs from the original in that it omits:

- 81/678 gold clause in private contracts; more properly with gold clause cases (III-E-9)
- 81/659 involves U. S. Shipping Board and Maritime Commission thus more properly with administrative agencies (III-E-13)

It adds 76/866, involving impairment of obligation of contract between state and a corporation. The case is complicated, but generally follows the pattern of +, meaning interpretation of contract favorable to business under attack by contractees. It was taken from the E-Liability set because the directionality did not correspond very well. It had originally, however, come out of E-Contract Clause. The nonscalar is 81/720, Hughes' +, which would hold the surety company not released from liability and uphold the right of claimant to present his suit in the state court.

E-Federal Government Regulatory/Administrative Agencies (III-E-13) is the same as previously save for deletion of 80/54, suit for recovery from proceeds of government seized property, which is predominantly a J case, therefore positioned in (III-J-2). Three non-scalars are:

- 81/659 Sutherland's -, anti gov't. order cancelling steamship rates
- 80/688 Roberts' + because he joins Brandeis' most liberal dissent denying even stockholders' standing (TVA)

77/1114 Hughes' + would uphold the gov't. right to cancel patent so that the invention benefit the public

E-Antitrust (III-E-14) differs only in the deletion of 78/1007, involving the Clayton Act, but only insofar as that act authorized the FTC to dissolve mergers. FTC apparently is dominant therefore the case is positioned in (III-E-13). Notable are McReynolds' + votes (three of five), probably relevant to his background as a vigorous trustbuster in the days of T.R. The nonscalar is 77/825, McReynolds' -. This directionality is to a degree misleading here, as a + (majority) vote is against government for failure to show adequate grounds for injunction but pro retention of jurisdiction in case future developments justify enforcement of the act. McReynolds, in a brief if not curt opinion, holds the injunction should be immediately granted. Hence the just-in-case nature of this case, asserting jurisdiction but temporarily suspending definitive judgment, compounds the assignment of directionality.

E-Commerce Regulation (III-E-15) includes federal cases only. A + upholds commerce regulations by the federal government. Only case 81/573, involving a suit by a corporation in interstate commerce to recover fees paid under protest to the state, was therefore omitted.

E-Intergovernmental Tax Immunity (III-E-16) is a mix of state/state and state/federal cases, but all

from the E-state tax scale. The scale is identical with the original version, save for the omission of 81/691, which concerns federal taxation of salaries of municipal officers. F here seems more dominant than E. Non-scalars include:

76/893 McReynolds' + upholding state tax on corporate franchise
 76/815 Roberts' +, joining Brandeis' most liberal
 (exp) dissent calling for frank overruling of bad precedent

E-State Tax Policy re Corporations (III-E-18) is a kind of residual category for cases not included in (III-E-16) and (III-E-17) but still (as they) part of the E-state tax scale in the original. The cumbersome nature of the title at least enables it to cover the general content matter. A slight objection to this new scale category is that it draws a fine line between tax on foreign corporations, corporations with "foreign" connections, and the E-State Regulation of Foreign Corporations (III-E-21), which is made up of cases from the original E-State Regulation scale (rather than the E-State Tax Scale, as is the case here). The sample is composed of:

76/1102 state franchise tax during receivership of a federal corporation
 81/814 state tax on chattels used within state but purchased without
 76/313 state tax on domestic corporation of nonresident
 77/710 state tax on foreign corporation
 80/91 tax on corporation shares
 80/299 state tax categories re corporations

The only nonscalar is 81/814, Van Devanter's + upholding state tax on in-state use of chattels purchased outside that state.

E-State Police Power and Regulation via Commissions (III-E-19) represents a combination of the Milk Price scale with the former State Police Power and Regulation via Commission, with 78/413 (state exercise of emergency powers, the Minnesota Mortgage Moratorium law), the only new addition. Nonscalars are:

- 81/1223 Roberts' +, upholding Ga. supreme court ruling pro Ga. statute (classifying insurance company employees) as not arbitrary; pro state regulation
- 78/260 Brandeis' -, holding state delegation of power to state highway commissioner (order abolishing grade crossing) is unconstitutional without a hearing
- Hughes' + upholds this delegation of power, without the necessity of a hearing

E-State Regulation of Foreign Corporations (III-E-21) is identical with the original version, with the excepted omission of 81/573, involving state regulation of a railroad in interstate commerce. The case apparently is better suited to (III-E-19) instead. There are no nonscalars. The foregoing scales of (III-E-19), (III-E-20) and (III-E-21) represent a breakdown of the original E-State Regulation, with companion cases 80/233 and 80/241 deleted, both of these being more federal than state. The new modification consists in fifteen scales: 121 total cases; and zero duplicates. This, as against

seventeen scales; 268 total cases, and 143 duplicates in the thirty-seven variable sets. To compare the new E scales with originals in the fifty-six-thirty-seven variable matrices:

(III-E-8)	Originals:	E-Liability
2 NSR	3	NSR
.815 MMR	.793	MMR
.976 R	.976	R
(III-E-11)	Originals:	E-Noninsurance Contract
1 NSR	2	NSR
.833 MMR	.777	MMR
.961 R	.961	R
(III-E-13)	Originals:	E-Federal Regulatory Agencies
3 NSR	4	NSR
.743 MMR	.733	MMR
.962 R	.952	R
(III-E-14)	Originals:	E-Antitrust
1 NSR	1	NSR
.777 MMR	.786	MMR
1.0 R	1.0	R
(III-E-15)	Originals:	E-Commerce Regulation
0 NSR	1	NSR
.890 MMR	.871	MMR
1.0 R	.991	R
(III-E-16)	Originals:	E-Intergovernment Tax Immunity
2 NSR	2	NSR
.844 MMR	.828	MMR
.954 R	.962	R
(III-E-21)	Originals:	E-Regulation of Foreign Corporations
0 NSR	0	NSR
.814 MMR	.818	MMR
1.0 R	1.0	R

(III-E-18) is omitted because it is without counterpart in the two prior scales. (III-E-19) contained so

minor an alteration that no change was effected otherwise.

F Scale Set

F-Federal Taxation of Gifts (III-F-22) is a version similar to the original save for the deletions of companion cases 79/367 and 79/372, involving deductions claimed for amortization of bond discount and charitable contributions, respectively. They were subsequently positioned in (III-F-24). There are no nonscalars.

F-Federal Taxation involving Tax Refunds, Discounts, Permissible Deductions (III-F-24) resembles the original save for seven deletions:

- 81/1279 (one case, 2 expansions) involving the Social Security Act; positioned in the 1st instance in (III-F-23)
- 81/1143 involving recovery of taxes collected under the AAA, 1933, declared unconstitutional; now in (III-F-23)
- 80/35 involving succession taxes; positioned in (III-F-22)
- 76/772 } companion cases, question of gifts in con-
- 76/793 } templation of death; relocated in (III-F-22)

Nonscalars are:

- 78/365 Hughes' -, against gov't. tax; would honor deductions on widow's trust made by trustee
- 78/1311 McReynolds' -, would set aside deficiency assessment of income taxes, by Commissioner IRS, against life insurance company

F-Federal Taxation involving Testamentary Trusts (III-F-25) represents a deletion of eight cases from the original:

78/365 positioned in (III-F-24) involving taxable
income of trust
81/1265 involving trustee right to refund; placed in
(III-F-24)
77/748 involving taxation of deeds of trusts; located
in (III-F-22)
80/29, } companion cases involving federal estate tax
80/35 } on trust; positioned in (III-F-22)
78/719 depletion of trust (mine); put in (III-F-24)
76/772, } involve tax on securities transferred to
76/793 } trustees; included in (III-F-22)

The nonscalar, accounting for two votes, is 78/1361,
Cardozo's -, holding federal tax on sale of trust property
as discriminatory. It is a pro individual, anti govern-
ment vote.

Results of the modifications leave four scales;
thirty-nine total cases; and zero duplicates, compared
with the thirty-seven variable sets of seven, 169, and
ninety-four respectively. Compared with the fifty-six/
thirty-seven variable matrices:

(III-F-22)		Originals:	F-Federal Taxation of Gifts
0	NSR	1	NSR
.826	MMR	.787	MMR
1.0	R	.983	R

(III-F-24)		Originals:	F-Federal Taxation <u>re</u> Refunds
2	NSR	7	NSR
.788	MMR	.746	MMR
1.0	R	.969	R

(III-F-25)		Originals:	F-Testamentary Trusts
2	NSR	6	NSR
.920	MMR	.860	MMR
.979	R	.973	R

IV. The Twenty-One Variable Sets

A FACTOR A and LAWS programs were run, essentially
corroborating the results of previous analyses. Another

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IV. The Twenty-One Variable Sets

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breakdown was essayed, on the basis of combining into the master scale the largest number of cases within any given set (J, C, E, and F) capable of being subsumed under a given topic. The LAWS program for thirty-seven variables (run just prior to the twenty-five variable program) was examined but not used, chiefly because the correlations I was concerned with generally included already-combined scales, which in the twenty-five variable program were deliberately avoided. For present purposes, we eliminated certain interscale combinations that were made expressly for the thirty-seven variable LAWS program. If LAWS for thirty-seven variables had been used as a standard, in most instances it would be effectively combining combination-scales.

In the LAWS program for twenty-five variables, I deliberately chose the combinations which were most highly correlated, and represented the fewest number of scales (in other words, a highly correlated combination of, say five to ten variables was avoided). Concentration was on the two variable (scale) combinations. In this attempt, the chief principle of combination was the existence of high correlation and semantic compatibility. The highest correlations conforming to the above were scaled; others remaining were ignored. There were problems, however. McReynolds' few voting aberrations, especially in the antitrust scale, yet remained. Roberts was also less

than amenable (in the sense of being rather unusually positive in certain scale combinations). The J combinations seemed most meaningful of all in terms of structure, voting behavior, and semantic content. If J and C combinations had been run, these were not masters, and allowance would have had to be made.

The tentative results of this procedure in the E set were combinations of six scales. Among these, to give random examples, was: E-Governmental Tax Immunity and F-Social Tax (.955 correlation), the common tie apparently being the latitude of governmental tax power, where that power is used in an extraordinary manner. Another example was E-State Police Power and Regulation via Commissions, and F-Gifts (.867 correlation), with the common latent dimension of attitude toward government power in the area of private business, profit/earnings, and disposal thereof. Another was E-Antitrust and F-Trusts (.80 correlation), with the dominant attitude, again, of government control over private business and the fruits of individual effort. Four of the six combinations correlated at $\geq .90$; the remainder at $\geq .80$. Thus all six were combined on the bases of relatively high levels of correlation. The results, however, were unsatisfactory. Combinations were not distinctive, and worse, appeared to erase the distinctive elements that had consistently appeared in prior scales. This was

true of even the highest correlated scales, at .969, and became obvious by the time the lowest correlation (.80) was attained.

Generally, these combinations were neither that meaningful nor that heuristic. Given this fact, it was decided to run those scales that appeared most unique in previous analyses (and combination, if unique, being allowable). On this basis then, the following scales were chosen. As in all three sets described before, only those scales which have changed are described. The appendix merely lists the ones remaining the same, and those are consequently not even mentioned herein.

C Scale Set

C-Combined C-Procedural (State/Federal Mix) and C-Due Process/Subconstitutional Fair Procedure (IV-C-5) is a summed composite, without deletions, of both scales.

The nonscalars are:

- | | |
|--------|---|
| 76/365 | McReynolds' + upholding jury verdict, against petitioner convicted under National Prohibition Act |
| 78/674 | Brandeis' -, against state court procedure; would uphold accused's right to be present at trial and view as fundamental
McReynolds' + holds Mass. free to regulate its court procedure unless offensive to fundamental principles of justice |

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E Scale Set

E-Contracts (private; insurance); Bonds, Contract Systems (IV-E-6) contains case content identical to that of the separate scales (III-E-10) and (III-E-11) of the twenty-five variable sets, but is listed in full in the appendix as this represents the first time these two have been combined. The non-scalars include:

- 80/105 Roberts' - would give none of the creditors, laborers or materialmen any right of lien on the fund (public contractor's surety bond here)
- 81/720 Hughes' + would hold that the surety company still retains liability; would uphold claimants' right to prosecute in court
- 77/197 Brandeis' + would hold that the Court should dismiss writ as improvidently granted (insurance suit in D.C.)
- 78/934 Cardozo's + would uphold the insured as his action was ordinarily not dangerous

E-State Regulation (IV-E-12) is identical with the original (I-E-30) save for the deletion of 80/233 and 80/241, both involving federal/state tax on unlawful (liquor) business. They are more fittingly placed in (IV-F-19). Nonscalars are as before, explanation (I-E-30).

E-State Tax minus Intergovernmental Tax Immunity (IV-E-17) is identical with (I-E-26) save for the deletions of the immunity cases: 81/666; 76/893; 76/815; 76/815 (exp); and 80/1236. This scale (IV-E-17) still, however, contains the cases constituting the subscale E-Fourteenth Amendment, Equal Protection and E-Chain Store. A FACTOR A of two and four dimensional

solutions, and FACTOR C, for twenty-one variables, were run, as well as a plot of FACTOR C, for twenty-one variables. The results apparently corroborated what antecedent results suggested: one definite factor seems dominant; any additional ones, a few at most, are specifications of the dominant one.

CHAPTER IV

SUBSTANTIVE FINDINGS: ANALYSIS

Two purposes of this chapter are to present in composite the results of computer programs mentioned and to indicate the over-all dimensionality of the data. At this point, focus is on interprogram similarities. The approach is deductive, to allow the similarities and points of comparison established by individual programs to be, to a degree, interrelated. In short, I attempt to indicate the basis for the analysis, and then ultimately to integrate this into an explanation of decision making on the Hughes Court, employing the psychological model (cf., Chapter II). I do not claim the explanation offered is definitive. I do not, even in giving it, propose to answer other critics in the sense of directing these findings to their points. I do intend more than "letting the facts speak for themselves" - a highly improbable occurrence at best. The nature of those findings has been extensively detailed, so the structure of the interpretation is easily ascertained. In a desirable sense, the interpretations is made vulnerable to informed judgment:

its merit better judged by a specialized knowledge of the objective, empirical bases from which it derives.

In keeping with these purposes, consideration of topics is ordered in the following manner. In Chapter IV, the separate results of computer programs are compared and commented on. In Chapter V, I attempt to integrate these findings in terms of the model, thus to explain, on the general level of the Court as a whole, the salient, psychological factors in decision making during the 1931-1936 terms. In the last chapter, Chapter VI, findings are discussed as they pertain to individual justices, and some comparison made between conclusions here and those of the conventional literature.

In the over-view, all fifteen computer programs run on these data tended to be mutually supportive, in terms of statistical results, and to lend themselves plausibly to the same kinds of interpretation: variations on a basic theme, as it were. In all four permutations (i.e., from the 56 to 21 variable sets) the average tau was never out of the range of the .70's. In all four permutations, unique variables tended to stay consistently unique in factor analyses and hierarchical cluster analyses. The results of all permutations in factor analyses definitely indicate one dominant factor and suggested a possibility of four factors at most, the last two being quite weak in explanatory power; the second perhaps

independent but still very much related to the first. A considerable degree of consistency of core variables (i.e., those loading highest [generally $\geq .6$] and/or most consistently on any given factor on all dimensions within a given computer program) also obtained across the factor analyses. Taken as a whole, these are the rough dimensions that the data indicate, and are as well the basis for subsequent analysis.

NPAR Programs

Kendall's tau (Siegel, 1956, pp. 213-223; Hays, 1963, pp. 642+) is our initial measure of intercorrelation, the minimally acceptable level $\geq .6$. It is an index of agreement, showing the tendency toward similarity among rank orders. The scores it yields evidence a monotone relation among coefficients. Computed by NPAR programs (Morris, 1967), the average taus are:

56 variable set: .7762	25 variable set: .7129
37 variable set: .7397	21 variable set: .7158

Such results, in all cases considerably above the minimum, establish the closely interrelated nature of these data (alike in their most expansive through to their most contracted form).

In the 56 variable sets, those variables having a consistently large number of $< .6$ correlations are:

(I-J-3); (I-C-23); (I-E-27); (I-E-32); (I-E-39); (I-F-46); (I-F-53); (I-F-56). In the 37 variable set, there are

fewer correlations at or above .9. The < .6 correlations are: (II-J-3); (II-E-16); (II-E-20); (II-E-25); (II-F-31); (II-F-34). (II-E-24) is added, being more consistently low here than in the 56 set. In the 25 variable set, the consistent lows were: (III-J-2); (III-E-11), to a lesser degree; (III-F-24). Newly added is (III-E-14), probably one result of the content change in that variable. In the 21 variable set, the same lows from the preceding still prevail: (IV-J-2); (IV-E-11); and (IV-F-20).

Factor Analyses

FACTOR A (Williams, 1967) gives a principal axes solution, followed by quartimax then varimax rotations. Quartimax, while not too meaningful per se (as it tends to load as much as possible on the first factor) becomes so when loadings, and their patterns, are compared across the same programs with data varied. The Kiel-Wrigley criterion is employed and the eigenvalue threshold set at zero to insure inclusive consideration of all possible factors. The input intercorrelation matrix consists of tau correlations from a previous NPAR program.

FACTOR C (DeTemple and Williams, 1968), taking the same kind of input as FACTOR A, yields oblique (interdependent) rather than the orthogonal (independent) factors of FACTOR A. Oblique rotation looks for optimal

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FACTOR C (DeTemple and Williams, 1968), taking the same kind of input as FACTOR A, yields oblique (interdependent) rather than the orthogonal (independent) factors of FACTOR A. Oblique rotation looks for optimal

definition of correlated and uncorrelated cluster patterns made by the variables. The factors are allowed to become correlated in that each factor is individually rotated to fit each distinct cluster. The resulting factors reflect the pattern of the relation among clusters. Thus oblique rotation gives added information by more sharply defining cluster boundaries and indicating the correlations among clusters. In effect, it allows an estimate on how closely the data approximate orthogonality. FACTOR C solutions here are analyzed in terms of clusters of high, low, and moderate ranges.

In the 56 variable set, FACTOR A, the two dimension varimax accounted for 82% of the variance: .50 on factor I; .33 on factor II. In three dimensions, 86% of the variance was accounted for by: .38 on factor I; .24 on factor II; .26 on factor III. In the fourth dimension, 88% of the variance was distributed: .36 on factor I; .18 on factor II; .18 on factor III; .18 on factor IV. The variables with communalities $< .7$ on the two-dimensional FACTOR A solution were: (I-J-3); (I-E-27); (I-E-30); (I-E-38); (I-E-39); (I-E-42); (I-E-43). The three dimension varimax retained only (I-J-3) and (I-E-39); the fourth dimension, only the latter. Added factors III and IV attach mainly to the few unique variables (e.g., [I-E-27]; [I-E-41]) thus are of narrow relevance. Factor III seems to have a jurisdictional

aspect, some sense of the boundaries of power, but this is pervasive and ill-defined across levels of subjects. Factor IV does little more than account for an additional, and negligible, per cent of the total variance.

The uniformly high correlations of FACTOR A otherwise, as well as the nondistinctive nature of factors after factor I, did suggest the plausibility of an oblique solution. In FACTOR C, solutions deteriorate as factors were added and there is a good correspondence with FACTOR A, especially in terms of factor loadings. In essence, two different kinds of factor analysis basically corroborate the same kind of findings.

In the two dimension solution (row vectors of original length), loadings on both factors compared rather well with FACTOR A to dimension varimax, though FACTOR C loadings tend to be lower. Court response appears negative generally to regulation state/federal (in certain areas) but more negative in state. Regarding factor I, the most highly ($\geq .7$) correlated cluster¹ suggests the general issue of delimiting permissible bounds of governmental authority. The (.5 > .6) cluster seems concerned with legislative power regulating certain aspects of the state or national economy. The $\leq .4$

¹(I-J-1); (I-J-2); (I-C-13); (I-C-14); (I-C-15); (I-C-17); (I-C-19); (I-E-26); (I-E-50); (I-E-51); (I-F-54).

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The uniformly high correlations of FACTOR A otherwise, as well as the nondistinctive nature of factors after factor I, did suggest the plausibility of an oblique solution. In FACTOR C, solutions deteriorate as factors were added and there is a good correspondence with FACTOR A, especially in terms of factor loadings. In essence, two different kinds of factor analysis basically corroborate the same kind of findings.

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correlations appear connected with appeals to higher (federal) standards. Probably a fair play aspect is indicated.

Regarding factor II, the highly correlated clusters ($.5 > .7$)¹ present the issue of the individual's right to be secure in possession of property or in property/contractual rights. Negatively correlated clusters² suggest the issue of state/federal government exercising power for public purposes and designating those subject to that power: i.e., government activism. This seems logical, if factor II is, as hypothesized, an attitude toward individuals or individualism.

Oblique rotation seems justified: the factors appear interrelated. Their interdependence seems further justified in view of the Court's assumed role as protector of the Constitution they perceive. In other words, both factors hypothesized are considered in adjudication. Indeed, many cases explore the relation between them, though chiefly in an economic context. There is no difficulty in seeing such factors, within the forum of the Court, translate into competing values and value systems, in terms of which Court decisions are made.

¹(I-C-23); (I-C-30); (I-E-39); (I-E-45); (I-F-46); (I-F-48); (I-F-53); (I-F-56).

²(I-J-1); (I-J-2); (I-E-26); (I-E-27); (I-E-38); (I-E-50); (I-E-51); (I-F-54).

The three dimension FACTOR C solution is basically similar to the varimax counterpart in FACTOR A. As before, especially on factor I, the latter is characterized by higher loadings on more variables. Given the hypothesized factors I, II, III, as government power; individual; jurisdiction, correlations between primary factors here seem reasonable. I and II correlated .63; I and III, .63; and II and III, .40. Clusterings in the four dimension solution again suggest that solutions do not improve by adding factors. Correspondence with FACTOR A held.

To sum, throughout all FACTOR C rotated solutions, 1-4 dimensions, there prevails a correspondence to FACTOR A. In all cases, FACTOR C loadings are uniformly lower: .6 in FACTOR A would be .3 in FACTOR C. Thus all high loadings in FACTOR A will not have exact correspondence with those in FACTOR C. Loadings high in FACTOR C in one pattern are also high in FACTOR A on that pattern in the same dimension. It is the inverse that is not necessarily true.

Although in the actual analysis I minimize the 56 variable set, a rather lengthy interpretation of its factors is offered here, as the factors themselves tend to remain stable, even though their content is progressively reduced. In FACTOR A and FACTOR C, 56 variable sets, core variables for factor I are: (I-J-5);

(I-C-14); (I-C-15); (I-C-17); (I-C-19) (I-E-38); (I-E-51). (I-J-5) is connected with Prohibition, the conduct of federal agents, and XIV amendment requirements.

(I-C-14) concerns interpretation of state/federal statutes and international treaties. With few exceptions, (I-C-15), (I-C-17), and (I-C-19) involve the same.

(I-E-38) takes up insurance policies and claims, while in (I-E-51), XIV amendment considerations predominate, state tax cases being the most numerous category. The predominance of C categories in factor I derives from the fact that the same cases are involved, but in multiple arrangements. In this factor, J and C cases are chiefly procedural, Prohibition and XIV amendment connected, and involve statutory regulation in noneconomic areas.

Dominant concern here is with the kinds of things the Court can take cognizance of as being individual, noneconomic rights constitutionally guaranteed. The context is one wherein such rights appear threatened by operation of state or federal statute. The Court is asked to intervene between individual and questioned authority. These rights are miscellaneous: right to act as juror, self incrimination, and jury trial. The E cases in factor I represent unquestionably attitude to state tax power. The Court is asked to determine the constitutional scope of the power in the case at hand.

As state tax on business enterprise is prominent, the category taps Court attitude to that power, and to that private enterprise subject thereto.

Drawing all these cases (J, C, E, and F) together, factor I can be viewed as having a preponderant attitude to government regulation component. Government is state or federal; regulation is in economic or noneconomic spheres; subjects range from individual to corporation. Perhaps this is why the factor explains so much of the common variance and why it definitely is not pure. Labels such as right to regulate, government activism, the positive state, and statism all apply, being synonymous in effect.

Factor II contains core variables: (I-E-45); (I-F-46); (I-F-48); (I-F-53); (I-F-56). (I-E-45) concerns insolvency and the legal status of parties involved; (I-F-46), taxes concurring with transfer of properties as gifts. Modes of action for recovering money from government and determination of what is properly taxable dominate (I-F-48), while (I-F-53) details subjects of federal tax laws and their reaction to such subjection. (I-F-56) deals more directly with the general subject of (I-F-48). This factor's dominant aspect appears to be federal tax power, operative in revenue acts and New Deal legislation.

Factor II appears rather more pure than factor I, the Court here passing judgment on federal fiscal policy. In this respect, factor II represents the economic aspect of factor I. In another respect, given the Court's generally negative response, it opens the issue of Manchester style liberalism (as economic individualism or the necessary underpinnings of the entrepreneurial ethic). There is operative a notion of individual economic rights, bestowed by an impartial, natural economy. There is also an implied "ethical" corollary that what one gets by dint of individual initiative, one by rights can hold against all comers, including the federal government.

Factor III has only one core variable (I-E-27), which seems most concerned with economic rights in a federal system, or the economic rights of business under plural authorities (given the intergovernmental tax immunity aspect). This immunity tends in practice to justify nullification of state tax power as a means of control.

The results of FACTOR A for 37 variables was so similar to the 56 variable set that we decided against running FACTOR C. Two factors at most, which possibly could become one if the data were tightened up, were defined. In quartimax two dimension, 80% of the variance was distributed between factor I, .75 and factor II, .06. In varimax two dimension, only the distribution

changed: factor I, .45; factor II, .36. In the three dimension varimax, factor III added 6% to this variance and left the distribution: factor I, .32; factor II, .26; factor III, .28 (almost identical with that solution in FACTOR A, 56 variable set). Save for (II-E-28), there were no "new" $< .7$ communalities, the "old" being: (II-J-3); (II-E-16); (II-E-25); (II-E-34). The $\geq .9$ loadings on factor I in quartimax were comparable: (II-J-4); (II-C-5); (II-C-6); (II-C-8); (II-C-9); (II-C-10); (II-C-11); (II-C-12); (II-E-14); (II-E-21); (II-E-29); (II-F-32); (II-F-33); (II-F-35).

Factor I supports the interpretation of attitude to government exercise of basic sovereign powers (e.g., tax power; power to legislate for the public welfare; powers in Bill of Rights protected areas). Factor II again has the idea of limitations upon the statutory power of government, and the more positive counterpart of constitutional guarantees of the individual against total government. The label of individualism in legal/economic terms is as applicable here as in FACTOR A, 56 variable sets.

The pattern of the two dimension varimax indicates factor II as the individualist factor of quartimax. Some idea of what is due the individual, in terms of economic/non-economic rights from and against government appears operative. As before, adding a third dimension did not

improve the loading patterns. It did emphasize the changed pattern that combined scales¹ can cause. Otherwise, its utility is minimal. No loading is $\geq .9$, and the previous pattern is distorted in not too meaningful fashion. It is still interpretable in terms of jurisdiction.

In the FACTOR A, 25 variable sets, two dimension quartimax accounted for 81% of the variance; factor I, .73; factor II, .08. The two dimension varimax, 81%; with .47 on factor I; .34 on factor II. The third dimension increased the variance to 86%, the distribution being: factor I, .24; factor II, .22; factor III, .40. In both two dimension quartimax and varimax, (III-J-2), (III-C-4), and (III-F-24) have $< .7$ communalities, while the three dimension solution had none below .74. The $\geq .9$ two dimension quartimax loadings on factor I (and two dimension varimax is generally similar) are: (III-C-5); (III-E-15); (III-E-16); (III-E-18); (III-E-20); (III-E-21); (III-F-23); (III-F-25). All suggest factor I represents an attitude toward governmental power, specifically in the areas of tax regulation. This is most apparent when examining the AOs and ASs of the variables with $\geq .9$ loadings.

¹The 37 variable sets are unique in that all variations of the original 56 variable sets are combination scales. This is true of no other subsequent permutation.

In two dimension varimax, highest loadings on factor II are: (III-E-7); (III-E-11); (III-E-13); (III-F-24). This in no way disturbs the previously hypothesized individualist orientation. Highest loadings occur most often with an AO of assessed taxpayers, government employees, contractors, and parties accused of crime. There is a legalist slant, indicating AS is perceived in terms of litigant's legal prerogatives and written constitutional guarantees. The three dimension varimax loads highest on (III-E-14), (III-E-16), and (III-F-25), though a number of higher loadings occurred in factor I of quartimax.¹ The jurisdictional aspect is still apt. AO orientation stresses inherent rights such as acquisition, maintenance, and development of property. In sum, an assumed natural right to property.

In FACTOR A, 21 variables, the two dimension quartimax takes into account 82% of the variance: .73 on factor I; .09 on factor II. The varimax counterpart, with 82% of the variance, loads .46 on factor I; .36 on factor II. No third dimension was run, but in the fourth dimension, 90% of the variance was thus distributed: factor I, .40; factor II, .12; factor III, .12; factor IV, .26. In both two dimension solutions, the

¹(III-J-1); (III-C-5); (III-E-9); (III-E-12); (III-E-15); (III-E-18); (III-E-19); (III-E-20); (III-E-21); (III-F-22).

communalities $< .7$ are identical: (IV-J-2); (IV-C-4); (IV-F-20). The fourth dimension had none less than $.7$. Two dimension quartimax loadings $.9$ on factor I are: (IV-E-7); (IV-E-9); (IV-E-12); (IV-E-16); (IV-E-17); (IV-F-19); (IV-F-21). The fourth dimension is identical with the FACTOR A, 25 variable set; all are associated with governmental power.

In two dimension varimax, highest ($\geq .8$) loadings on factor II are: (IV-E-6); (IV-E-10); (IV-E-14). Loadings $\geq .7$ are: (IV-J-2); (IV-J-3); (IV-C-5); (IV-E-8); (IV-F-20). For all variables, the individualist interpretation is plausible. The nature of the four dimension solution suggests a fourth factor as superfluous. The generally lower correlations among primary factors and the per cents of variance accounted for in FACTOR C, 21 variable set (as compared with FACTOR C, 56 variable set) seem concomitant with the reduction of variables to 21. Correlation among primary factors of the fourth dimension solution (much higher than the two or three dimension solutions) seem to bear this out: a $.70$ correlation between factors I and II in the fourth dimension solution, as compared with $.48$ for the two, and $.46$ for the three dimension solutions.

In the two dimension solution (row vectors of original length), the highest ($\geq .8$) loadings on factor I are: (IV-C-4); (IV-E-7); (IV-E-11); (IV-E-13);

(IV-E-15); (IV-F-19); (IV-F-21). Included ($\geq .5$) could be: (IV-J-1); (IV-E-9); (IV-E-12); (IV-E-16); (IV-E-17); (IV-F-18). For factor II, the highest ($\geq .4$) are: (IV-J-2) the only one at .83; (IV-E-6); (IV-E-8); (IV-E-10); the last three having only .40-.47 loadings. A rough correspondence between this solution and the two dimension solution of FACTOR A, 21 variables, exists in terms of the loading pattern. The discrepancy lies in the noted fact that FACTOR C loadings are characteristically much lower than those of FACTOR A: a .5 FACTOR C = .7 FACTOR A; a .2 FACTOR C = .5 FACTOR A.

The hypothesis remains: that factor I predominates; that it represents an attitude toward exercise of the government's sovereign powers (cf., p. 151). In general, however, these powers are historically recognized and of a public nature. Also, factor II here seems to approximate an attitude towards exercise of government powers in areas rather more private, where government functions variously as watchdog or usurper of relationships that may have public aspects but which are yet perceived as basically private. In other words, these relationships are perceived as an area more immediately involving individuals. This is particularly salient in the contract and liability cases. Government in this area occupies a position comparable to that of parvenu, in the sense that it is not at all obvious or settled what exactly

is government's role. In the areas associated with the first factor, it can be equally argued that historically, government is not a new arrival but rather an habitué merely functioning in new, heretofore unused ways.

Adding a third dimension which loads heavily on (IV-F-20) suggests again the jurisdiction concept. Given the specific universe of content, it seems to mean getting one's just due from Caesar or whomever. Considered as a whole, a fourth dimension adds little, save for (IV-J-2), a consistently anomalous variable, but detracts much, especially regarding variables without significant loadings. Its merit consists in indicating the core variables on the main factors which remain consistent throughout the program. Highest loadings on core variables are in areas possessing more consensus regarding government's function (e.g., antitrust, commerce). Another merit, absenting the interpretative value, lies in the fact that the loadings confirm variables (IV-F-20) and (IV-F-21) as distinguishable categories. The former includes so many trust cases like the latter that the difference made for classificatory purposes might have been spurious.

Plots

Computer plottings were done on the loadings of FACTOR C 56 and 21 variable sets. For FACTOR C, 56

variables, I clerically plotted, in nine graphs, the correlations among primary factors. Results underlined previous observation that the factors were not pure. They also indicated that drawing in oblique angles proved only that a hypothesis of several distinct factors was untenable here, so few were the variable loadings on the factors themselves, even when these were rotated. In the computer plotting for 56 variables, only 50 coordinates were drawn, the remainder (interrelated subsets) appearing more than once.¹ Superimposing penciled oblique angles over these clusters again indicated (as did the clerical version) that the clusters did not align along factor angles but distributed themselves about them. High correlation among these variables is obvious. Those variables still unique² appeared on the plot at a greater distance from the more interrelated ones.

The 21 variable plotting had no coordinates occurring more than once. The cluster patterns are clear, more definite, and reflect the new structural economy. The more unique variables indicated by a graph of the two dimension solution are: (IV-J-2); (IV-C-4); (IV-E-11);

¹(I-C-6), (I-C-7), and (I-C-8); (I-C-21) and (I-C-24); (I-C-9) and (I-C-18); (I-C-14) and (I-C-15); (I-C-17) and (I-C-19).

²(I-J-3); (I-C-23); (I-E-27); (I-E-32); (I-E-38); (I-E-39); (I-E-42); (I-E-43); (I-F-46); (I-F-53); (I-F-55).

(IV-F-20). (IV-E-6), (IV-E-8), (IV-E-10), and (IV-E-14) cluster loosely among themselves, a short distance from the other variables, which cluster tightly, in ball-like fashion. I focus on the first graph in preference to any of the remaining eight, since it is my judgment that the two factor solution generally is more meaningful.

LAWS

Hierarchical cluster analysis (Price, 1969) is a computer dependent program called LAWS, having a characteristic especially pertinent to our model. It combines levels of variables into successively more inclusive clusters until at the end, when the level of the average tau is reached, it has included every variable in the input matrix. Input data are the same as are used for both types of factor analyses, with the exception that a square rather than triangular matrix is requisite. The successive clusters need not be symmetrical in formation, though this is highly desirable if the data warrant.

A tally of the most unique variables in LAWS for 37 variables (those correlating $< .8$) includes: (II-J-3); (II-E-16); (II-E-19); (II-E-22); (II-E-24); (II-E-25); (II-E-28); (II-F-34); (II-F-36). Had there been fewer, less highly correlated cluster elements, the program would have been more serviceable as a guide to data reduction. As it was, the results of the 37 variable

set indicated that the input data would require refinement before LAWS could aid in the latter objective.

LAWS for 25 variables does have a symmetrical structure: a visibly hierarchical pattern, hence lends itself quite well to our model. FACTOR C, 21 variables indicates high correlations within a factor for variables which this LAWS also shows to be interrelated. This correspondence makes possible the subsequent reliance upon LAWS, 25 variables when specifying the components of psychological determinants of decision making. The most unique variables are, in descending order: (III-J-2); (III-C-4); (III-E-14); (III-E-13); (III-F-24); (III-E-11).

The 21 variable LAWS does not recommend itself as much as did the 25, hence is subordinant to it in the following analysis. There is definite correspondence between both, and both are utilized. The 21 variable program lists, in descending order of uniqueness: (IV-J-2); (IV-C-4); (IV-E-11); (IV-E-14); (IV-F-18); (IV-E-10); (IV-E-8).

TABLE 4A.--FACTOR A, 25 variable sets: Two dimension
varimax solution.

	Total Variance: .81	I .47	II .34
1. J State Jurisdiction		.86	.30
2. J Federal Jurisdiction		.25	.74
3. J Full Faith and Credit		.59	.70
4. C Statutory Construction		.72	.34
5. C Procedure		.61	.71
6. C Due Process/ S. F. Procedure		.54	.74
7. E Bankruptcy		.40	.85
8. E Liability		.60	.68
9. E Gold Clause		.79	.42
10. E Insurance Contract		.50	.69
11. E Noninsurance Contract		.28	.84
12. E ICC		.81	.38
13. E Federal Agency		.36	.84
14. E Antitrust		.85	.13
15. E Commerce		.74	.53
16. E Intergov't. Tax Immunity		.87	.37
17. E Fourteen Amendment		.73	.49
18. E State Tax Policy		.84	.41
19. E Police		.70	.50
20. E Labor		.80	.52
21. E Foreign Corporation		.84	.38
22. F Gifts		.68	.54
23. F Social Tax		.87	.42
24. F Refund		.18	.80
25. F Trusts		.89	.35

TABLE 4B.--FACTOR A, 21 variable sets: Two dimension
varimax solution.

Total Variance: .82		I	II
		.46	.36
1.	J State Jurisdiction	.81	.36
2.	J Federal Jurisdiction	.21	.79
3.	J Full Faith and Credit	.57	.73
4.	C Statutory Construction	.76	.30
5.	C Procedural and Due Process	.53	.78
6.	E Contracts	.31	.89
7.	E Intergov't. Tax Immunity	.86	.38
8.	E Liability	.59	.70
9.	E Commerce	.76	.50
10.	E Federal Agency	.34	.86
11.	E Antitrust	.88	.09
12.	E State Regulation	.74	.57
13.	E ICC	.83	.36
14.	E Bankruptcy	.41	.84
15.	E Gold Clause	.78	.43
16.	E Labor	.81	.52
17.	E State Tax	.70	.58
18.	F Gifts	.72	.51
19.	F Social Tax	.85	.44
20.	F Refund	.25	.72
21	F Trusts	.87	.37

TABLE 4B.--FACTOR A, 21 variable sets: Two dimension
varimax solution.

Total Variance: .82		I	II
		.46	.36
1.	J State Jurisdiction	.81	.36
2.	J Federal Jurisdiction	.21	.79
3.	J Full Faith and Credit	.57	.73
4.	C Statutory Construction	.76	.30
5.	C Procedural and Due Process	.53	.78
6.	E Contracts	.31	.89
7.	E Intergov't. Tax Immunity	.86	.38
8.	E Liability	.59	.70
9.	E Commerce	.76	.50
10.	E Federal Agency	.34	.86
11.	E Antitrust	.88	.09
12.	E State Regulation	.74	.57
13.	E ICC	.83	.36
14.	E Bankruptcy	.41	.84
15.	E Gold Clause	.78	.43
16.	E Labor	.81	.52
17.	E State Tax	.70	.58
18.	F Gifts	.72	.51
19.	F Social Tax	.85	.44
20.	F Refund	.25	.72
21.	F Trusts	.87	.37

TABLE 4C.--FACTOR C, 21 variable sets: Two dimension solution.

	I	II
1. J State Jurisdiction	.58	.32
2. J Federal Jurisdiction	-.15	.83
3. J Full Faith and Credit	.34	.19
4. C Statutory Construction	.70	-.23
5. C Procedural and Due Process	.30	.23
6. E Contracts	.03	.41
7. E Intergov't. Tax Immunity	.66	.21
8. E Liability	.30	.47
9. E Commerce	.59	.04
10. E Federal Agency	.07	.40
11. E Antitrust	.81	-.14
12. E State Regulation	.56	.06
13. E ICC	.65	.16
14. E Bankruptcy	.15	.39
15. E Gold Clause	.61	.07
16. E Labor	.59	.18
17. E State Tax	.52	.06
18. F Gifts	.53	.24
19. F Social Tax	.66	.14
20. F Refund	.10	.16
21. F Trusts	.66	.25

CHAPTER V

DATA AND MODEL

In the present chapter I attempt a number of things. The most important of these, however, is joining empirical data just analyzed to the model previously described. It is the goodness of fit between the two that imparts worth to scientific explanations at whatever level of disciplinary advance. Certainly the importance of the model cannot be overestimated. Its centrality becomes immediately apparent if, for example, the present analysis were to terminate with the last chapter. It is the model, or theoretical framework, that allows discrete findings to become an interpretable whole with explanatory power.

The fitting process is hardly automatic: that the judgmental is in large part involved is both necessary and obvious. My approach to the model in general and the fitting process in particular is a rather pragmatic one of maximum utility. In other words, the model is used for its explanatory power. Its success is gauged by the degree to which it enables a plausible explanation of decision making on the Hughes Court, in terms of the data provided.

The process whereby data are selected from out of the total universe sampled and analyzed, then subsequently assigned places within the psychological hierarchy, is the area where the judgmental comes most noticeably to the fore. In this regard, I can say only that here, as throughout, I will make the process as open as possible and justify it as persuasively as I can. To any reader, however, I leave the option of disagreement and at least the empirical foundations upon which to do so.

Construction of the Hierarchy

The Process

Utilizing pertinent findings from all computer programs (discussed in the preceding chapter), I noted all core variables (i.e., those loading consistently on the same factor across various computer programs), mechanically assigning each to whichever of four possible factors it pertained. And while the evidence appeared to the contrary, all four factors were included initially. Though the listings of core variables derived from four different permutations of data, the variables chosen out of all four sets differed very little among themselves, so the results were easily comparable, if not identical. During the listing, I also noted the number of times each variable recurred.

This simple procedure, in effect ascertaining the consensus of all programs, produced a fairly well-substantiated listing of core variables, corroborated by as many as five or six computer programs. The number of recurrences of the variable within any one factor merely increased the confidence in its positioning. The results of the procedure, in terms of the very few (i.e., one or two) core variables that could be assigned factor three or four, suggested deleting them completely. The presence of a core variable on either of these factors invariably meant a distending of the existing pattern. Certainly there were enough grounds heretofore for this deletion, but this is the ultimate point at which a decision had to be made. Consequently, the solution must be in terms of at most two, but possibly even one factor: a situation earlier noted as being quite likely.

The 21 variable sets were employed as guidelines regarding the number and kinds of variables to be dealt with and accounted for. These particular sets are chosen because they represent the ultimate reduction of all variables to their most elementary state. It is hardly appropriate to speak of "essences" in an empirical tract, but at least the 21 variables in toto contain the essential elements dealt with by decision makers on the Hughes Court. They represent the end product of a refinement process and ostensibly the best permutation in that

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sense. The 56 variable sets, for example, are too complex for the present purpose. In them the basic elements are compounded and somewhat obscured by appearing in many different forms: a prime fact making those sets analytically undesirable.

Core variables on the check lists accounted for 15 of the 21 variables on the legend for the 21 variable matrix. Six variables remained. In other words, these had not yet been assigned to either factor I or factor II because they had not been designated as core variables by the computer analyses. To assign these unplaced variables, I examined the most likely programs, again to ascertain some consensus on the positioning: FACTORS A and C, 21 variables; FACTOR A, 25 variables; FACTOR A, 37 variables; FACTORS A AND C, 56 variables.

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with regard to variable position on factors, the 21 and 25 variable solutions were given added weight in the determination.

On these bases, and under the conditions noted, assignment of the heretofore unplaced factors was as follows:

J-State on factor I	E-Antitrust on factor I
J-Full Faith and Credit on factor II	E-ICC on factor I
C-Procedural and Due Process on factor II	E-Gold Clause on factor I

The resultant two factors, together containing 21 variables, are:

Factor I (12 variables)	Factor II (9 variables)
C-Statutory Construction	C-Procedural and Due Process
J-State	J-Federal
E-State Tax minus Inter- gov't. Immunity	J-Full Faith and Credit
E-Labor	E-Federal Agency
E-Commerce	E-Liability
E-Tax Immunity	E-Contracts
E-Antitrust	E-Bankrupt
E-ICC	F-Gifts
E-State Regulation	F-Refund
E-Gold Clause	
F-Social Tax	
F-Trusts	

These list, by set, the variables in each factor. The results are mechanically determined "set clusters" within factors. Set boundaries (J, C, E, and F), while essential to research and analysis, might not be so rigidly observed in the decision making context, however neatly they may fall together.

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E-State Regulation	F-Refund
E-Gold Clause	
F-Social Tax	
F-Trusts	

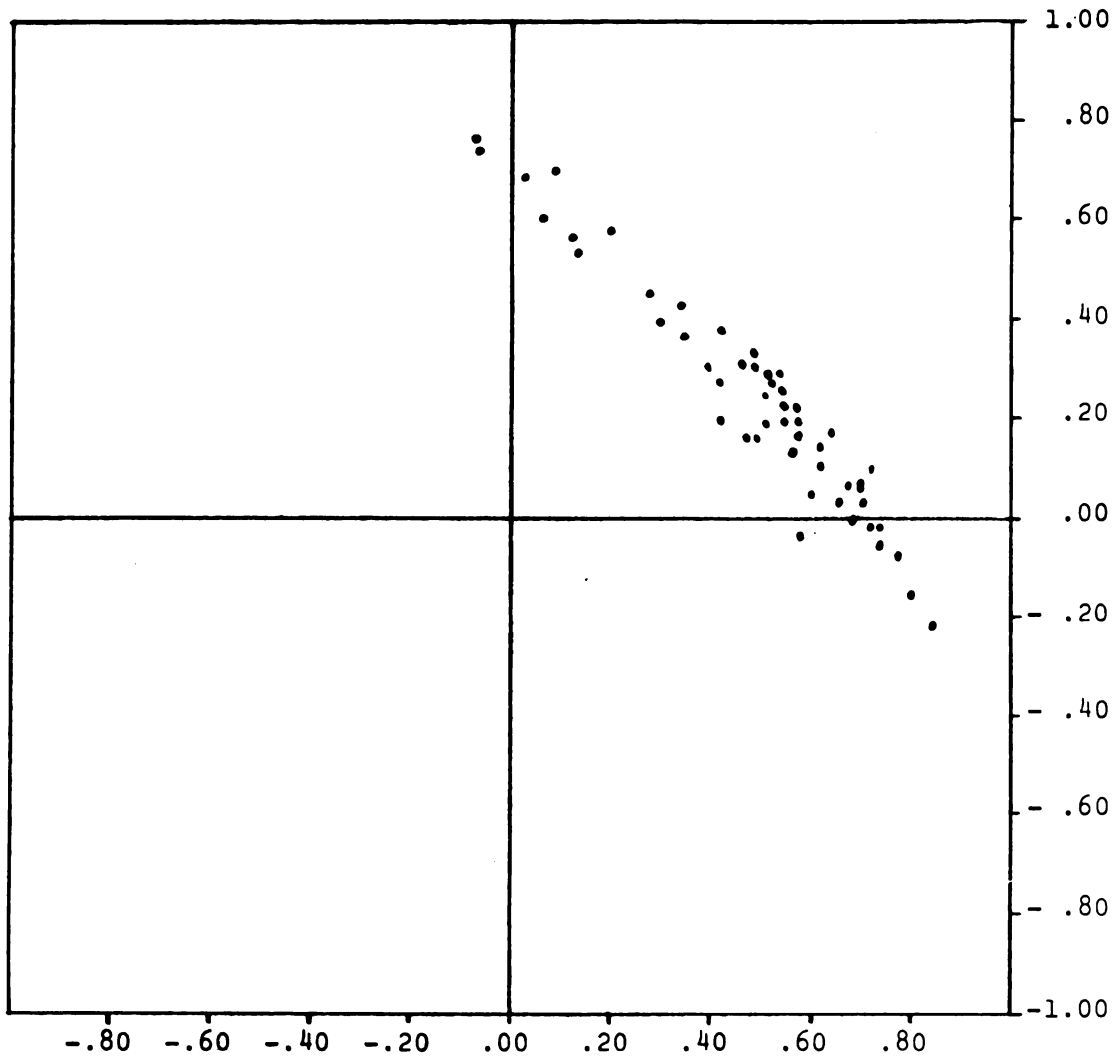
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To check the correspondence between these and actual, nonmechanical clusters, the computer plotting for FACTOR C, 21 variables, was reexamined. The plotted clusters are nonmechanical in that they occur without regard to separate factors hypothesized, and without regard to the set boundaries so arbitrary and heuristic at the same time. The resultant mix in positions, indicated by the plotting, strongly suggests that a one factor solution, rather than two, is closer to the reality of decision making on the Hughes Court. My own preference, because of its analytic rigor and structural definiteness, is the two dimension solution, with the second factor perhaps qualified as a specification of the first, but still somewhat independent of it. In light of the findings here, however, such a solution hardly appears defensible. This conclusion does not mean blind, exacting adherence to a computer solution. It does mean selection on the basis of a choice that is plausibly explained by, and more conformable to, the data themselves.

In the plotting, graphs one (the two dimension FACTOR C, 21 variable solution for factors one and two) and two (three dimension solution FACTOR C, 21 variable solution for factors one and two) were focused on. The clusters plotted, while not callous to the mechanical structure, hardly observed the category boundaries which guided research. Descriptively, this means:

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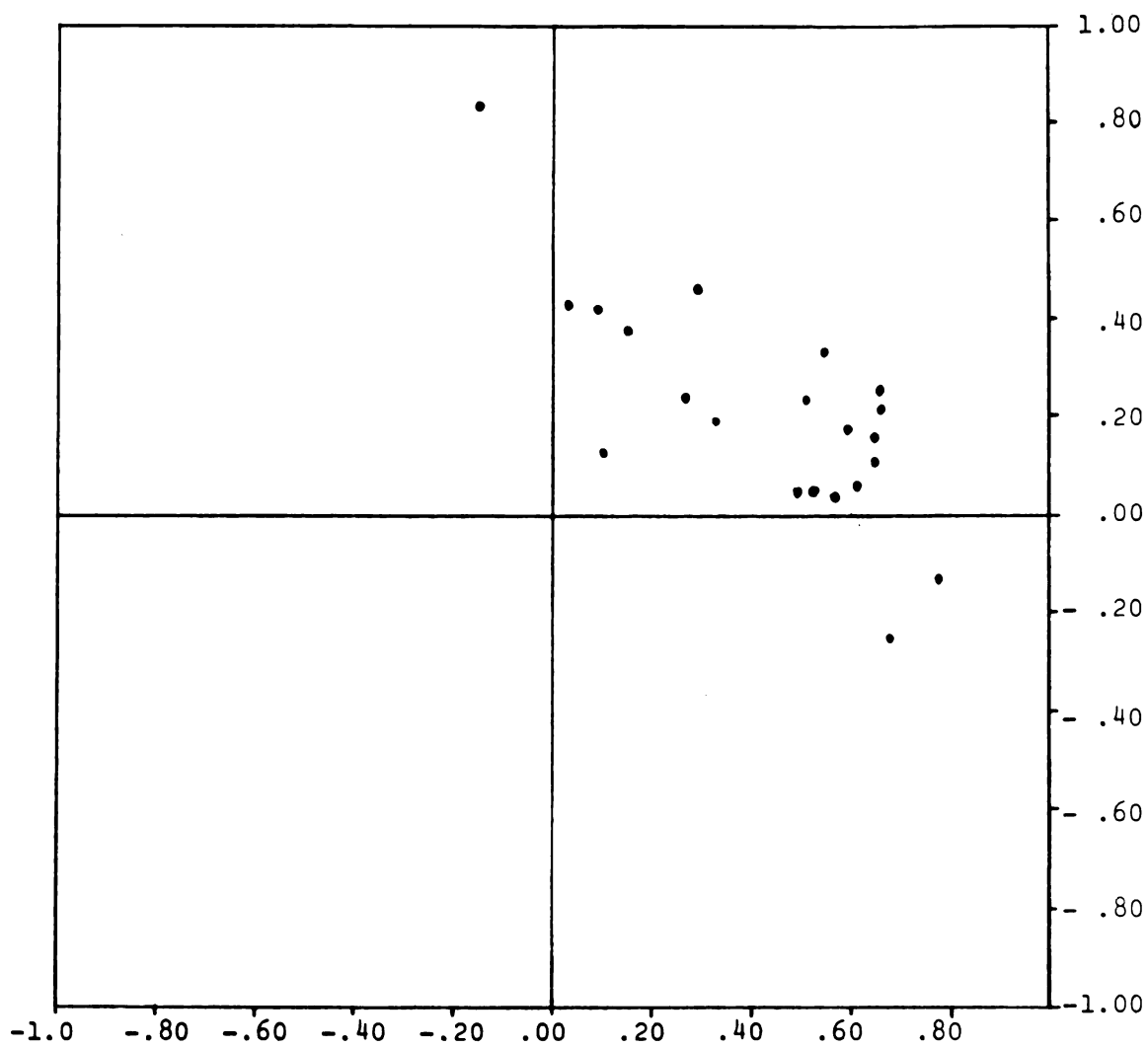
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Factor I: H axis

Factor II: V axis

Figure 5A. FACTOR C, 56 variable sets: Two dimension solution.



Factor I: H axis

Factor II: V axis

Figure 5B. FACTOR C, 21 variable sets: Two dimension solution.

- a. E-Antitrust; C-Statutory Construction; J-Federal are definitely unique and apart
- b. E-Contracts; E-Federal Agency; E-Bankrupt; E-Liability cluster together, with F-Refund loosely attaching itself thereto
- c. E-State Tax minus Intergov't. Immunity; E-State Regulation; E-Commerce; E-Gold Clause all cluster, as do
- d. E-Trusts; E-Intergovernmental Tax Immunity; E-ICC, F-Social Tax, with E-Labor loosely attached
- e. Both c and d can cluster together, in ball-like fashion, joined by J-State and, to a slight degree, F-Gifts
- f. C-Procedure and Due Process and J-Full Faith and Credit loosely cluster

In sum, the initial processes in construction of the hierarchy have determined the variables to be taken into account; the manner of clusterings to be explained; and the nature of the solution. In accord with the model, each of the 21 variables represents an attitude system. Clusterings of the variables (attitude systems) may or may not, as the data warrant, represent values. The values themselves integrate, to greater or lesser degree, into a working value system for Court decision making during the 1931-1936 term.

Components of the Hierarchy

Description of Variables
as Attitude Systems

Although detailed description of these variables is given in the appendices on the Guttman scales, some brief characterization of each appears in order.

Regarding the three most unique variables:

J-Federal Cases: The uniqueness seems chiefly accounted for by the fact that Cardozo, Hughes, Van Devanter, and Butler have tie ranks (two pluses, two minuses for each). Also, of four cases herein, two are quite unusual (80/54 and 77/1148), the former in content and the latter in that the +/- direction was determined on a very minor basis. Also the cases (76/389 and 80/54) responsible for the + vote of Van Devanter and Butler, enabling them to tie with the not quite so improbable combinations of Hughes and Cardozo, were unusual ones involving Court jurisdiction in patent and copyright cases. In any case, the variable represents an attitude to judicial activism and jurisdictional assertiveness vis-à-vis lower federal courts.

C-Statutory Construction: Roberts' surprisingly + direction, in six of seven cases, probably accounts in great part for the uniqueness. His + votes represent generally largess in interpretation, a pro C (individual) directionality. They are responsible for his tie rank

(number two) with Brandeis and Hughes. Only Stone and Cardozo are more liberal. Civil rights evidently is an exception to what the conventional literature styles as his lawyer's approach. The variable itself represents attitudes towards civil rights and the degree of statutory regulation constitutionally permissible.

E-Antitrust: McReynolds' abnormal rank, high on the liberal end of the spectrum, has much responsibility for uniqueness here. Beyond an unwonted liberalism in this category could lie his earlier experience as a vigorous trustbuster in the Progressive years, on account of which he was then characterized as liberal, even radical. The fact that Stone, Hughes, and Sutherland each had three NPs (nonparticipations) out of five total further softens the ranks (e.g., a consequent Hughes and Sutherland tie). The variable represents an attitude toward the various elements of business monopoly, competition (the other side of the coin), and federal statutory regulation.

Attempting to improve the fit of C-Statutory Construction, and E-Antitrust, tau coefficients were later clerically computed for both. In the case of the former, Roberts was omitted and the scale was then ranked against E-State Regulation (a core variable in factor I). The resulting tau, .88, indicated that Roberts' behavior was responsible for the uniqueness of this variable. For

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Antitrust, McReynolds was omitted, and the scale then ranked against E-Commerce, another central variable in factor I. A tau of .75 was obtained. That it was no higher seems due in great part to the concomitant fact of Sutherland's abnormal rank in Antitrust, where he ties with Hughes.

Regarding the cluster of E-Contracts; E-Federal Agency; E-Bankrupt; E-Liability and loosely, F-Refund:

E-Contracts: Composed of both insurance and non-insurance varieties, the variable represents an attitude system which regards the extent of the binding nature of contracts, thus establishes the status of contractees. The kind of contractee, business or individual, makes a difference.

E-Federal Agency: This variable is concerned basically with orders of federal regulatory agencies or bureaus directed to actors subject thereto. Usually, the actor is a business corporation, or an individual within an area of enterprise under regulation. The attitude system here represents an attitude to the regulatory powers congressionally delegated to specialized federal bodies, in economic areas.

E-Bankrupt concerns the condition of bankruptcy as it pertains to private corporations and a municipal government. The attitude system, despite compounding

elements, seems basically the naked debtor/creditor argument coming up for judgment.

E-Liability concerns employer/ employee relations, where the latter's loss is connected with the work contract and mainly with regard to liability of vessels. The attitude system is focused on the worker and his rights: an underdog dimension seemingly.

F-Refund, involving mainly the rights of an assessed taxpayer and his claims for that which government has [wrongfully] taken away, seems to represent an attitude system highly sensitive to and geared toward the economic rights of the individual and the maintenance of security in possession. It is watchful, too, of the scope of the sovereignty expressed in the tax power.

Regarding the cluster of E-State Tax minus Inter-governmental Immunity; E-State Regulation; E-Commerce Regulation; E-Gold Clause:

E-State Tax may basically involve state taxes on various kinds of business (chain stores, foreign corporations) and personal property, as well as statutory classifications for purposes of taxation. Probably the attitude system represents the constitutionally available rights of private enterprise (especially under XIV amendment, equal protection) within the area of public sovereignty. It is an attitude towards the allowable

bounds to which state legislatures can stretch the tax power.

E-State Regulation in general concerns state legislative regulation of private enterprise, in effect, operationalizing the police power by commission and/or statutes. The attitude system is founded on the regulator/regulated relationships: state legislatures as the former; private enterprise as the latter.

E-Commerce Regulation involves predominantly New Deal legislation and its utilization of the federal commerce power. The attitude system would necessarily be directed towards legislative innovation, in terms of federal regulation of heretofore unregulated areas. The consequences of government in action, in terms of power employed, are the dominant foci here.

E-Gold Clause primarily centers on the power of Congress to override contractual (public or private) obligations bound up with the monetary system. The attitude system activated seems dominantly the sanctity of contract as either absolute or relative.

Regarding the cluster of F-Trusts, E-Intergovernmental Tax Immunity, E-ICC, F-Social Tax, and marginally, E-Labor:

F-Trusts generally involves cases testing the various ways whereby property in trust is rendered federally taxable. Regardless of the legal labyrinths

Involved in these cases, the attitude system, in a most elementary manner, seems to be right to property, together with untrammelled right of its ultimate disposal.

E-Intergovernmental Tax Immunity concerns the state tax power over an object (corporations, lands) having especial status because of extra-state connections. The attitude system concerns the state tax power where its operation intrudes into an area of plural sovereignties.

E-ICC concerns private business (railroads, transit companies, stockyards, carriers generally) in interstate transport or transaction. The attitude system is again set in the regulators (i.e., ICC) and the regulated (the carriers) context, and so activates response toward both.

F-Social Tax deals mainly with federal taxes based on policy orientations that are decidedly nonfiscal. In this category, the attitude system focuses on judgment as to the legitimacy of either policy per se or of government's mode of implementation.

E-Labor involves two state minimum wage laws, and one state labor code. All instances activate an attitude system which regards the laborer, either as underdog in a free enterprise system, or a party whose legal status is based on his right to work and freedom of contract.

Regarding J-State and F-Gifts, which tend to loosely attach themselves to the combination of the two preceding sets:

J-State: The variable content is variegated. Apparently the common tie is judicial activism in the sense of broadly conceiving the scope of federal jurisdiction. The attitude system involves this consideration (judicial activism) specified as the exercise of an oversight function with regard to the rulings of state courts.

F-Gifts largely deals with operation of the federal tax power via revenue acts on gifts by inheritance or succession. Seemingly, the nature of property transferral (gift as opposed to trust) activates an attitude which makes a difference in perception of federal tax power, resulting in a more positive orientation to it.

Regarding C-Procedural and Due Process and J-Full Faith and Credit:

C-Procedural and Due Process in large part involves the procedural guarantees of the accused, particularly in federal criminal trials and in state courts. The nature of most cases involving the Prohibition Act, for example, occasions a duality in the attitude system: regard for procedure tends to go hand in hand with the attitude toward legislation under which conviction occurred.

J-Full Faith and Credit deals with interstate relations, specifically, state courts honoring rulings of other state courts which in some manner affect or relate

to them. The attitude system seems again to concern the Court as overseer of interstate relations in judicial forums throughout the federal system.

Integration of Variables

At this juncture, more precise specification of the psychological proximity of these attitude systems is required. For this reason, the LAWS programs for 25 and 21 variables were employed interchangeably. This was necessary, given the very good structure of the 25 variable program and the fact that there were some minor differences in the content of each variable set. By weaving back and forth, as it were, between these sets and the raw data from which they derive, an anatomy for the explanation was constructed.

To repeat: in general, hierarchical cluster analysis indicates what variables in any given set cluster together (possible clusters containing from two up to, and including, N number of variables in the entire set), and at what level of correlation (i.e., from a theoretical 1.00 down to the lowest tau of any one set of variables). For example, in the LAWS for 25 variables, the highest correlation starts at .969 (between J-Full Faith and Credit, and C-Procedural). The various clusterings are then listed in descending order of correlation, and end at a .713 correlation which includes all 25 variables.

The original NPAR for 25 variables had yielded an average tau of .713, and so the relationship goes. LAWS for 21 variables had started with a .965 correlation (E-Commerce, and E-Labor), and continued, in descending order of correlations, until the terminal point, a correlation including all 21 variables. The correlation among these 21 is .716 (again, the average tau indicated by NPAR for 21 variables).

Essentially, I worked back and forth between these two programs (i.e., LAWS for 21 and for 25 variables). Where both programs agreed, selection of correlated variables was mechanical. Where they did not, the judgmental and extrapolative processes again came into play. Thus the following indicates, in short hand fashion, these processes and the correlated variables ultimately selected. The correlated variables themselves are given, the variable sets from which this correlation derives (21 and/or 25 sets), and the level of correlation. The order of treatment is guided, not by the level of correlation, but by the clusters of variables (attitude systems) explained in the section immediately preceding.

- a. J-Full Faith and Credit and C-Procedure and Due Process 21 variable (program) - .926
(correlation)

E-Intergovernmental Tax Immunity; F-Social Tax; E-Trusts; J-State 21 variable - .916

E-ICC; E-Commerce; E-Labor 21 variable - .914

F-Social tax; E-State Regulation 21 variable - .914

These elements intercorrelated together in the 21 variable set at .827

The following clusters, less definite because deriving variously from two programs and much of the judgmental and extrapolative processes, are:

- b. F-Trusts; E-Antitrust 21 and 25 variable - .800 hence relate E-Antitrust to section a
- E-Gold Clause; F-Trusts 21 variable - .872 hence relate E-Gold Clause to section a
- C-Statutory Construction; E-Gold Clause 21 variable - .782 hence relate C-Statutory Construction to section a
- c. E-Federal Agency; E-Contracts 21 variable - .896
- F-Refund; E-Noninsurance (translate Contracts) 25 variable - .828
- E-Federal Agency; E-Bankrupt 25 variable - .825
- J-Federal; E-Federal Agency 21 variable - .764
- J-Federal; E-Insurance Contracts (translate Contracts) 25 variable - .770
- F-Refund; E-Bankrupt 21 variable - .759
- E-Contracts; E-Liability; E-Federal Agency; (also C-Procedural) 21 variable - .824
- E-Liability; F-Gifts 21 variable - .862
- hence could plausibly build a composite cluster of the foregoing relationships by extrapolation (i.e., E-Federal Agency; E-Contracts; E-Bankrupt; E-Liability; F-Refund, with F-Gifts and J-Federal marginally included

Hierarchy Detailed

The major findings of this analysis based on decisional output for the 1931-1936 terms thus point to the conclusion that decision making on the Hughes Court was dominated by a single factor made of three components.

The factor has been mentioned, and used throughout, as an attitude toward government, toward the exercise of governmental power. For the purposes of this conclusion, however, I have here labeled it "operational government." This is due to the fact that it basically concerns the Court's attitude towards a particular, coexisting governmental apparatus, as well as Court perception as to how that government was executing its functional imperatives. Government here embraces more than Franklin Roosevelt's administration. It involves, as do the case-stimuli, the total polity or political society.

In essence, I conclude that the value system of the Court as a whole is, in terms of psychological determinants, a simple one factor structure: operational government. The extremely intercorrelated nature of the data as well as the scalability of mass, gross categories of cases have indicated as much throughout. Though striving for simplicity, one tries to avoid the appearance of being overly simplistic. At the risk of the latter, however, the conclusion stands. Empirically it is warranted. Historically it seems not at all improbable.

The Hughes Court sat during an intensively transitional period. The men on it were born in the Civil War or Reconstruction period, and though the 1930's were only thirty years up from the turn of the century, they were light years away in terms of the governmental function.

In other words, both concept and perception regarding the role of government in a democratic society were revolutionized. Government was no longer a negative force, policing to maintain public order and intervening only when physical disruption of the social organization threatened. Society had been a self-contained mechanism regulated by natural forces. Government had been the policeman on the sidelines, looking on to see that society kept on working things out, propelled by its own inner dynamism. Depression, the failure of Hoover's policies, and Franklin Roosevelt were prominent in radically changing this state of affairs. Enter then the social welfare function and positive governmental action.

This distance of light years is true not only of government's function in execution but also of that function as perceived by the electorate, in particular the people who voted in 1932 and 1936. It was a time when government was reaching into all aspects of its citizens' lives, a kind of democratic encapsulation process. As the cases themselves vividly demonstrate, hardly any legal issue but what had an aspect vis-à-vis governmental power. The prohibition cases are a natural example.

I further conclude that two dominant and one minor values compound the factor. The one value concerns operational government as it exists/operates in public areas. This refers to areas wherein the presence of governmental

authority, representing the general public, is accorded a legitimacy that may be denied, upon specification, to the actual exercise of its power. In sum, it is the public welfare value. It is a value that assumes government state or federal does have a care for the social entity, and that perfection of organized society is incontestably a desirable, worthy goal. Just what this "care" amounts to, in terms of implementation, is of course another matter and the argument's core.

Although J-Full Faith and Credit and C-Procedure and Due Process are, on the basis of LAWS 21 and 25 variable sets, part of the public welfare value, they correlate so highly together, and are of sufficiently different matter from the rest as to be distinguished. There is enough of court/legal procedure in both to make probable a very judicial kind of value evidencing concern on the part of the Supreme Court over the conduct of business by lower courts. In both categories, the Court is essentially examining lower court output for judicial errors. Perhaps the label "judicial process value," with its implied pride of court, is not too misleading.

The other dominant value is generally along an individualistic/privatistic dimension, despite the implications of such category titles as E-Federal Agency and J-Federal. In the area where this value is operative, there is no fundamental consensus regarding even the

Value System:

Operational Government

Public Welfare

Private Rights

Values:

Judicial Process

Attitude Systems:

J: 1 2 3 E: 6 7 8 9 10 11
 C: 4 5 12 13 14 15 16 17
 F: 18 19 20 21

Legend:

J Scale

- 1 State Jurisdiction
- 2 Federal Jurisdiction
- 3 Full Faith & Credit

C Scale

- 4 Statutory Construction
- 5 Procedural & Due Process

E Scale

- 6 Contracts
- 7 Intergov. Tax Immunity
- 8 Liability
- 9 Commerce
- 10 Federal Agency
- 11 Antitrust
- 12 State Regulation
- 13 ICC
- 14 Bankruptcy
- 15 Gold Clause
- 16 Labor
- 17 State Tax

F Scale

- 18 Gifts
- 19 Social Tax
- 20 Refund
- 21 Trusts

Figure 5C. Representation of the hierarchy.

presence of governmental authority. Government may operate as a kind of deus ex machina here, but the tenor of most cases constituting these categories underlines the saliency of individual to individual relationships, generally in an economic context. This value area focuses on the issue of the primacy of the individual in getting, keeping, losing, or just dealing. The rights involved, and what government's position regarding them, are then the points of adjudication. For these reasons, this value seems best labeled "private rights."

These, then, are my conclusions on the working value system of the Court. It is basically a single value system, which I have termed operational government. The value system itself is composed of two dominant values, and one minor one. The dominant values are public welfare and private rights. The minor one, touching the Court's awareness of the adjudicatory role of courts in the federal system, is the judicial process value. The most basic components are 21 attitude systems mentioned before.

CHAPTER VI

THE JUSTICES ON THE COURT

The chapter is devoted to the individual justices, given the tendency for this type of analysis, focusing on the Court as a whole, and dealing in data aggregates, to minimize the individuality of Court members. This is true although the ranks themselves are intensely individual, both in terms of focus and of informational yield. Hence in concluding, it seems fitting to make some statements about the justices, in terms of findings herein. It also seems profitable to make some comparison of these findings with the conventional literature. These, in brief, are the purposes the concluding chapter sets out to accomplish.

General Orientation

The perennial question about justices inevitably turns on their relative positions along a liberal-conservative dimension. My findings in this regard are indicated in the Average Ranks of Table 6A, based on the 21 variable sets. The justices' ranks across each variable (scale) are listed by set (J, C, E, and F). For each set, the average rank of each justice is computed.

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TABLE 6A.--Average ranks from 21 variable sets.

J SCALE					
	A	B	C	D	
Br	1	1	3.5	1.8	
Ca	3	4.5	2	3.2	
St	2	2	1	1.7	
H	5	4.5	3.5	4.3	
R	4	7.5	6	5.8	
McR	9	9	9	9	
Vand	7.5	4.5	6	5.7	
Su	6	7.5	6	6.5	
Bu	7.5	4.5	8	6.7	

Legend: A-State Jurisdiction; B-Federal Jurisdiction; C-Full Faith and Credit; D-Average ranks across J Scale.

C SCALE					
	A	B	C		
Br	4	3	3.5		
Ca	2	1.5	1.8		
St	2	1.5	1.8		
H	5	4	4.5		
R	2	6	4.0		
McR	7	9	8		
Vand	6	5	5.5		
Su	8	7	7.5		
Bu	9	8	8.5		

Legend: A-Statutory Construction; B-Procedural and Due Process/ Subconstitutional Fair Procedure; C-Average ranks across C Scale.

E SCALE													
	A	B	C	D	E	F	G	H	I	J	K	L	M
Br	3	1.5	1.5	2.5	3	2	3	1	3	3.5	2	3	2.5
Ca	2	3	3	1	1.5	2	2	2	3	3.5	2	1.5	2.2
St	1	1.5	1.5	2.5	1.5	2	1	3	1	1	2	1.5	1.6
H	4	5	4.5	4	4	6.5	4	4	3	3.5	4	4	4.2
R	8	4	6	5	7	4	5	5	7.5	3.5	5	5	5.4
McR	9	8	8.5	7.5	9	5	8	7	7.5	7.5	7.5	9	7.8

Vand	6	6.5	4.5	7.5	5.5	8.5	6.5	7	5	7.5	7.5	7.5	6.6
Su	6	6.5	7	7.5	8	6.5	6.5	7	7.5	7.5	7.5	7.5	7.0
Bu	6	9	8.5	7.5	5.5	8.5	9	9	7.5	7.5	7.5	8	7.8

Legend: A-Contract
 B-InterGov't. Tax Immunity
 C-Liability
 D-Commerce
 E-Federal Agency
 F-Antitrust
 G-State Regulation
 H-ICC
 I-Bankruptcy
 J-Gold Clause
 K-Labor
 L-State Tax
 M-Average Ranks
 across E Scale

F SCALE

	A	B	C	D	E
Br	1.5	2	3	1.5	2.0
Ca	3	2	1.5	3	2.4
St	1.5	2	1.5	1.5	1.5
H	4	5	5.5	5	2.6
R	6	4	9	4	5.8
McR	6	8.5	5.5	7.5	6.9
Vand	6	6.5	4	7.5	6.0
Su	8	6.5	7	7.5	7.3
Bu	9	8.5	8	7.5	8.3

Legend: A-Gifts; B-Social Tax; C-Refunds; D-Trusts; E-Average ranks across F Scale

GENERAL AVERAGES

	J	C	E	F	A
Br	1.8	3.5	2.5	2.0	2.9
Ca	3.2	1.8	2.2	2.4	2.8
St	1.7	1.8	1.6	1.5	1.7
H	4.3	4.5	4.2	2.6	3.9
R	5.8	4.0	5.4	5.8	5.3
McR	9	8	7.8	6.9	7.9
Vand	5.7	5.5	6.6	6.0	6.0
Su	6.5	7.5	7.0	7.3	7.1
Bu	6.7	8.5	7.8	8.3	7.8

Legend: J-J Scale; C-C Scale; E-E Scale; F-F Scale; A-Average across all scales

TABLE 6A.--Average ranks from 21 variable sets.

J SCALE

	A	B	C	D
Br	1	1	3.5	1.8
Ca	3	4.5	2	3.2
St	2	2	1	1.7
H	5	4.5	3.5	4.3
R	4	7.5	6	5.8
McR	9	9	9	9
VanD	7.5	4.5	6	5.7
Su	6	7.5	6	6.5
Bu	7.5	4.5	8	6.7

Legend: A-State Jurisdiction; B-Federal Jurisdiction; C-Full Faith and Credit; D-Average ranks across J Scale.

C SCALE

	A	B	C
Br	4	3	3.5
Ca	2	1.5	1.8
St	5	1.5	1.8
H	4	4	4.5
R	2	6	4.0
McR	7	9	8
VanD	6	5	5.5
Su	8	7	7.5
Bu	9	8	8.5

Legend: A-Statutory Construction; B-Procedural and Due Process/ Subconstitutional Fair Procedure; C-Average ranks across C Scale.

E SCALE

	A	B	C	D	E	F	G	H	I	J	K	L	M
Br	3	1.5	1.5	2.5	3	2	3	1	3	3.5	2	3	2.5
Ca	2	3	3	1	1.5	2	2	2	3	3.5	2	1.5	2.2
St	1	1.5	1.5	2.5	1.5	2	1	3	1	1	2	1.5	1.6
H	4	5	4.5	4	4	6.5	4	4	3	3.5	4	4	4.2
R	8	4	6	5	7	4	5	5	7.5	3.5	5	5	5.4
McR	9	8	8.5	7.5	9	5	8	7	7.5	7.5	7.5	9	7.8

Vand	6	6.5	4.5	7.5	5.5	8.5	6.5	7	5	7.5	7.5	7.5	6	6.6
Su	6	6.5	7	7.5	8	6.5	6.5	7	7.5	7.5	7.5	7.5	7	7.0
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Legend: A-Contract
 B-Intergov't. Tax Immunity
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	A	B	C	D	E
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St	1.5	2	1.5	1.5	1.5
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Legend: A-Gifts; B-Social Tax; C-Refunds; D-Trusts; E-Average ranks across F Scale

GENERAL AVERAGES

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Bu	6.7	8.5	7.8	8.3	7.8

Legend: J-J Scale; C-C Scale; E-E Scale; F-F Scale; A-Average across all scales

Finally, each justice is assigned an average rank across all sets (J, C, E, and F). This last average represents, in effect, the average of the average ranks of each justice for J, C, E, and F combined. There are some points to be noted.

In all sets, Stone is the most liberal member of the Court. He ties with Cardozo in C and outranks Brandeis in J by a very small margin, but the fact remains that in no ranking is he less than first. Most telling is his average across all scales (1.7), which puts him well ahead of Cardozo, his nearest competitor, with 2.8. Although in the J and F sets Brandeis ranks ahead of Cardozo, Cardozo indisputably holds second rank in view of the over-all rankings. In fact, though often the triumvirate of Brandeis, Cardozo and Stone is referred to (and admittedly, not without justification), Cardozo and Stone are much closer to each other in C than Brandeis is to either. Indeed, Brandeis seems not so liberal as conventional analysis reports. If Brandeis were positioned on a unidimensional ideological continuum, he would have Stone on his left, Hughes on his right, and himself about equidistant from either. His ranks in C and E are particularly instructive.

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Speaking of the Hughes-Roberts duality, Hughes in all cases save the C scale is the more liberal of the two. Roberts' surprisingly pro C directionality has been

previously noted. This area of his (Roberts') interpretative largess in actual decision making behavior is uniformly slighted by the literature. Roberts' extra-court activities with the Boy Scouts, and his dealings with Girard College are duly noted, but a general silence prevails regarding his judicial liberality in this central area of attitudinally motivated behavior. In spite of this, however, Hughes is incontestably the more liberal, as the span from 3.9 (Hughes) to 5.3 (Roberts) in average ranks across all scales indicates.

The ranks of the so-called four horsemen (i.e., McReynolds, Van Devanter, Sutherland and Butler) are not as closed as the title implies. McReynolds, Sutherland and Butler perhaps may be the real impenetrables. Of their stalwart conservatism there is no doubt. But Van Devanter is different, though again his differences go by the board in most conventional assessments. In these data, he predictably comes after Roberts, therefore tends to be sixth in line. This signifies for Van Devanter a far greater degree of liberalism, in terms of the ranks and the psychological distances they represent, than is implied by the mechanical distance between six and seven (i.e., Van Devanter and Sutherland). In terms of average ranks across all scales, and on the J and C sets, Van Devanter is closer to Roberts (on his left) than to Sutherland (on his right).

Of the three remaining, in ascending order of conservatism, are Sutherland, Butler, and McReynolds, though the .1 difference between Butler and McReynolds may, to most readers, be too insignificant to constitute a point of differentiation. Butler's few tender points, those capable of some response in the liberal direction, appear in the federal jurisdictional and federal agency scales (perhaps explicable as a kudos from a man who appreciated technical expertise). In this same vein, McReynolds' two soft points are antitrust in the E set (perhaps the trustbuster background surfacing); and what appears to be inexplicably maverick behavior in the refund cases of the W set, where he ties with Hughes in upholding government right to tax and to retain the revenue derived.

Individual Members

Louis Dembitz Brandeis occasioned a 124 day period of consideration by the U. S. Senate before appointment to the Court (Cole, 1934; Mason, Brandeis, 1956). Taft and seven former ABA presidents headed the opposition but in the end, partisan regularity on the Judiciary Committee (10 Democrats--8 Republicans) prevailed. The literature makes much of the Brandeis style of liberalism: flaming, crusading, didactic (Konefsky, 1956; Richberg, pp. 129-138 and Lerner, pp. 29-45, in Frankfurter, 1932). In terms of role perception, however, the justice was a

TABLE 6B.--Opinion types (dissensual cases 1931-1936 terms).

Year	Br		Ca		St		CEH		R		McR		Van D		Su		Bu		
	M*	NM**	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	
1931	16	15	8	4	13	15	27	0	28	3	23	7	23	7	23	4	22	8	
1932	22	10	18	13	17	14	26	4	28	3	20	11	26	4	25	6	20	11	
1933	18	10	17	11	14	14	23	4	23	5	20	8	25	3	23	5	19	8	
1934	15	15	14	16	8	22	26	4	26	4	22	7	23	7	23	7	21	9	
1935	10	25	9	26	9	25	27	7	28	6	28	6	32	2	28	6	28	6	
1936	28	7	25	11	21	5	34	2	32	4	14	22	23	12	21	15	16	20	
Total	109 (.57)	82 (.43)	91 (.53)	81 (.47)	82 (.46)	95 (.54)	163 (.89)	21 (.11)	165 (.87)	25 (.13)	127 (.68)	61 (.32)	152 (.81)	35 (.19)	143 (.79)	38 (.21)	126 (.67)	62 (.33)	

*M = majority, concurrence with

**NM = nonmajority, or all other types (i.e., concurrence with dissent, solo dissent, separate concurrence)

Total possible dissensual opinions for the six terms is 189. However, some figures are inflated by the fact of multiple concurrences within one case.

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Year	Br		Ca		St		CEH		R		McR		Van D		Su		Bu	
	M*	NM**	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM
1931	16	15	8	4	13	15	27	0	28	3	23	7	23	7	23	4	22	8
1932	22	10	18	13	17	14	26	4	28	3	20	11	26	4	25	6	20	11
1933	18	10	17	11	14	14	23	4	23	5	20	8	25	3	23	5	19	8
1934	15	15	14	16	8	22	26	4	26	4	22	7	23	7	23	7	21	9
1935	10	25	9	26	9	25	27	7	28	6	28	6	32	2	28	6	28	6
1936	28	7	25	11	21	5	34	2	32	4	14	22	23	12	21	15	16	20
Total	109	82	91	81	82	95	163	21	165	25	127	61	152	35	143	38	126	62
	(.57)	(.43)	(.53)	(.47)	(.46)	(.54)	(.89)	(.11)	(.87)	(.13)	(.68)	(.32)	(.81)	(.19)	(.79)	(.21)	(.67)	(.33)

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1931	16	15	8	4	13	15	27	0	28	3	23	7	23	7	23	4	22	8	
1932	22	10	18	13	17	14	26	4	28	3	20	11	26	4	25	6	20	11	
1933	18	10	17	11	14	14	23	4	23	5	20	8	25	3	23	5	19	8	
1934	15	15	14	16	8	22	26	4	26	4	22	7	23	7	23	7	21	9	
1935	10	25	9	26	9	25	27	7	28	6	28	6	32	2	28	6	28	6	
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Total	109 (.57)	82 (.43)	91 (.53)	81 (.47)	82 (.46)	95 (.54)	163 (.89)	21 (.11)	165 (.87)	25 (.13)	127 (.68)	61 (.32)	152 (.81)	35 (.19)	143 (.79)	38 (.21)	126 (.67)	62 (.33)	

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	M*	NM**	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM	M	NM
1931	16	15	8	4	13	15	27	0	28	3	23	7	23	7	23	4	22	8
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	(.57)	(.43)	(.53)	(.47)	(.46)	(.54)	(.89)	(.11)	(.87)	(.13)	(.68)	(.32)	(.81)	(.19)	(.79)	(.21)	(.67)	(.33)

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1933	18	10	17	11	14	14	23	4	23	5	20	8	25	3	23	5	19	8
1934	15	15	14	16	8	22	26	4	26	4	22	7	23	7	23	7	21	9
1935	10	25	9	26	9	25	27	7	28	6	28	6	32	2	28	6	28	6
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	(.57)	(.43)	(.53)	(.47)	(.46)	(.54)	(.89)	(.11)	(.87)	(.13)	(.68)	(.32)	(.81)	(.19)	(.79)	(.21)	(.67)	(.33)

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Total possible dissensual opinions for the six terms is 189. However, some figures are inflated by the fact of multiple concurrences within one case.

TABLE 6C.--Authorship tally of dissensual opinions 1931-1936 terms.

Justice	Authorship of Majority Opinions	Authorship of Dissents	Total No. Authored Opinions 1931-36
Br	12	6	18
Ca	22	25	47
St	17	29	46
CEH	21	5	26
R	35	9	44
McR	11	19	30
VanD	2	2	4
Su	25	9	34
Bw	14	13	27

Legend: Only comparatively full, written opinions, specifically authored by one justice, are included herein. Thus all jointly authored works and single sentence/word expressions are omitted. To qualify as a "full" opinion, some elaboration had to be given for a particular position in the instant case.

Also, "dissents" here represent a rather gross category, into which are lumped separate opinions/ concurrences, or generally, any verbalization distinct from the majority opinion.

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Legend: Only comparatively full, written opinions, specifically authored by one justice, are included herein. Thus all jointly authored works and single sentence/word expressions are omitted. To qualify as a "full" opinion, some elaboration had to be given for a particular position in the instant case.

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TABLE 6D.--Comparison of number of dissensual case opinions with total number of case opinions 1931-1936.¹

Justice	Total Number of Authored Opinions in Dissensual Cases, 1931-1936	Total Number of Opinions Delivered 1931-1936 ²
Br	18	90
Ca	47	150
St	46	156
CEH	26	140
R	44	139
McR	30	108
VanD	4	26
Su	34	112
Bu	27	117

¹Figures in column 1 are from author's data; in column 2, from 51, Harvard Law Review (1937-1938).

²Includes the justice's opinions of the Court, concurring and dissenting opinions combined.

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²Includes the justice's opinions of the Court, concurring and dissenting opinions combined.

man after Felix Frankfurter's heart (Frankfurter, 1931-1932, pp. 33-105).

Brandeis worked within the traditional framework. He believed in the lawyer-statesman and judicial restraint. Despite a keen social conscience, he had a bias against bigness preventing him from coming to terms with other than small, individual-encompassed units. This kept him less than modern, and made him something of a transitional liberal on the middle ground between the old Manchester variety and that of the post New Deal.

In terms of orientation to operational government, Brandeis was flexible. His anti bigness and his commitment to smaller units of authority did not preclude pragmatic endorsement of necessary government power and use of the constitutional armature to support its exercise. Public welfare in terms of socio-economic legislation, and employment of the tax or regulatory power on part of either federal or state governments, held unambiguous priority over private rights. To the Court's role as keeper of the federal balance, he assigned positive meaning; more often than not, the Court could consider and determine the controversy.

Table 6B¹ shows Brandeis concurring with the majority approximately 57% of the time. He was a dissenter (43% of the time) but usually in concurrences, recording only one solo dissent over six years. He authored comparatively fewer opinions than his reputation suggests (12 for a majority; 6 in dissent) as against 90 total opinions (unanimous and nonunanimous) from 1931-1936. Only Van Devanter was less prolific. Brandeis is notable for his deference to socioeconomic experiments of state legislatures (the laboratories of democracy) and to administrative agencies (e.g., Crowell v. Benson, 76/598). He had a regard for the sanctity of jury verdicts and court procedures, even if these were anti individual. He upheld union rights, against the individual if necessary, possibly because of their relation to his ideas on industrial democracy (cf., Senn v. Tile Layers Protection Union, 81/1229).

Benjamin Nathan Cardozo, though without wide public following, was prominent professionally among the elite of bench and bar. His confirmation by the Senate allegedly took ten seconds (The New York Times, July 10, 1938, pp. 1, 30). He had characterized himself as a judicial evolutionist, and felt his appointment "an interesting time

¹In all instances, unless otherwise indicated, my data represent and refer to dissensual cases only. Unanimous ones are not treated.

to do my little share in translating into law the social and economic forces that throb and clamor for expression" (Ibid.). On coming to the Court, Cardozo probably had the most fully developed philosophy of any, and one he had set forth publicly (Cardozo, 1921; 1928). He spoke easily in terms of society and the social mind, but the vocabulary of individualism was conspicuously absent.

Cardozo evidently had a definite conception of what government was required to do, hence in most cases was prepared to uphold the legislation giving government the power to do it. In this sense, his orientation to operational government was realistic, in terms of the 1930's. It was not the pro experimentation attitude of Brandeis. For Cardozo, more modern reasons were compelling. His sense of the public welfare, looking upon the needs of society as government's paramount concern, accorded with, if it did not occasion, the positive orientation to government, especially the critical tax and regulatory powers. Private rights he would uphold (e.g., insurance claim cases, freedom of speech) where not encroaching upon rightful governmental power. He held a restrained view of the judge's role: one which ended when it was established that the legislators were not arbitrary. Absent the qualification, and a very real activism together with its unquestionable legitimacy, are implied.

Table 6B indicates that he concurred with the majority, in dissensual cases, 53% of the time; with dissenters, 47% of the time. He has the highest number of authored opinions for any justice over the entire period: 47 (22 with the majority; 25 with the dissent). Stone comes close with 46, but his breakdown is 17 for the majority and 29 for the dissent, though the latter figure gives Stone the high for the Court in authorship of dissents, with Cardozo second. In federal tax and regulatory cases, notably ICC, Cardozo's liberal directionality (pro government) is salient. It was a largess extended to state governments as well, particularly in areas such as taxation of railroads, and of various private businesses.

Harlan Fiske Stone came to the Court from Wall Street firms and 13 years as Dean of Columbia Law School. His peers later characterized his approach to constitutional issues as essentially pragmatic (92 L. Ed., 1956 [1947]), but it irritated Stone to be designated a liberal. He did not like labels and he felt himself distinguishable by the fact that, unlike Brandeis, he was not trying "to do anything socially" (Mason, Stone, 1956, p. 417). Nonetheless, his voting behavior, as noted, was in each set the most liberal. Of all the justices, Stone probably was most concerned with the development of a decisional methodology (Dowling, 1941). His address for the Harvard tercentary celebration (Stone, 1936) contains

the core of his thought regarding such development: especially, his belief in the adequacy of the common law system, provided the legal profession cast off a certain conservative habit of mind limiting the contemporary relevance of law.

Table 6B indicates Stone concurred with the majority 82 times (46%) and with the dissent, 95 times (54%).¹ He authored 46 total opinions: 17 for the majority; 29 for the dissenters, more dissenting opinions than anyone. Across all six terms, combining dissensual and nondissensual, he delivered 156 opinions, the high for the Court. Impressions to the contrary, he was then the most vocal member on the Court, as well as, according to my data, the most liberal. His vote in tax cases both state and federal is at all times unidirectional. His majority opinion in Carmichael v. Southern Coal and Coke Company, 81/1245, epitomizes this attitude. His general support of governmental power is nowhere more apparent than in the gold clause cases, where he goes further than any justice to sanction such power in regulation of the currency.

Thus of all the justices, Stone is the most positive in orientation to operational government. An equally

¹Stone had a period of extended absence during the 1936 term. As far as my data are concerned, this meant he did not participate in 11 of the total 36 dissensual cases for that term.

positive attitude to public welfare (even if he disavowed Brandeis' crusader approach) evidences itself in for example, U. S. v. Dubilier Condenser Corporation, 77/1114, where Stone upholds the federal government's right to employees' inventions, as they are part of a public enterprise. Perhaps Stone had internalized a very definitive allocation system regarding society's goods. He had little doubt as to what exactly should be rendered to Caesar. It followed that private rights were circumscribed and to be adapted to the century's new conditions. Judges were primarily the ones to delimit the new boundaries between individual and government, so the judicial process value occupied a central position. In the area of civil liberties particularly, he would give courts much discretion, not only in openly abandoning stare decisis when necessary, but also specifying procedural content in the Bill of Rights.

Charles Evans Hughes became Hoover's chief justice by a 52-26 vote, hardly a thumping majority as votes for the chief justiceship go (Mason, 1958, p. 75). His behavior on the Court contributes to his characterization as a Progressive. His updated Burkean conservatism contained enough social awareness and flexibility to be genteely liberal. Especially his dissent in Railroad Retirement Board v. Alton Railroad, 79/1468, demonstrates this. He could relate to Theodore Roosevelt, though not

to William Jennings Bryan. He had an administrative mastery of the Court's business, which enabled him to run a fairly tight operation in taut atmosphere, despite divisiveness. Assigning opinions, he was "like a general deploying his army" (Frankfurter, 1949, p. 3). Having "no particular pride of authorship" (McElwain, Ibid., p. 19), he valued an opinion rather in its potential for majority-making. There is much commentary upon what is apparently considered the extreme, at times discrediting, expediency dictating Hughes' tactics on the Court (Brant, 1937).

The New York Times called him a "distinguished liberal on the Court" and credited him with a "basic liberal viewpoint" (August 28, 1948, p. 6). My data indicate a man very much in the middle of the road, one trying to minimize cleavages in an all too obviously divided Court, and to maximize his own chief justiceship. During six years, he concurred with the majority 163 times (89% of the time), leaving only 11% of the time wherein he held nonmajority status. He authored few opinions, only 26: 21 of which were for a majority, indicating opinion deployment in form of payoffs. To guard against a jaundiced view, however, it should be added that over the period, combining unanimous and non-unanimous opinions, he delivered 140.

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The composite picture is one of a man who rarely strayed from the center of power: and in decision making on this Court, given the tendency of the alignments generally, power was indeed in the center position. He did uphold the government and participated with the majority in the controversial gold clause cases, despite their being 5-4 splits that he tried so to avoid. Typical was his opinion in Perry v. U. S., 79/912, that held it beyond congressional power to override the obligation of government bonds, but admitted it beyond the Court's power to effect a remedy for the injustice.

The Chief Justice's orientation to operational government seems indeterminate, although in the latter years, it tended to become more positive. In his written opinions there is an ambivalence, even obfuscation. In his voting behavior, it is a half and half situation: neither completely positive nor completely negative. Certainly public welfare was an unambiguous value: he gave the majority opinion overruling Adkins and upholding the Washington minimum wage law (which Sutherland held violative of freedom of contract under XIV amendment) in the West Coast Hotel case, 81/703. But apparently private rights were equally valuable. Seemingly, this equality of the two dominant values led to ambivalence in the total value system, on the next level of generality. Obviously, the judicial process value was much with

Hughes, but the administrative aspect was regnant, if not rampant. The Court's social role was minimal; its administrative, intercurial role maximal.

Owen Josephus Roberts, conservative Republican, bland-mannered, devoutly Episcopal, and completely unpredictable (The New York Times, May 18, 1955, p. 31), came to the Court fresh from his Teapot Dome triumph. He doubtless was the most changeable member of the Court. The literature tends to portray him as one extremely susceptible to cross-pressure and not a little unsure of himself (Corwin, 1941, pp. 75-76). In terms of age, he was the youngest on the Court (55 at the time of appointment). Cardozo, the nearest chronologically, was 62 when appointed in 1932, though he was the junior justice.

That Roberts did occupy the pivotal position and was aware of it seems fairly supportable. In this sense, Rodell (1955) was not wrong in calling him at one time the most powerful man in the United States. Certainly without him, Hughes could not form majorities, though Roberts himself was much under the influence of the Chief Justice. At the time of his resignation, 1945, he would note in a letter to Hughes that the greatest experience and satisfaction in his life had been working with him (Griswold, 1955, pp. 348-349).

Table 6B shows Roberts' participation in the majority 87% of the time: in the nonmajority, 13% of the

time: a decided centrist tendency. He was the chief author in only 44 dissensual cases, 35 of these being majority opinions, which gives him the high for the Court in that latter category. Roberts' written opinions show him extremely anti ICC rulings. Of his behavior in state and federal tax cases, it can be said only that a marked instability is evident. His pro C leanings have been previously commented upon.

Roberts' verbal behavior tends to obscure any orientation to operational government by a heavy overlay of considerations of law: he stares myopically at the statutory text, apparently bending every effort to ignore the enacting authority. His voting behavior, however, evidences far more consistently than Hughes a rather negative orientation. It was Roberts who, in the Alton Railroad case, gave the majority opinion holding the federal railroad retirement act unconstitutional. It was, in essence, an harrangue against the social policy aspects inhering in the act. Interestingly, it was Hughes who upheld, noting that industry should take care of its human wastage.

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constitutional framework. Indeed, the definitive statement on the slot machine theory of judicial decision making was his own majority opinion in U. S. v. Butler, 30/477. In other words, for Roberts, judicial activism went in the opposite direction. It was essentially prohibitive action.

James Clark McReynolds came to the Court in 1914, known then as a liberal for ardent antitrust prosecution while serving as assistant attorney general, then attorney general, of the United States. He comes across generally as an intolerant, insufferably dogmatic man with an unbridled tongue and many "abrasive idiosyncracies." He was, as Bickel terms him, the Court's American primitive. Differences in judgment he perceived as contention of principles, and for McReynolds, tolerance in matters of principle was tantamount to traffic with the devil. He was a black-letter lawyer become black-letter judge. A favorite comparison was that of the judicial role to baseball umpire (Early, 1954, p. 65), though judges had the written text of the Constitution as guide. In his eyes, the founding fathers had created a document that judges were to quite literally preserve.

Table 6B indicates that McReynolds participated in the majority 68% of the time (127 occasions). Though he evidently did not fear dissent (61 times, 32%), it may be true that in the latter terms, he grew dispirited with

the Court's decision making. In authorship of opinions, only Stone and Cardozo wrote more dissents, while in total opinions, only Van Devanter and Brandeis wrote fewer. He authored a total 30 opinions, 19 of which were dissents. His written opinions suggest a pro individual orientation regarding court and trial procedure, particularly where government, or government agents, are the prosecution. The exception is, of course, antitrust. Perhaps no cases so much as the gold clause group so touched the jugular and literally brought forth his credo extemporaneously, in open Court.

His dogged adherence to the doctrines of state sovereignty and noninterference of the federal government is nowhere better displayed than in an amazing separate dissent (Steward Machine Co. v. Davis, 81/1279). He quotes at length from Franklin Pierce's message to the Senate, 1854, on a bill granting public lands to the states to benefit the indigent insane. The argument's theme is that the mass of the business of government is best left to the states, from which he concludes that ergo title IX of the Social Security Act (taxing employers of 8 or more) is invalid interference of the kind Pierce described eighty years earlier.

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concept of reality. His ideal seemed to be some kind of perpetual interregnum. He did not really conceive of government as an active agent, save when paradoxically its power was necessary to preserve those conditions making government unnecessary. His concept of public welfare, judging from his voting behavior, was hardly wholistic in the sense of being directed at a total society. Rather it was atomized into individual units. Thus public welfare was, in effect, denied on the basis of private rights. The judicial process value was conceived as involving a negative guardianship of a written constitutional text, and positive resistance to any extrapolative forays beyond.

Willis Van Devanter's path to the Court began when he left Indiana for the Wyoming Territory in 1884. Involvement with the men who shaped that territory for statehood, with regional politics, and with the Union Pacific all played their roles in his nomination as Circuit Judge for the 8th Circuit by Roosevelt, 1903, and in his appointment as associate justice by Taft, 1910. He made enemies, among them William Jennings Bryan, who could not forget Van Devanter's vigorous campaign on horseback for William McKinley back in the Wyoming days. The justice was one of the most indefatigable members on the Court, though more notably able in conference (regarding temperament, industry, expertise) than in written

product. Van Devanter's retirement letter, May 18, 1937 (The New York Times, February 9, 1941, p. 47), signaled turning of the tide in the Court packing affair. He was thereby first to take advantage of the new retirement statute for federal judges.

As noted, Tables 6B, 6C, and 6D do not display Van Devanter so implacably conservative as much of the literature implies. He was in the majority 81% of the time (152 instances) and with the dissent, 35 times (19%). His seeming inability to write without extreme difficulty is obvious when considering his written output. During the six year period, he authored four opinions: two majority; two dissents. Considering unanimous and non-unanimous cases, he wrote approximately 22 or 26 opinions (Rodell, 1955, gives 22; Harvard Law Review, 1937-1938, gives 26). The general average for each (other) justice was at least 20 opinions per annum. The occasion of two written opinions focused on the equal protection clause of XIV amendment, which he interpreted as requiring states to have well-defined categories for taxation purposes.

Van Devanter's orientation to operational government is indicated chiefly by nonverbal behavior. It tends generally toward a negative voting direction. Public welfare he evidently saw as an inductive thing, so private rights received positive, primary focus. The

judicial process value probably was his most positive in the sense of tending toward an active Court, functioning freely, flexibly, determinatively, within the constitutional framework. Especially corroborative is his rank in the J scale set.

George Sutherland, when a U. S. Senator from Utah, impressed and befriended another senator who was to appoint him to the Court: Warren Harding. Indeed, during Harding's presidential campaign, Sutherland was looked upon as the former's Colonel House. Influenced by Thomas Cooley at the University of Michigan, Sutherland became, and remained, a disciple of Herbert Spencer and the laissez-faire world his system necessitated and legitimized. The belief was deep-rooted in personal experience that stretched from the Utah frontier to the U. S. Supreme Court. Sutherland was another justice to have lived the American dream.

His Spencerian system was completely self-contained, neither questioned nor subjected to any form of reality testing. In it, the individual was the ultimate political reality, while social aggregates received little consideration and less place. Stress on the individual did, however, make for a procedural liberalism which demanded absolute equality before law. Such equality, the "universal solvent" of arbitrary distinctions, accorded with the best laissez-faire tenets (Paschal, 1951, pp. 116-153).

To Sutherland, the Constitution provided the ideal government: multiple points of power in perpetual checkmate.

A tally indicates Sutherland participated in the majority on 143 occasions (79%) and in the nonmajority on 38 occasions (21%). He authored a total of 25 majority opinions and 9 dissents, the number of dissents on a marked increase by the 1936 term. In toto, across unanimous and nonunanimous cases for the six terms, he wrote only 112 opinions. This suggests that the mouthpiece position credited to him is not that dominant in comparison with the other justices. His written opinions suggest a decided antipathy to state tax and regulatory measures. Probably the most representative utterance in his dissent in the Minnesota Mortgage Moratorium Law case, 78/413, essentially a discourse on the process of constitutional construction. The West Coast Hotel dissent, 81/703, a delivery on the function of a judge and the stability of the Constitution in the face of the ebb and flow of economic events, also supplements his philosophy.

Sutherland's orientation to operational government, admitting gradations, is basically that of Van Devanter, Butler, and McReynolds. Government is the negative, passive force that Social Darwinists talked of. Minimally necessary, it should therefore be minimally active. Along with the best of British liberals, public welfare

was private rights of the individual summed. It was the categorical imperative applied to government. One therefore looked to the preservation of private rights. Public welfare was an automatic corollary. It was Sutherland who wrote for the majority in the Scottsboro cases, upholding the right to counsel as inherent in and demanded by the XIV amendment, especially in proceedings under tense atmosphere. Regarding the judicial process value, his discourse in West Coast Hotel implies a restrained role unless active government is constitutionally offensive. Then the Court's role becomes obstructive or restorative, depending on the point of view.

Pierce Butler, Democrat, Roman Catholic, and self-made man, was an appointee Chief Justice Taft had counted on to join Van Devanter, McReynolds, Sutherland and Sanford for purposes of "steading the boat" (Curtis, 1947, p. 96). The well-known corporation lawyer from the Northwest, general attorney for prominent railroads, had come far. His story was another American epic, though more along Horatio Alger lines than either Van Devanter's or Sutherland's. In 1939, Hughes, surveying Butler's 17 year tenure, would sum it as an endeavor "to keep open the traditional path to individual achievement which he himself had trod" (84 L. Ed., 1439). "Good, old-fashioned, Anglo-Saxon individualism" Butler called it.

One of the Court's experts on valuation of rail property (Brandeis, with another theory, was the other), he always perceived the railroads as bearers of the American civilization and felt that their responsibility for its development should be rightfully recognized, indeed rewarded (Brown, 1945, pp. 11-32). Characteristically, he championed the rights of the individual citizen; was anti government in interpreting due process and procedural guarantees of the Bill of Rights and XIV amendment; found police powers most acceptable when suppressing violators of social order; concurred in Southern legislation regarding its "peculiar problem"; and assigned low priority to alien rights.

My own count shows Butler with the majority 67% of the time (126 instances) and dissenting 33% (62 instances). He authored only 27 opinions: 14, majority; 13, dissents. In common with Sutherland, he tended to be more liberal in the international field, especially regarding treaty interpretation. Inevitably he is pro-railroads, anti ICC. His dissent in Senn V. Tile Layers Protective Union, 81/1229, slamming "victimization by unions" and upholding "the right to engage in the common occupations of life" admirably demonstrates his pro-entrepreneurial orientation. It is of interest that Brandeis, writing the majority opinion, upheld union measures against an uncooperative, individual contractor.

Also noteworthy is Butler's dissent in Hansen v. Haff, 78/969, narrowly interpreting the 1917 Immigration Act to bar alien reentry for immoral purposes. The majority's haggling over whether these purposes were dominant or subordinate seemed an insubstantial consideration.

The Butler approach is operational government was the essence of laissez-faire. As noted, this "anti" orientation evidences itself particularly in ICC cases, the railroads constituting nineteenth century epitomes of private enterprise. Private rights tend to be mainly acquisitive (economic) and procedural (noneconomic) with him. Public welfare per se is hardly dignified by a place in this scheme. He holds the judicial process value in a manner that protects individual from government and preserves intact the wide-open entrepreneurial context he believed in. In other words, this latter value was extremely and primarily functional.

Conclusion

Thus briefly are the justices on this Court characterized. I have not attempted case by case, opinion by opinion exegesis. Other commentaries do as much. They were consulted, and are listed in the accompanying bibliography. My own focus has been the Hughes Court, and the psychological dimensions of its decision making process, ascertained on the basis of aggregating

decisional data. Results are given in terms of general tendencies, not discrete opinions. Essentially, this analysis is on another level than much of the commentary, and is, for that reason, to a degree noncomparable.

As caveat to the reader, it must be repeated that the findings here are on the basis of dissensual cases. Unanimous ones are not treated. This is a consequence of the methodology employed, and of the fact that there are no distinctions in a unanimous decision. In terms of understanding decision making, however, I do not think that the approach utilized at all distorts reality. One has merely to remember that dissensual cases are one side of decisional output. But for empirical research, they are by far the most important side, precisely because they "tell" more. Justices themselves have pointed out that unanimous opinions belong to and represent no one in particular. They are merely opinions having elements sufficiently innocuous to be supported by all, and generally are not even sufficiently integrated to form anything so structured as a consensus.

The Hughes Court has many modern aspects; its divisiveness much in evidence; its output examined as probably no prior Court's had been. Assuming (and perhaps this may be unwarranted, in view of the contemporary voting behavior research) the voting public then was aware and involved, both Court and citizenry were

occupied with the same preponderant issue. As my conclusions suggest, this factor of operational government also dominated the decision making process during these six terms of the Hughes Court.

APPENDICES

APPENDIX A

GUTTMAN SCALOGRAMS

APPENDIX A

GUTTMAN SCALOGRAMS

The following pages describe the four successive sets of scalograms used, in such manner as to allow replication. The initial categories of all scales are four sets (J-Jurisdiction; C-Civil Liberties; E-Economic; F-Fiscal). Subcategories within each set are determined according to dominant subject matter. These subcategories constitute scales, which themselves may be further broken down into subscales or combined variously with other scales. The general format of description is as follows.

Description

Set and title of scale designated
Total number of cases in scale, with breakdown indicating
 duplicates (cases appearing elsewhere in the same set)
 expansions (additional vote tallies of opinions on the basis of semantic differential), when such are appropriate
AO (attitude toward object) and AS (attitude toward situation)

Data

Cases (arranged according to extremeness of item marginals from most to least positive: positive here equated with the most liberal directionality, in general terms)
Abbreviated citation (from Lawyers' Edition of the U.S. Reports, giving volume and page)
Item marginals in parentheses

Results

Scale scores of each justice*
Corresponding ranks for each justice on basis of
his scale score
Coefficient of reproducibility (R)
Minimal marginal reproducibility (MMR)
Total nonscalar responses (NSR)

*Key to Justices:

Brandeis	Br
Cardozo	Ca
Stone	St
Hughes	H
Roberts	R
McReynolds	McR
Van Devanter	VanD
Sutherland	Su
Butler	Bu

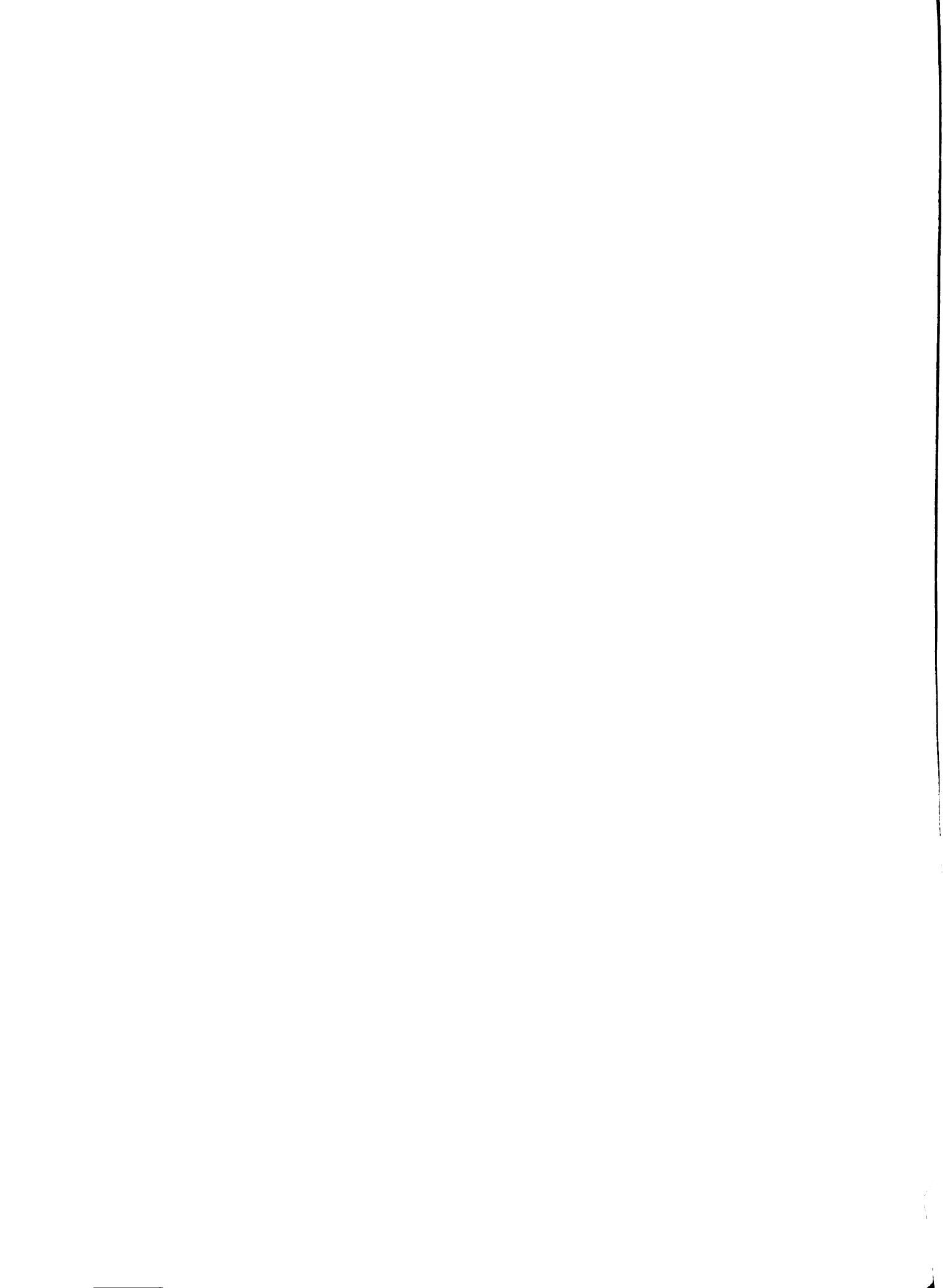
I. Fifty-Six Variable SetsJ Scale Set (N = 5 scales)1. Description

- J - Jurisdiction (n = 15 cases; including one expansion)
 AO - petitioner claiming federal court jurisdiction (Court/clientele)
 AS - propriety of exercising Supreme Court jurisdiction over determination of lower federal/state courts and administrative commissions
 AO₁ - federal courts as appropriate forum for litigation in question (court/court)
 AS₁ - lower federal courts relations with Supreme Court

Data

Sorrells v. US 77/413 (8-1)
 Clark v. Williard 78/1160 (8-1)
 Cate v. Beasley 81/21 (7-1)
 Leman v. Krentler-Arnold 76/389 (7-1)
 Becker Steel v. Cummings 80/54 (7-2)
 D.C. v. Clawans 81/843 (7-2)
 Senn v. Tile Layers Union 81/1229 (5-4)
 Wood v. Broom 77/131 (4-5)
 Rogers v. Guaranty Trust 77/652 (3-5)
 Herndon v. Lowry 79/1530 (3-6)
 (exp) 77/652*
 Colorado v. Symes 76/1253 (2-7)
 Hurn v. Oursler 77/1148 (2-7)
 S. Carolina v. Bailey 77/1292 (2-7)
 U.S. v. W. Virginia 79/1546 (1-8)
 Expansion: 77/652: Br+, Ca-, St+; H-; RN; McR-;
 VanD-; Su-; Bu- (2-6)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.93	1
	Ca	.71	3
	St	.86	2
	H	.53	5
	R	.54	4
	McR	.93	9
R .931	VanD	.60	6.5
MMR .707	Su	.60	6.5
NSR 6	Bu	.67	8



2. Description

J - State Cases Subscale (n = 9 cases; including one expansion)

AO - same

AS - propriety of exercising Supreme Court jurisdiction over determination of cases arising in state courts

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/1166		Br	.89	1
81/21		Ca	.78	3
81/1229		St	.88	2
77/131		H	.67	5
77/652		R	.57	4
79/1530		McR	1.00	9
76/1253	R .967	VanD	.78	7.5
(exp) 77/652	MMR .780	Su	.67	6
77/1292	NSR 2	Bu	.78	7.5

3. Description

J - Federal Cases Subscale (n = 6 cases)

AO - same

AS - propriety of exercising Supreme Court jurisdiction over determination of cases out of lower federal courts

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	1.00	1
76/389		Ca	.60	4
81/843		St	.83	2
80/54		H	.67	4
77/1148		R	.50	7
79/1546		McR	.83	9
	R .925	VanD	.67	4
	MMR .677	Su	.50	7
	NSR 2	Bu	.50	7

4. Description

J - Full Faith and Credit (n = 6 cases; including one duplicate)

AO- person or property (claiming) one state's authority and protection within another state's jurisdiction

AS - limits set to domestic jurisdiction and local policy making by the constitutional requirement of full faith and credit

Data

Broderick v. Rosner 79/1100 (8-1)
 Borax Consolidated v. Los Angeles 80/9 (8-1)
 (dup) 78/1160 (8-1)
 Milwaukee County v. White Co. 80/220 (7-2)
 Sanders v. Armour Fertilizer Works 78/1206 (4-5)
 Yarborough v. Yarborough 78/269 (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.83	3.5
	Ca	.83	2
	St	1.00	1
	H	.83	3.5
	R	.67	6
	McR	.83	9
R 1.00	VanD	.67	6
MMR .758	Su	.67	6
NSR 1	Bu	.50	8

5. Description

- J - Jurisdiction Subscale on Federal Cases and C-Subscale on Subconstitutional Fair Procedure (involving cases from federal courts) (n = 12 cases; including five duplicates)
- AO - any federal court within the context of its position in the federal judicial system (systemic context)
- AS₁ - competency of any given federal court to adjudicate matter at hand
- AS₂ - finality of judgment at a particular, hierarchical level within the federal system

Data

Dunn v. U.S. 76/356 (8-1)
 (dup) 77/413 (8-1)
 Burroughs v. U.S. 78/484 (8-1)
 (dup) 76/389 (7-1)
 Funk v. U.S. 78/369 (7-2)
 (dup) 81/843 (7-2)
 Reed v. Allen 76/1054 (3-6)
 Grau v. U.S. 77/212 (2-7)
 Sgro v. U.S. 77/260 (2-7)

(dup) 77/1148 (2-7)
 Fairmont Glass v. Cub Fork Coal 77/439 (2-7)
 (dup) 79/1546 (1-8)

<u>Results</u>	Justice	Scale Score	Rank	
	Br	.75	3	
	Ca	.80	2	
	St	.92	1	
	H	.50	5.5	
	R	.50	5.5	
	McR	.92	9	
R	.936	VanD	.50	5.5
MMR	.682	Su	.50	5.5
NSR	4	Bu	.75	8

C Scale Set (N = 19 scales)

6. Description

- C - Combined Master Scale of all C cases (n = 24)
- AQ - persons allegedly deprived of non-economic, civil rights under the Bill of Rights, XIV amendment guarantees and various statutory prescriptions
- AS - propriety of Supreme Court intervention to insure maintenance, by lower courts, of federal standards both constitutional and statutory

Data

Sorrells v. U.S. 77/413 (8-1)
 Burroughs v. U.S. 78/484 (8-1)
 Hansen v. Haff 78/968 (8-1)
 Dunn v. U.S. 76/356 (8-1)
 U.S. v. Limehouse 76/843 (7-1)
 Powell v. Alabama #98 77/159 (7-2)
 Patterson v. Alabama #99; Weems v. Alabama #100 77/159
 Funk v. U.S. 78/369 (7-2)
 D.C. v. Clawans 81/843 (7-2)
 Cook v. U.S. 77/64 (6-2)
 Factor v. Laubenheimer 78/315 (6-3)
 U.S. v. Wood 81/78 (5-3)
 Nixon v. Condon 76/984 (5-4)
 Snyder v. Massachusetts 78/674 (5-4)
 Herndon v. Lowry 81/1066 (5-4)
 Wood v. Broom 77/131 (4-5)
 Dimick v. Schiedt 79/603 (4-5)
 Reed v. Allen 76/1054 (3-6)

Herndon v. Georgia 79/1530 (3-6)
 Grau v. U.S. 77/212 (2-7)
 Sgro v. U.S. 77/260 (2-7)
 Fairmont Glass Works v. Cub Fork Coal 77/439 (2-7)
 U.S. v. Murdock 78/381 (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.75	3
	Ca	1.00	1.5
	St	1.00	1.5
	H	.71	4
	R	.63	5
	McR	.79	8
R .937	VanD	.57	6
MMR .763	Su	.54	7
NSR 13	Bu	.88	9

7. Description

- C - Federal Cases in C Master (n = 17; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights as violators of, plaintiffs under, federal legislation or subject to federal jurisdiction
- AS - propriety of Supreme Court as arbitrator between demands of federal legislation or procedures used to enforce that legislation and the civil rights of those affected

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.71	3
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
76/356		H	.65	4
76/843		R	.59	5
78/369		McR	.76	8
81/843	R .943	VanD	.56	6
77/64	MMR .735	Su	.53	7
78/315	NSR 9	Bu	.82	9
81/78				
79/603				
77/131				
76/1054				
77/212				
77/260				
77/439				
78/381				

Herndon v. Georgia 79/1530 (3-6)
 Grau v. U.S. 77/212 (2-7)
 Sgro v. U.S. 77/260 (2-7)
 Fairmont Glass Works v. Cub Fork Coal 77/439 (2-7)
 U.S. v. Murdock 78/381 (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.75	3
	Ca	1.00	1.5
	St	1.00	1.5
	H	.71	4
	R	.63	5
	McR	.79	8
R .937	VanD	.57	6
MMR .763	Su	.54	7
NSR 13	Bu	.88	9

7. Description

C - Federal Cases in C Master (n = 17; all duplicates)

AO - persons allegedly deprived of non-economic, civil rights as violators of, plaintiffs under, federal legislation or subject to federal jurisdiction

AS - propriety of Supreme Court as arbitrator between demands of federal legislation or procedures used to enforce that legislation and the civil rights of those affected

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.71	3
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
76/356		H	.65	4
76/843		R	.59	5
78/369		McR	.76	8
81/843	R .943	VanD	.56	6
77/64	MMR .735	Su	.53	7
78/315	NSR 9	Bu	.82	9
81/78				
79/603				
77/131				
76/1054				
77/212				
77/260				
77/439				
78/381				

8. Description

- C - State Cases in C Master (n = 9; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights as violators of, or plaintiffs under, state legislation
- AS - propriety of Supreme Court as arbitrator between demands of state legislation (or procedures used to enforce state legislation) and the civil rights of those subject thereto

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
#98; #99;					
#100 77/159		Br		.78	3
78/315		Ca		1.00	1.5
76/984		St		1.00	1.5
78/674		H		.78	4
81/1066		R		.67	5
77/131		McR		.78	8
79/1530	R .901	VanD		.56	6
	MMR .792	Su		.56	7
	NSR 7	Bu		1.00	9

9. Description

- C - Procedural Cases in C Master (n = 18; all duplicates)
- AO₁ - accused party alleging denial of procedural rights
- AS₁ - appeal for Supreme Court application of federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by state/federal law
- AO₂ - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS₂ - absence, or alleged unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/356		Br		.72	3
77/413		Ca		1.00	1.5
78/484		St		1.00	1.5
#98; #99; #100		H		.67	4
77/159		R		.56	5.5
78/369		McR		.89	9
81/843	R .992	VanD		.56	5.5
81/78	MMR .761	Su		.56	7
78/674	NSR 4	Bu		.89	8
81/1066					

8. Description

- C - State Cases in C Master (n = 9; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights as violators of, or plaintiffs under, state legislation
- AS - propriety of Supreme Court as arbitrator between demands of state legislation (or procedures used to enforce state legislation) and the civil rights of those subject thereto

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#98; #99;				
#100 77/159		Br	.78	3
78/315		Ca	1.00	1.5
76/984		St	1.00	1.5
78/674		H	.78	4
81/1066		R	.67	5
77/131		McR	.78	8
79/1530	R .901	VanD	.56	6
	MMR .792	Su	.56	7
	NSR 7	Bu	1.00	9

9. Description

- C - Procedural Cases in C Master (n = 18; all duplicates)
- AO₁ - accused party alleging denial of procedural rights
- AS₁ - appeal for Supreme Court application of federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by state/federal law
- AO₂ - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS₂ - absence, or alleged unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356		Br	.72	3
77/413		Ca	1.00	1.5
78/484		St	1.00	1.5
#98; #99; #100		H	.67	4
77/159		R	.56	5.5
78/369		McR	.89	9
81/843	R .992	VanD	.56	5.5
81/78	MMR .761	Su	.56	7
78/674	NSR 4	Bu	.89	8
81/1066				

79/603
76/1054
79/1530
77/212
77/260
77/439
78/381

10. Description

- C - Jury Trial (n = 6; all duplicates)
- AO - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS - absence or allegedly unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.67	4.5
81/843		Ca	1.00	1.5
81/78		St	1.00	1.5
78/674		H	.83	3
79/603		R	.50	6
78/381		McR	.83	9
	R .954	VanD	.67	4.5
	MMR .778	Su	.67	7
	NSR 2	Bu	.83	8

11. Description

- C - Combined Due Process and Subconstitutional Fair Procedure (n = 12, all duplicates)
- AO - accused party alleging denial of procedural rights
- AS - appeal for Supreme Court application of federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by state/federal law

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356		Br	.75	3
78/484		Ca	1.00	1.5
#98; #99;		St	1.00	1.5
#100 77/159		H	.58	4.5
78/369		R	.58	4.5
81/1066		McR	.92	8.5
76/1054	R 1.00	VanD	.50	6.5
79/1530	MMR .750	Su	.50	6.5
77/212	NSR 1	Bu	.92	8.5

77/260
77/439

12. Description

C - Subscale of Subconstitutional Fair Procedure
(n = 7; all duplicates)

AO - accused, negatively sanctioned by law,
seeking remedy in rectification of
procedure

AS - propriety of Supreme Court exercising
judgment upon lower federal courts'
application of fair procedure standards

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356		Br	.57	3
78/484		Ca	1.00	1.5
78/369		St	1.00	1.5
76/1054		H	.57	5.5
77/212		R	.57	5.5
77/260		McR	.86	8.5
77/439	R 1.00	VanD	.57	5.5
	MMR .730	Su	.57	5.5
	NSR 1	Bu	.86	8.5

13. Description

C - Subscale of Due Process (n = 5; all duplicates)

AO - accused party seeking XIV amendment guarantees
allegedly denied by state

AS - appeal for Supreme Court application of XIV
amendment, due process standards to state
statutes

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#98; #99;		Br	1.00	2
#100 77/159		Ca	1.00	2
81/1066		St	1.00	2
79/1530		H	.80	4.5
		R	.80	4.5
		McR	1.00	8.5
	R 1.00	VanD	.60	6.5
	MMR .866	Su	.60	6.5
	NSR 0	Bu	1.00	8.5

14. Description

- C - Substantive Cases in C Master (involving statutory construction and constitutional interpretation) (n = 15; all duplicates)
- AO₁ - persons allegedly deprived of non-economic civil rights under application of given statute, state or federal
- AS₁ - effective meaning of statute in instant case (i.e., practical meaning as evidenced in application); especially meaning as compatible with civil rights of subjects
- AO₂ - persons allegedly deprived of non-economic, civil rights through operation of federal/state statutes
- AS₂ - constitutional guarantees as measure of the statute and potential remedy for purported grievance

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.73	3
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
76/843		H	.67	5
81/843		R	.67	4
77/64		McR	.80	9
78/315	R .948	VanD	.50	6
81/78	MMR .752	Su	.60	7
76/984	NSR 7	Bu	.80	8
81/1066				
77/131				
79/1536				
77/212				
77/260				
78/381				

15. Description

- C - Statutory Construction - Cases from C Master (n = 14; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights under application of statute state/federal
- AS - effective meaning of statute in instant case (i.e., practical meaning as evidenced in application); especially meaning as compatible with civil rights of subjects

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.71	3
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
76/843		H	.64	5
77/641		R	.64	4
78/315		McR	.79	9
81/78	R .943	VanD	.54	6
76/984	MMR .750	Su	.64	7
81/1066	NSR 7	Bu	.79	8
77/131				
79/1530				
77/212				
77/260				
78/381				

16. Description

- C - Constitutional Interpretation - Cases from C Master (n = 7; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights through the operation of federal/state statutes
- AS - constitutional guarantees as measure of statute and potential remedy for purported grievances

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/843		Br	.57	3
81/78		Ca	1.00	1.5
78/674		St	1.00	1.5
81/1066		H	.57	4
79/1530		R	.57	6
77/212		McR	.86	8
77/260	R .958	VanD	.57	5
	MMR .778	Su	.86	7
	NSR 3	Bu	1.00	9

17. Description

- C - Federal Substantive Cases from C Master (involving statutory construction and constitutional interpretation) (n = 12; all duplicates)

- AO₁ - persons allegedly deprived of non-economic, civil rights under application of federal statute
- AS₁ - effective meaning of federal statute in instant case (i.e., practical meaning as evidenced in application); especially meaning as compatible with civil rights of subjects
- AO₂ - persons allegedly deprived of non-economic civil rights through operation of federal statutes
- AS₂ - constitutional guarantees as measure of the statute and potential remedy for purported grievances

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.67	3.5
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
78/843		H	.67	5.5
81/843		R	.67	5.5
77/64		McR	.75	9
78/315	R .928	VanD	.64	5.5
81/78	MMR .738	Su	.50	7
77/131	NSR 7	Bu	.75	8
77/212				
77/260				
78/381				

18. Description

- C - Federal Procedural Cases from C Master (involving due process, subconstitutional fair procedure, and jury trial) (n = 12; all duplicates)
- AO₁ - accused party alleging denial of procedural rights
- AS₁ - appeal for Supreme Court application of federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by federal law (as applied by state/federal officials)
- AO₂ - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS₂ - absence, or alleged unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356		Br	.67	3.
77/413		Ca	1.00	1.5
78/484		St	1.00	1.5
78/369		H	.58	4
81/843		R	.50	5.5
81/78		McR	.92	9
79/60	R 1.00	VanD	.50	5.5
76/1054	MMR .736	Su	.58	7
77/212	NSR 1	Bu	.83	8
77/260				
77/439				
78/381				

19. Description

C - Federal Cases involving Statutory Construction
(n = 11; all duplicates)

AO - persons allegedly deprived of non-economic,
civil rights under application of federal
statute

AS - effective meaning of statute in instant case
(i.e., practical meaning as evidenced in
application), especially meaning as compatible
with civil rights of subjects

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413		Br	.64	3.5
78/484		Ca	1.00	1.5
78/968		St	1.00	1.5
76/843		H	.64	5.5
77/64		R	.64	3.5
78/315		McR	.73	9
81/78	R .918	VanD	.60	5.5
77/131	MMR .725	Su	.55	7
77/212	NSR 7	Bu	.73	8
77/260				
78/381				

20. Description

C - Federal Cases involving Constitutional
Interpretation (n = 4; all duplicates)

AO - persons allegedly deprived of non-economic,
civil rights guaranteed by the federal
constitution, Bill of Rights

AS - Constitutional guarantees as criteria of statute and/or potential remedy for purported grievances

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/843		Br	.50	4.5
81/78		Ca	1.00	1.5
77/212		St	1.00	1.5
77/260		H	.50	4.5
		R	.50	4.5
		McR	1.00	8.5
	R 1.00	VanD	.50	4.5
	MMR .750	Su	.75	7
	NSR 0	Bu	1.00	8.5

21. Description

C - State Substantive Cases (involving statutory construction and constitutional interpretation) (n = 5; all duplicates)

AO₁ - persons allegedly deprived of non-economic civil rights under application of state statute

AS₁ - effective meaning of statute in instant case (i.e., practical meaning as evidenced in application), especially meaning as compatible with civil rights of subjects

AO₂ - persons allegedly deprived of non-economic, civil rights through operation of state statutes

AS₂ - federal constitutional guarantees as measure of statute and/or potential remedy for purported grievance (XIV and I amendments here)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/315		Br	.80	3
76/984		Ca	1.00	1.5
81/1066		St	1.00	1.5
77/131		H	.60	5
79/1530		R	.60	4
		McR	.80	7
	R .956	VanD	.80	7
	MMR .822	Su	.80	7
	NSR 2	Bu	1.00	9

22. Description

- C - State Procedural Cases (involving due process and subconstitutional fair procedural and jury trial) (n = 6; all duplicates)
- AO₁ - accused party alleging denial of procedural rights
- AS₁ - appeal for Supreme Court application of Federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by state law
- AO₂ - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS₂ - absence, or alleged unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#98; #99;				
#100 77/159		Br	.83	3
78/674		Ca	1.00	1.5
81/1066		St	1.00	1.5
79/1530		H	.83	4
		R	.67	5.5
		McR	.83	8
	R .952	VanD	.67	5.5
	MMR .814	Su	.50	7
	NSR 3	Bu	1.00	9

23. Description

- C - State Cases involving Federal Constitutional Interpretation (n = 3; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights through operation of state statutes
- AS - federal constitutional guarantees as measure of statute and potential remedy for purported grievance

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/674		Br	.67	3
81/1066		Ca	1.00	1.5
79/1530		St	1.00	1.5
		H	.67	4
		R	.67	7
		McR	.67	5.5

22. Description

- C - State Procedural Cases (involving due process and subconstitutional fair procedural and jury trial) (n = 6; all duplicates)
- AO₁ - accused party alleging denial of procedural rights
- AS₁ - appeal for Supreme Court application of Federal constitutional standards (procedural guarantees) on part of one negatively sanctioned by state law
- AO₂ - accused party's position vis-à-vis right to jury trial (V, VI, VII amendments)
- AS₂ - absence, or alleged unfair application of, constitutional right to jury trial

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#98; #99;				
#100 77/159		Br	.83	3
78/674		Ca	1.00	1.5
81/1066		St	1.00	1.5
79/1530		H	.83	4
		R	.67	5.5
		McR	.83	8
	R .952	VanD	.67	5.5
	MMR .814	Su	.50	7
	NSR 3	Bu	1.00	9

23. Description

- C - State Cases involving Federal Constitutional Interpretation (n = 3; all duplicates)
- AO - persons allegedly deprived of non-economic, civil rights through operation of state statutes
- AS - federal constitutional guarantees as measure of statute and potential remedy for purported grievance

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/674		Br	.67	3
81/1066		Ca	1.00	1.5
79/1530		St	1.00	1.5
		H	.67	4
		R	.67	7
		McR	.67	5.5

R	.925	VanD	.67	5.5
MMR	.816	Su	1.00	8.5
NSR	2	Bu	1.00	8.5

24. Description

C - State Cases involving Statutory Construction
(n = 5; all duplicates)

AO - persons allegedly deprived of non-economic,
civil rights under application of state
statute

AS - effective meaning of statute in instant
case (i.e., practical meaning as evidenced
in application); especially meaning as com-
patible with civil rights of subjects

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/315		Br	.80	3
76/984		Ca	1.00	1.5
81/1066		St	1.00	1.5
77/131		H	.60	5
79/1530		R	.60	4
		McR	.80	7
	R .956	VanD	.80	7
	MMR .822	Su	.80	7
	NSR 2	Bu	1.00	9

E Scale Set (N = 21 scales)25. Description

E - Combined State and Federal Regulation (also
includes subscales on state regulation; anti-
trust; ICC; commerce regulation; federal
regulatory agencies) (n = 66; including six
expansions and one memorandum case)

AO - object of state/federal regulation: corpora-
tion; stockholder; business enterprise subject
to ICC; government employee; private enter-
prise (railroads, insurance companies, public
utilities, dairies); businesses engaged in
monopolistic activity

AS - scope of the legislative powers (state/federal) to insure public welfare by regulation; specifically, to regulate monopolistic tendencies of business; to insure equal protection of law and due process; to provide oversight agencies (regulatory); to regulate commerce, and competition

Data

Adams v. Mills 76/1184 (8-1)
 Stephenson v. Binford 77/288 (8-1)
 Swayne and Hoyt v. U.S 81/659 (8-1)
 Norwegian Nitrogen Products Co. v. U.S. 77/796 (8-1)
 Appalachian Coal, Inc. v. U.S. 77/825 (8-1)
 Clark v. Williard 78/1100 (8-1)
 Ashwander v. TVA 80/688 (8-1)
 U.S. v. American Sheet and Tin Plate Co. 81/1186 (8-1)
 Milwaukee County v. White Co. 80/220 (7-2)
 Memo. case: #2 Great Atlantic and Pacific Tea Co. v. Maxwell 76/500 (7-2)
 FTC v. Royal Milling Co. 77/706 (7-2)
 Becker Steel v. Cummings 80/54 (7-2)
 Los Angeles Gas and Electric Co. v. Railroad Commission of California 77/1180 (6-2)
 Nebbia v. New York 78/940 (5-4)
 Metropolitan Casualty Ins. Co. v. Brownell 79/1070 (5-4)
 Borden's Farm Products Co. v. Ten Eyck 80/669 (5-4)
 West Coast Hotel Co. v. Parrish 81/703 (5-4)
 Highland Farms Dairy v. Agnew 81/835 (5-4)
 NLRB v. Jones and Laughlin Steel Corp. #421 81/893 (5-4)
 NLRB v. Fruehauf Trailer Co. #420-21 81/893
 NLRB v. Friedman-Harry Marks Clothing Co. #422-23 81/893
 The Associated Press v. NLRB 81/953 (5-4)
 Senn v. Tile Layers Protective Union 81/1229 (5-4)
 U.S. v. Swift and Co. #568 76/999 (4-2)
 American Wholesale Grocers Association v. Swift and Co. #569 76/999
 National Wholesale Grocers Association v. Swift and Co. #570 76/999
 ICC v. New York, New Haven and Hartford RR Co. 77/248 (4-3)
 Texas and Pacific Rail Co. v. U.S. 77/1410 (4-5)
 Arrow-Hart and Hegeman Electric Co. v. FTC 78/1007 (4-5)
 Atlantic Coast Line RR Co. v. Florida #344 79/1451 (4-5)
 Florida v. U.S. #345 79/1451
 Railroad Retirement Bd. v. Alton RR Co. 79/1468 (4-5)

Carter v. Carter Coal Co. #636 80/1161 (4-5)
 R. C. Tway Coal Co. v. Glenn #649 80/1161
 R. C. Tway Coal Co. v. Clark #650 80/1161
 Morehead v. New York ex rel. Tipaldo 80/1347 (4-5)
 Great Northern Ry Co. v. State of Washington
 81/573 (4-5)
 (exp) 80/688*
 Hartford Steam Boiler Inspection and Ins. Co.
 v. Harrison 81/1223 (4-5)
 Rogers v. Guaranty Trust Co. 77/652 (3-5)
 Chicago, Rock Island and Pacific Ry Co. v. U.S.
 76/177 (3-6)
 U.S. v. Baltimore and Ohio R Co. 76/243 (3-6)
 ICC v. Oregon-Washington R and Navigation Co.
 77/588 (3-6)
 U.S. v. Dubilier Condenser Corp. 77/1114 (3-6)
 Southern R Co. v. Virginia ex rel. Shirley 78/260
 (3-6)
 Georgia Ry and Electric Co. v. City of Decatur
 79/1365 (3-6)
 Atchison, Topeka and Santa Fe Ry Co. v. U.S.
 #606 79/1382 (3-6)
 Union Stock Yard Co. v. U.S. #607 79/1382
 West v. Chesapeake and Potomac Telephone Co.
 79/1640 (3-6)
 U.S. v. Constantine #40 80/233 (3-6)
 U.S. v. Kesterson 80/241 (3-6)
 Mayflower Farms v. Ten Eyck 80/675 (3-6)
 Jones v. SEC 80/1015 (3-6)
 (exp) #636 80/1161*
 (exp) #649 80/1161
 (exp) #650 80/1161
 U.S. v. Elgin, Joliet and Eastern Ry Co. 80/1300
 (3-6)
 (exp) 80/1347*
 New State Ice Co. v. Liebmann 76/747 (2-6)
 (exp) 77/652*
 Nashville, Chattanooga and St. Louis Ry v. Walters
 79/949 (2-6)
 Arizona Grocery v. Atchison, Topeka and Santa Fe
 R Co. 76/348 (2-7)
 Reynolds v. U.S. 78/1353 (2-7)
 Powell v. U.S. 81/643 (1-6)
 Panama Refining Co. v. Ryan #135 79/446 (1-8)
 Amazon Petroleum Corp. v. Ryan #260 79/446
 Expansions:
 80/688: Br+; Ca+; St+; H-; R+; McR-; VanD-; Su-;
 Bu- (4-5)
 80/1161: Br+; Ca+; St+; H-; R-; McR-; VanD-; Su-;
 Bu- (3-6)
 80/1347: Br+; Ca+; St+; H-; R-; McR-; VanD-; Su-;
 Bu- (3-6)

77/652: Br+; Ca-; St+; H-; RN; McR-; VanD-; Su-;
Bu- (2-6)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.91	3
	Ca	.95	1
	St	.95	2
	H	.56	4
	R	.55	5
	McR	.86	9
R .954	VanD	.82	6
MMR .814	Su	.84	7
NSR 26	Bu	.89	8

26. Description

- E - State Tax (n = 34; including four expansions and one memorandum case)
- AO - private business/agents (subject to another government) as objects of state power
- AS - federal limitations (XIV amendment due process and equal protection; interstate commerce clause; intergovernment tax immunity) on scope of state tax power

Data

Lawrence v. State Tax Commission 76/1102 (8-1)
 Michigan v. Michigan Trust 76/1136 (8-1)
 (exp) #724 81/1245*
 (exp) #797 81/1245
 New York ex rel. Cohn v. Graves 81/666 (7-2)
 Henneford v. Silas Mason Co. 81/814 (7-2)
 Pacific Co. v. Johnson 76/893 (6-3)
 Life and Casualty Ins. Co. v. McCray 78/987 (6-3)
 Fox v. Standard Oil of New Jersey 79/780 (5-4)
 Carmichael v. Southern Coal and Coke Co. #724
 81/1245 (5-4)
 Carmichael v. Gulf States Paper Corp. #797
 81/1245
 Great Atlantic and Pacific Tea Co. v. Grosjean
 81/1193 (4-3)
 Burnet v. Coronado Oil and Gas Co. 76/815 (4-5)
 Concordia Fire Ins. Co. v. Illinois 78/1411 (3-5)
 Hooper v. Tax Commission of Wisconsin 76/248 (3-6)
 First National Bank of Boston v. Maine 76/313 (3-6)
 Anglo Chilean Nitrate Sales Corp. v. Alabama
 77/710 (3-6)
 Liggett Co. v. Lee 77/929 (3-6)
 (exp) 76/815*

Stewart Dry Goods Co. v. Lewis #454 79/1054 (3-6)
 Levy v. Lewis #455 79/1054
 Penney Co. v. Lewis #456 79/1054
 Kroger Co. v. Lewis #457 79/1054
 Senior v. Braden 79/1520 (3-6)
 Schuykill Trust Co. v. Pennsylvania 80/91 (3-6)
 Colgate v. Harvey 80/299 (3-6)
 Memo. case: #587 Noble-Trotter Rice Milling Co.
 v. Fontenot 80/402 (3-6)
 Great Northern Ry. Co. v. Weeks 80/532 (3-6)
 Graves v. Texas Co. 80/1236 (2-6)
 Valentine v. Great Atlantic and Pacific Tea Co.
 #13 81/22 (2-6)
 Valentine v. Graham Department Stores #14 81/22
 Valentine v. Walgreen Co. #15 81/22
 Binney v. Long 81/239 (2-6)
 (exp) 77/929*

Expansions:

81/1245: Br+; Ca+; St+; H+; R+; McR-; VanD+; Su+;
 Bu+ (8-1)
 76/815: Br+; Ca-; St+; H-; R+; McR-; VanD-; Su-;
 Bu- (3-6)
 77/929: Br-; Ca+; St+; H-; R-; McR-; VanD-; Su-;
 Bu- (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.97	2.5
	Ca	.97	2.5
	St	1.00	1
	H	.66	5
	R	.61	4
	McR	.94	9
R .988	VanD	.84	7
MMR .854	Su	.82	6
NSR 5	Bu	.88	8

27. Description

- E - Intergovernmental Tax Immunity Subscale
 (mix of state/federal and state/state combinations) (n = 6, including four duplicates and one expansion)
- AO - property subject to double and/or discriminatory taxation by state
- AS - dimensions of doctrine of immunity in each case

Stewart Dry Goods Co. v. Lewis #454 79/1054 (3-6)
 Levy v. Lewis #455 79/1054
 Penney Co. v. Lewis #456 79/1054
 Kroger Co. v. Lewis #457 79/1054
 Senior v. Braden 79/1520 (3-6)
 Schuykill Trust Co. v. Pennsylvania 80/91 (3-6)
 Colgate v. Harvey 80/299 (3-6)
 Memo. case: #587 Noble-Trotter Rice Milling Co.
 v. Fontenot 80/402 (3-6)
 Great Northern Ry. Co. v. Weeks 80/532 (3-6)
 Graves v. Texas Co. 80/1236 (2-6)
 Valentine v. Great Atlantic and Pacific Tea Co.
 #13 81/22 (2-6)
 Valentine v. Graham Department Stores #14 81/22
 Valentine v. Walgreen Co. #15 81/22
 Binney v. Long 81/239 (2-6)
 (exp) 77/929*

Expansions:

81/1245: Br+; Ca+; St+; H+; R+; McR-; VanD+; Su+;
 Bu+ (8-1)
 76/815: Br+; Ca-; St+; H-; R+; McR-; VanD-; Su-;
 Bu- (3-6)
 77/929: Br-; Ca+; St+; H-; R-; McR-; VanD-; Su-;
 Bu- (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.97	2.5
	Ca	.97	2.5
	St	1.00	1
	H	.66	5
	R	.61	4
	McR	.94	9
R .988	VanD	.84	7
MMR .854	Su	.82	6
NSR 5	Bu	.88	8

27. Description

- E - Intergovernmental Tax Immunity Subscale
 (mix of state/federal and state/state combinations) (n = 6, including four duplicates and one expansion)
- AO - property subject to double and/or discriminatory taxation by state
- AS - dimensions of doctrine of immunity in each case

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/666		Br	1.00	1
76/893		Ca	.67	4
76/815		St	.80	3
80/1236		H	.67	5
(exp) 76/815		R	.83	2
81/691*		McR	.83	7
	R .962	VanD	.83	7
	MMR .828	Su	.83	7
	NSR 2	Bu	1.00	9

*Brush v. Commissioner of Internal Revenue not included in State Tax master scale because involves federal tax.

28. Description

- E - Fourteen Amendment, Equal Protection Subscale (n = 21, including three expansions; all duplicates)
- AO - individual or private business asserting discriminatory hence unconstitutional application of state tax
- AS - state taxation as limited by the XIV amendment, equal protection clause

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/1102		Br	.95	3
(exp) #724		Ca	1.00	1.5
81/1245		St	1.00	1.5
(exp) #797		H	.60	4.5
81/1245		R	.62	4.5
78/987		McR	.90	9
79/780	R .993	VanD	.90	8
#724; #797	MMR .854	Su	.86	6.5
81/1245	NSR 2	Bu	.86	6.5
81/1193				
78/1411				
76/248				
77/929				
#454; #455;				
#456; #457				
79/1054				
80/532				
#13; #14; #15				
81/22				
81/239				
(exp) 77/929				

29. Description

- E - Chain Store Tax Subscale (n = 7; all duplicates; one expansion)
- AO - chain store as object of state regulation of interstate commerce
- AS - latitude of permissible state policy re taxation of business within its bounds; economic policy of state; intrastate commerce

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
79/780		Br		.97	3
81/1193		Ca		1.00	1.5
77/929		St		1.00	1.5
#13; #14; #15		H		.71	4.5
81/22		R		.71	4.5
(exp) 77/929		McR		1.00	7.5
	R 1.00	VanD		1.00	7.5
	MMR .932	Su		1.00	7.5
	NSR 0	Bu		1.00	7.5

30. Description

- E - State Regulation (n = 25; one memorandum case; two expansions; all duplicates)
- AO - private enterprise (railroads, insurance companies, public utilities, dairies) allegedly burdened in its activities by operation of state and/or federal (police) powers
- AS - scope of the police power of government/state regulatory power vis-à-vis XIV amendment guarantees of equal protection and due process

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
77/288		Br		.92	3
78/1160		Ca		.96	2
80/220		St		1.00	1
(memo. case)		H		.56	4
76/500		R		.52	5
77/1180		McR		.92	8
78/940	R .975	VanD		.83	6.5
79/1070	MMR .834	Su		.84	6.5
80/669	NSR 6	Bu		.96	9
81/703					
81/835					
81/1229					
80/1347					
81/573					

81/1223
 77/652
 78/260
 79/1365
 79/1640
 80/233
 80/241
 80/675
 (exp) 80/1347
 76/747
 (exp) 77/652
 79/949

31. Description

E - State Regulation of Milk Prices Subscale
 (n = 4; all duplicates)

AO - dairies: restriction of their privilege
 to engage in business

AS - expression of state legislative powers:
 power to fix prices, require licenses and
 classify businesses subject thereto

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/940		Br	1.00	2
80/669		Ca	1.00	2
81/835		St	1.00	2
80/675		H	.85	4.5
		R	.85	4.5
		McR	1.00	7.5
	R 1.00	VanD	1.00	7.5
	MMR .966	Su	1.00	7.5
	NSR 0	Bu	1.00	7.5

32. Description

E - State Police Power and Regulation of Public
 Utilities via Commissions (n = 6; all dupli-
 cates)

AO - business company challenging mode of regulation
 by state commission

AS - state power to regulate public utilities or
 other private enterprise under XIV amendment
 limitations

81/1223
 77/652
 78/260
 79/1365
 79/1640
 80/233
 80/241
 80/675
 (exp) 80/1347
 76/747
 (exp) 77/652
 79/949

31. Description

- E - State Regulation of Milk Prices Subscale
 (n = 4; all duplicates)
- AO - dairies: restriction of their privilege
 to engage in business
- AS - expression of state legislative powers:
 power to fix prices, require licenses and
 classify businesses subject thereto

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/940		Br	1.00	2
80/669		Ca	1.00	2
81/835		St	1.00	2
80/675		H	.85	4.5
		R	.85	4.5
		McR	1.00	7.5
	R 1.00	VanD	1.00	7.5
	MMR .966	Su	1.00	7.5
	NSR 0	Bu	1.00	7.5

32. Description

- E - State Police Power and Regulation of Public
 Utilities via Commissions (n = 6; all dupli-
 cates)
- AO - business company challenging mode of regulation
 by state commission
- AS - state power to regulate public utilities or
 other private enterprise under XIV amendment
 limitations

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/1180		Br	.67	3
78/260		Ca	1.00	1.5
79/1365		St	1.00	1.5
79/1640		H	.67	4
76/747		R	.83	5.5
79/949		McR	.80	5.5
	R .98	VanD	1.00	8
	MMR .885	Su	1.00	8
	NSR 1	Bu	1.00	8

33. Description

E - State Provisions for Labor (n = 4; one expansion; all duplicates)

AO - laborer whose protection is provided for by positive enactment of state legislation

AS - limitations on state power (chiefly, its police power) imposed by XIV amendment (due process and equal protection, here seen as guarantees of right to work and freedom of contract)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/703		Br	1.00	2
81/1229		Ca	1.00	2
80/1347		St	1.00	2
(exp) 80/1347		H	.75	4
		R	.50	5
		McR	1.00	7.5
	R 1.00	VanD	1.00	7.5
	MMR .916	Su	1.00	7.5
	NSR 0	Bu	1.00	7.5

34. Description

E - State Regulation of Foreign Corporations (n = 7; one expansion; all duplicates)

AO - foreign corporation negatively acted upon by host state's laws

AS - scope of state regulatory power upon business activities within its geographic bounds

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/1160		Br	1.00	1.5
80/220		Ca	.86	3
76/500		St	1.00	1.5
79/1070		H	.71	4
81/573		R	.80	5
77/652		McR	1.00	9
(exp) 77/652	R 1.00	VanD	.57	6.5
	MMR .818	Su	.57	6.5
	NSR 0	Bu	.86	8

35. Description

E - Commerce Regulation (n = 16; four expansions; all duplicates)

AO - corporate challenge (corporation or stockholder) to federal statutory regulation or to federal activity statutorily sanctioned

AS - congressional determination (through specifically delegated authority) of scope of federal commerce power

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
80/688		Br	.88	2.5
#419 81/893		Ca	1.00	1
(exp) #420-21		St	.88	2.5
(exp) #422-23		H	.63	4
81/953		R	.63	5
(exp) 80/688		McR	1.00	9
79/1468	R .991	VanD	.94	7
#636; #649;	MMR .871	Su	.94	7
#650 80/1161	NSR 1	Bu	.94	7
81/573				
(exp) #636				
80/1161				
(exp) #649				
(exp) #650				
#135; #260				
79/446				

36. Description

E - Interstate Commerce Commission (ICC) (n = 13; all duplicates)

- AO - a business enterprise (railroads, transit companies, stockyards, carriers) subject to orders of ICC
 AS - employment of regulatory powers by ICC (reparations, rate prescriptions, investigation)

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
81/1186		Br		1.00	1
76/1184		Ca		.80	2
77/248		St		.92	3
#344; #345 79/1451		H		.58	4
77/1410		R		.62	5
#606; #607 79/1382		McR		.85	7
77/588	R .98	VanD		.85	7
76/177	MMR .83	Su		.85	7
76/243	NSR 2	Bu		1.00	9
76/348					
81/643					

37. Description

- E - Contracts (private; insurance); Bonds; Contract Systems (n = 10; one duplicate)
- AO - parties to contract, generally involving insurance policies
- AS - nature of bond in insurance contracts generally or nature of a contract

Data

- (dup) 81/659
 American Surety Co. of New York v. Westinghouse
 80/105 (8-1)
 American Surety Co. v. Greek Catholic Union
 76/490 (7-1)
 St. Paul Fire and Marine Insurance v. Bachmann
 76/648 (7-1)
 Holyoke Water Power v. American Paper 81/678 (5-4)
 Sanders v. Armour Fertilizer Works 78/1206 (4-5)
 Dugas v. American Surety Co. 81/720 (2-6)
 Washington Fidelity Insurance v. Burton 77/197 (2-7)
 Travelers Protective Association v. Prinsen
 78/999 (1-8)
 Landress v. Phoenix Mutual Life 78/934 (1-8)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.70	3.5
	Ca	.75	2
	St	.89	1
	H	.70	3.5
	R	.60	5
	McR	.80	9
R .971	VanD	.60	6.5
MMR .704	Su	.70	8
NSR 4	Bu	.60	6.5

38. Description

E - Insurance Contract Subscale (n = 5; all duplicates)

AO - status of insurer/insured respectively (re a policy's contract)

AS - nature of bond in insurance contracts

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
79/490		Br	.60	2
76/648	.	Ca	(missing data)	
77/197		St	.80	1
78/999		H	.60	5
78/934		R	.60	5
		McR	1.00	8
	R 1.00	VanD	.60	5
	MMR .674	Su	.60	5
	NSR 0	Bu	.60	5

39. Description

E - Noninsurance Contract Subscale (n = 5; all duplicates)

AO - status of respective contracting parties

AS - nature of bond in given contract

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/659		Br	.80	4
80/105		Ca	1.00	2
81/678		St	1.00	2
78/1206		H	1.00	2
81/720		R	.60	6.5
		McR	.60	6.5
	R .961	VanD	.60	6.5
	MMR .777	Su	.80	9
	NSR 2	Bu	.60	6.5

40. Description

- E - Contract Clause in Federal/State Constitutions
(n = 8; all duplicates; one expansion)
- AO - contracting party seeking to maintain
sanctity of contract
- AS - legislative action (state/federal) as
limited by and/or violative of, the contract
clause (U.S. Constitution/XIV amendment,
due process, equal protection) or comparable
clause in state constitutions

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/893		Br		.88	2.5
79/907		Ca		.88	2.5
79/912		St		1.00	1
78/413		H		.63	4
80/1309		R		.50	5
76/866		McR		.88	6
81/239	R 1.00	VanD		1.00	8
(exp) 79/912	MMR .863	Su		1.00	8
	NSR 0	Bu		1.00	8

41. Description

- E - Gold Clause Cases (n = 7; 1 duplicate; one
expansion)
- AO - rights of contracting parties regarding
medium of payment
- AS - congressional power over monetary system in
view of obligation imposed by gold clause of
contracts public and private

Data

Norman v. B and O RR #270 79/885 (5-4)
U.S. v. Bankers Trust #471; U.S. v. Bankers Trust
#472 79/885
Nortz v. U.S. 79/907 (5-4)
Perry v. U.S. 79/912 (5-4)
(dup) 81/678
(exp) 79/912
Expansion: Br-; Ca-; St+; H-; R-; McR-; VanD-; Su-;
Bu- (1-8)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.86	3.5
	Ca	.86	3.5
	St	1.00	1
	H	.86	3.5
	R	.86	3.5
	McR	1.00	7.5
R 1.00	VanD	1.00	7.5
MMR .937	Su	1.00	7.5
NSR 0	Bu	1.00	7.5

42. Description

E - Antitrust (n = 6; all duplicates)

AO - business sanctioned by federal law for monopolistic activity

AS - power of Congress to regulate business combinations having monopolistic aspects (restraints of trade and commerce; subsidiaries)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/825		Br	1.00	2
#568; #569;		Ca	1.00	2
#570 76/999		St	1.00	2
78/1007		H	.67	4
80/1300		R	.58	5
		McR	.50	6
	R 1.00	VanD	.83	8.5
	MMR .786	Su	.67	7
	NSR 1	Bu	.83	8.5

43. Description

E - Federal Government Regulatory/Administrative Agencies (n = 10; all duplicates, including one expansion)

AO - litigant (stockholder, government employee, individual, corporation) affected or negatively sanctioned by government agency, claiming its action as ultra vires

AS - permissible powers (e.g., investigation, jurisdiction, contract) of federal agencies in their respective areas of regulation

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/659		Br	.80	3
77/796		Ca	1.00	1.5
80/688		St	1.00	1.5
77/706		H	.70	4
80/54		R	.60	7.5
78/1007		McR	.80	9
(exp) 80/688	R .952	VanD	.50	5.5
80/1015	MMR .733	Su	.70	7.5
77/1114	NSR 4	Bu	.50	5.5
78/1353				

44. Description

E - Liability (n = 7; one duplicate)

AO - claim of contractee (business or employee)
against loss or injury

AS - extent of liability (vessel or carrier) for
damages incurred during period of transactions
under contract; proven negligence as deter-
mining liability

Data

Alexander v. Kellogg and Sons #444 76/903 (7-1)

Rocco v. Lehigh Valley R Co. 77/743 (7-2)

May v. Hamburg-American P. Aktiengesellschaft
78/348 (7-2)

Krauss Lumber Co. v. Dimon SS Corp. 78/216 (5-4)

Crowell v. Benson 76/598 (3-5)

(exp) 76/903*

(dup) 81/720

*76/903: Br+; Ca N; St+; H-; R-; McR-; VanD-; Su-;
Bu- (2-6)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.86	3
	Ca	1.00	1.5
	St	1.00	1.5
	H	.71	4
	R	.57	5.5
	McR	.86	8.5
R .976	VanD	.57	5.5
MMR .793	Su	.71	7
NSR 3	Bu	.86	8.5

45. Description

- E - Bankrupt (n = 3)
 AO - insolvent corporation's position vis-à-vis
 creditors; receivers
 AS - state/federal laws providing for respective
 rights of bankrupts and creditors

Data

McCandless v. Furland 80/121 (5-4)
 Ashton v. Cameron County Water Improvement
 District 80/1309 (4-5)
 Dakin v. Bayly 78/229 (1-8)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.67	3
	Ca	.67	3
	St	1.00	1
	H	.67	3
	R	1.00	7.5
	McR	1.00	7.5
R 1.00	VanD	.67	5
MMR .853	Su	1.00	7.5
NSR 0	Bu	1.00	7.5

F Scale Set (N = 11 scales)46. Description

- F - Federal Taxation of Gifts (n = 8)
 AO - beneficiaries by inheritance/succession
 AS - propriety of application of federal tax
 power (via Revenue Acts 1921; 1924; 1926)
 to gifts of decedents or to charitable gifts;
 also taxation of gifts in contemplation of
 death

Data

Burnet v. Brooks 77/844 (8-1)
 Burnet v. Guggenheim 77/784 (6-2)
 Old Mission Portland Cement Co. v. Helvering
 79/267 (7-2)
 Gulf, Mobile and Northern RR Co. v. Helvering
 79/372 (7-2)

Helvering v. St. Louis Union Trust 80/29 (4-5)
 Becker v. St. Louis Union Trust 80/35 (4-5)
 Heiner v. Donnan 76/772 (2-6)
 Handy v. Delaware Trust 76/793 (2-6)

<u>Results</u>	Justice	Scale Score	Rank
	Br	1.00	2
	Ca	1.00	2
	St	1.00	2
	H	.71	4
	R	.75	8
	McR	.50	5.5
R .983	VanD	.50	5.5
MMR .787	Su	.63	7
NSR 1	Bu	1.00	9

47. Description

F - Combined State/Federal Tax Scales: E Scale State Tax and F Scale Federal Tax (n = 75; eight duplicates; six expansions; one memorandum case)

All AOs and ASs here are those from E-State Tax; F-Federal Tax Master Scale; and F-Federal Taxation of Gifts Scale respectively

Data

Lawrence v. State Tax Commission 76/1102 (8-1)
 Helvering v. Pardee #77 78/365 (8-1)
 (exp) 81/1279*
 Michigan v. Michigan Trust 76/1136 (8-1)
 (exp) #724 81/1245*
 (exp) #797
 Helvering v. Independent Life Insurance 78/1311
 (8-1)
 Helvering v. Midland Mutual Life 81/162 (8-1)
 Anniston Manufacturing Co. v. Davis 81/1143 (8-1)
 Stone v. White 81/1265 (8-1)
 U.S. ex rel. Girard Trust v. Helvering 81/1272 (8-1)
 (dup) 77/844
 (dup) 79/367
 (dup) 79/372
 New York ex rel. Cohn v. Graves 81/666 (7-2)
 Henefford v. Silas Mason Co. 81/814 (7-2)
 (exp) 81/1279*
 Helvering v. Davis 81/1317 (7-2)
 (dup) 77/784
 U.S. v. Safety Car Heating and Light Co. #75
 80/500 (6-3)

Helvering v. St. Louis Union Trust 80/29 (4-5)
 Becker v. St. Louis Union Trust 80/35 (4-5)
 Heiner v. Donnan 76/772 (2-6)
 Handy v. Delaware Trust 76/793 (2-6)

<u>Results</u>	Justice	Scale Score	Rank
	Br	1.00	2
	Ca	1.00	2
	St	1.00	2
	H	.71	4
	R	.75	8
	McR	.50	5.5
R .983	VanD	.50	5.5
MMR .787	Su	.63	7
NSR 1	Bu	1.00	9

47. Description

F - Combined State/Federal Tax Scales: E Scale
 State Tax and F Scale Federal Tax (n = 75;
 eight duplicates; six expansions; one
 memorandum case)

All AOs and ASs here are those from E-State Tax;
 F-Federal Tax Master Scale; and F-Federal Taxation
 of Gifts Scale respectively

Data

Lawrence v. State Tax Commission 76/1102 (8-1)
 Helvering v. Pardee #77 78/365 (8-1)
 (exp) 81/1279*
 Michigan v. Michigan Trust 76/1136 (8-1)
 (exp) #724 81/1245*
 (exp) #797
 Helvering v. Independent Life Insurance 78/1311
 (8-1)
 Helvering v. Midland Mutual Life 81/162 (8-1)
 Anniston Manufacturing Co. v. Davis 81/1143 (8-1)
 Stone v. White 81/1265 (8-1)
 U.S. ex rel. Girard Trust v. Helvering 81/1272 (8-1)
 (dup) 77/844
 (dup) 79/367
 (dup) 79/372
 New York ex rel. Cohn v. Graves 81/666 (7-2)
 Henefford v. Silas Mason Co. 81/814 (7-2)
 (exp) 81/1279*
 Helvering v. Davis 81/1317 (7-2)
 (dup) 77/784
 U.S. v. Safety Car Heating and Light Co. #75
 80/500 (6-3)

Rogers v. Safety Car Co. #76 80/500
 Pacific Co. v. Johnson 76/893 (6-3)
 Burnet v. Wells 77/1439 (5-4)
 Fox v. Standard Oil of New Jersey 79/780 (5-4)
 Helvering v. City Bank Farmers Trust 80/62 (5-4)
 Carmichael v. Southern Coal and Coke Co. #724
 81/1245 (5-4)
 Carmichael v. Gulf States Paper Corp. #797
 81/1245
 Steward Machine Co. v. Davis 81/1279 (5-4)
 Great Atlantic and Pacific Tea Co. v. Grosjean
 81/1193 (4-3)
 Burnet v. Coronado Oil and Gas 76/815 (4-5)
 (dup) 80/29
 (dup) 80/35
 Concordia Fire Insurance Co. v. Illinois 78/1411
 (3-5)
 Hoeper v. Tax Commission of Wisconsin 76/248 (3-6)
 First National Bank of Boston v. Maine 76/313 (3-6)
 Anglo-Chilean Nitrate Sales Corp. v. Alabama
 77/710 (3-6)
 Liggett Co. v. Lee 77/929 (3-6)
 (exp) 76/815*
 Helvering v. New York Trust #873 78/1361 (3-6)
 New York Trust v. Helvering #899 78/1361
 Freuler v. Helvering 78/634 (3-6)
 Whitcomb v. Helvering 78/645 (3-6)
 Stewart Dry Goods Co. v. Lewis #454 79/1054 (3-6)
 Levy v. Lewis #455 79/1054
 Penney Co. v. Lewis #456 79/1054
 Kroger Co. v. Lewis #457 79/1054
 Senior v. Braden 79/1520 (3-6)
 McFeely v. Comm'r of Internal Revenue #24 80/83 (3-6)
 U.S. v. First National Bank of Boston #110 80/83
 Helvering v. Lee #111 80/83
 Rand v. Helvering #439 80/83
 Dibblee v. Comm'r of Internal Revenue #494 80/83
 Schuykill Trust Co. v. Pennsylvania 80/91 (3-6)
 U.S. v. Constantine 80/233 (3-6)
 U.S. v. Kesterson 80/241 (3-6)
 Colgate v. Harvey 80/299 (3-6)
 Memo. case: #587 Noble-Trotter Rice Milling Co.
 v. Fontenot 80/402
 U.S. v. Butler 80/477 (3-6)
 Great Northern Ry Co. v. Weeks 80/532 (3-6)
 Miller v. Standard Nut Margarine Co. #251 76/422
 (2-6)
 Rose v. Standard Nut Margarine Co. of Florida #252
 76/422
 (dup) 76/772
 (dup) 76/793
 Graves v. Texas Co. 80/1236 (2-6)
 Valentine v. Great Atlantic and Pacific Tea Co.
 #13 81/22 (2-6)

Valentine v. Graham Department Stores #14 81/22
 Valentine v. Walgreen Co. #15 81/22
 Binney v. Long 81/239 (2-6)
 (exp) 77/929*
 U.S. v. Murdock 78/381 (2-7)
 Koshland v. Helvering 80/1268 (2-7)
 Thomas v. Perkins 81/1324 (2-7)
 Brush v. Comm'r of Internal Revenue 81/691 (2-7)
 Helvering v. Taylor 79/623 (1-8)
 Helvering v. Rankin 79/1343 (1-8)

Expansions:

81/1279: Br+; Ca+; St+; H+; R+; McR+; VanD+; Su+;
 Bu- (8-1)
 81/1245: Br+; Ca+; St+; H+; R+; McR-; VanD+; Su+;
 Bu+ (8-1)
 81/1279: Br+; Ca+; St+; H+; R+; McR-; VanD+; Su+;
 Bu- (7-2)
 76/815: Br+; Ca-; St+; H-; R+; McR-; VanD-; Su-;
 Bu- (3-6)
 77/929: Br-; Ca+; St+; H-; R-; McR-; VanD-; Su-;
 Bu- (2-7)

<u>Results</u>	Justice	Scale Score	Rank
	Br	.92	3
	Ca	.91	2
	St	.99	1
	H	.60	4
	R	.63	5
	McR	.84	8
R .964	VanD	.73	6
MMR .805	Su	.76	7
NSR 28	Bu	.87	9

48. Description

F - Federal Tax Cases involving Statutory Construction (n = 35; all duplicates)
 AO - taxpayer challenge based on specific application of federal tax statute
 AS - intent of Congress as expressed in statute so challenged

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/844		Br	.89	3
78/365		Ca	.87	2
78/1311		St	1.00	1
81/162		H	.59	4
81/1143		R	.71	9
81/1265		McR	.74	6
81/1272	R .968	VanD	.66	5
79/367	MMR .781	Su	.74	7
79/372	NSR 12	Bu	.83	8
#75; #76 80/500				
77/748				
77/1439				
80/62				
80/29				
80/35				
#873; #899				
78/1361				
78/634				
78/645				
#24; #110; #111;				
#494 80/83				
80/233				
80/241				
#251; #252				
76/422				
76/772				
76/793				
80/1218				
81/1324				
76/623				
79/1343				

49. Description

- F - Federal Tax Cases involving Constitutional Challenge (n = 18; all duplicates, including two expansions)
- AO - taxpayer challenge to congressional determination of constitutional scope of federal tax power
- AS - the constitutional boundaries of the federal tax power: latitude constitutionally sanctioned

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/844		Br	.94	1
(exp) 81/1279		Ca	.93	2.5
(exp) 81/1279		St	.94	2.5
81/1307		H	.61	5
#75; #76 80/500		R	.61	4
81/1279		McR	.78	8
76/815	R .957	VanD	.67	6
80/233	MMr .806	Su	.78	7
80/241	NSR 6	Bu	1.00	9
80/402				
80/477				
#251; #252				
76/422				
76/772				
76/793				
78/381				
81/691				

50. Description

E - State Tax Cases involving Statutory Construction (n = 13; all duplicates)

AO - taxpayer challenge based on specific application of state tax statute (tends to be a question of legitimacy of inclusion)

AS - clarification/intent of state legislature in statutes so challenged

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/1136		Br	1.00	2
79/780		Ca	1.00	2
78/1411		St	1.00	2
76/248		H	.83	4.5
77/710		R	.85	4.5
#454; #455; #456;		McR	1.00	9
#457 79/1054	R 1.00	VanD	.92	7
80/91	MMR .937	Su	.92	7
80/299	NSR 0	Bu	.92	7
80/1236				
81/239				

51. Description

- E - State Tax Cases involving Constitutional Challenge (n = 30; all duplicates; four expansions)
- AO - taxpayer challenge to state legislative determination of constitutional scope of state tax power
- AS - the constitutional boundaries of the state tax power; latitude constitutionally sanctioned (within both state police power and federal constitutional limitations)

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/1102		Br		.97	3
(exp) #724 81/1245		Ca		.96	1.5
(exp) #797		St		1.00	1.5
81/666		H		.66	5
81/814		R		.60	4
76/893		McR		.93	9
#724; #797	R	.986	VanD	.86	7
81/1245	MMR	.856	Su	.83	6
79/780	NSR	4	Bu	.90	8
81/1193					
76/815					
78/1411					
76/248					
76/313					
77/710					
77/929					
(exp) 76/815					
#454; #455;					
#456; #457					
79/1054					
79/1520					
80/299					
80/532					
80/1236					
#13; #14; #15					
81/22					
81/239					
(exp) 77/929					

52. Description

- F - Federal Taxation Master Scale (n = 44; all duplicates; two expansions)

51. Description

- E - State Tax Cases involving Constitutional Challenge (n = 30; all duplicates; four expansions)
- AO - taxpayer challenge to state legislative determination of constitutional scope of state tax power
- AS - the constitutional boundaries of the state tax power; latitude constitutionally sanctioned (within both state police power and federal constitutional limitations)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/1102		Br	.97	3
(exp) #724	81/1245	Ca	.96	1.5
(exp) #797		St	1.00	1.5
81/666		H	.66	5
81/814		R	.60	4
76/893		McR	.93	9
#724; #797	R .986	VanD	.86	7
81/1245	MMR .856	Su	.83	6
79/780	NSR 4	Bu	.90	8
81/1193				
76/815				
78/1411				
76/248				
76/313				
77/710				
77/929				
(exp) 76/815				
#454; #455;				
#456; #457				
79/1054				
79/1520				
80/299				
80/532				
80/1236				
#13; #14; #15				
81/22				
81/239				
(exp) 77/929				

52. Description

- F - Federal Taxation Master Scale (n = 44; all duplicates; two expansions)

- AO - assessed private property owner (chiefly succession tax, income tax, tax on lease) or state instrumentality
- AS - scope of tax power U.S. (as defined in Revenue Acts), given other constitutional limitations (V amendment, due process; XVI amendment)

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
78/365					
77/844		Br		.89	3
(exp) 81/1279		Ca		.88	2
78/1311		St		.98	1
81/162		H		.59	4
81/1143		R		.64	5
81/1265		McR		.78	8
81/1272	R .956	VanD		.67	6
79/367	MMR .776	Su		.73	7
79/372	NSR 21	Bu		.87	9
(exp) 81/1279					
81/1307					
77/748					
#75; #76 80/500					
77/1439					
80/62					
81/1279					
80/29					
80/35					
76/815					
#873; #899					
78/1361					
78/634					
78/645					
#24; #110; #111;					
#439; #494					
80/83					
80/233					
80/241					
80/402					
80/477					
#251; #252					
76/422					
76/772					
76/793					
81/691					
78/381					
80/1268					
81/1324					
79/623					
79/1343					

53. Description

- F - Revenue Acts 1921 and 1928 Subscale (n = 16; all duplicates)
- AO - taxpayer challenging federal collection of income tax
- AS₁ - federal tax power as operationalized in Revenue Act of 1921
- AS₂ - federal tax power as operationalized in Revenue Act of 1928

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/1311		Br	.94	3
81/612		Ca	.88	2
81/1265		St	1.00	1
79/367		H	.69	5
79/372		R	.75	9
78/634		McR	.81	7
78/645	R .965	VanD	.69	5
78/719	MMR .806	Su	.69	5
#873; #899	NSR 6	Bu	.81	8
78/1361				
#24; #110;				
#111; #439;				
#494 80/83				
80/1268				

54. Description

- F - Federal Tax for Reasons of Social Policy (n = 12; all duplicates, including two expansions)
- AO - taxpayer (generally a corporation or stockholder) challenging legitimacy/constitutionality of tax assessed in terms of power to enact and/or ultimate purpose
- AS - permissible scope of the federal tax power in a federal system

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/1143		Br	1.00	2
(exp) 81/1279		Ca	1.00	2
(exp) 81/1279		St	1.00	2
81/1307		H	.58	5
81/1279		R	.50	4
76/815		McR	.92	8.5
80/233	R 1.00	VanD	.67	6.5
80/241	MMR .806	Su	.67	6.5
80/402	NSR 1	Bu	.92	8.5

80/477
 #251; #252
 76/422

55. Description

- F - Federal Taxation involving Testamentary Trusts (n = 19; all duplicates)
- AO - testamentary trust (as well as testator-trustee-beneficiary relationships involved) as object of federal tax power
- AS - extent of federal tax power over property rights of this nature

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
#77 78/365		Br		1.00	1.5
81/1265		Ca		.88	3
77/748		St		1.00	1.5
77/1439		H		.72	5
80/62		R		.68	4
80/29		McR		.84	6.5
80/35	R	.973	VanD	.84	6.5
#873; #899	MMR	.86	Su	.89	8.5
78/1361	NSR	6	Bu	.89	8.5
78/634					
78/645					
78/719					
#24; #110;					
#111; #439;					
#494 80/83					
76/772					
76/793					

56. Description

- F - Federal Taxation involving Tax Refunds, Discounts, Permissible Deductions (n = 17; all duplicates, including two expansions)
- AO - assessed taxpayer (individual, corporation) contending against prior collection of taxes as inequitable/invalid/erroneous or for a deduction claimed
- AS - merits attaching to suit for recovery of taxes from the federal government or to suit to sustain deduction claimed

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#77 78/365		Br	.94	3
(exp) 81/1279		Ca	1.00	1.5
78/1311		St	1.00	1.5
81/1143		H	.71	4
81/1265		R	.65	9
81/1272		McR	.53	6
79/367	R .969	VanD	.65	5
79/372	MMR .746	Su	.53	7
(exp) 81/1279	NSR 7	Bu	.71	8
#75; #76 80/500				
81/1279				
80/35				
78/719				
76/772				
76/793				
81/1324				

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#77 78/365		Br	.94	3
(exp) 81/1279		Ca	1.00	1.5
78/1311		St	1.00	1.5
81/1143		H	.71	4
81/1265		R	.65	9
81/1272		McR	.53	6
79/367	R .969	VanD	.65	5
79/372	MMR .746	Su	.53	7
(exp) 81/1279	NSR 7	Bu	.71	8
#75; #76 80/500				
81/1279				
80/35				
78/719				
76/772				
76/793				
81/1324				

II. Thirty-Seven Variable Sets

J Scale Set (N = 4 scales)

1. J - Jurisdiction: same*
2. J - State Jurisdiction: same
3. J - Federal Jurisdiction: same

4. Description

J - Combined J-Full Faith and Credit and J and C Federal (n = 18)

AO - Supreme Court's position as umpire within the federal system (both of courts and of states)

AS - the boundaries of competent judgment as defined by the constitutional provision of full faith and credit and as given by assigned jurisdiction, for the courts and for the states

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356 (8-1)		Br	.78	3
79/1100 (8-1)		Ca	.81	2
77/413 (8-1)		St	.94	1
78/484 (8-1)		H	.61	4
80/9 (8-1)		R	.56	6
78/1160 (8-1)		McR	.89	9
76/389 (7-1)	R .988	VanD	.56	6
78/369 (7-2)	MMR .709	Su	.56	6
80/220 (7-2)	NSR 5	Bu	.67	8
81/843 (7-2)				
78/1206 (4-5)				
76/1054 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
77/439 (2-7)				
78/269 (2-7)				
77/1148 (2-7)				
79/1546 (1-8)				

C Scale Set (N = 9 scales)

5. C - Master: same

*"Same" indicates that the scale is identical to the corresponding one in the fifty-six variable sets.

6. Description

- C - Combined C-State and C-Procedural (n = 21)
- AO - persons denied non-economic and/or procedural rights under application of federal or state law
- AS - Court as guarantor of supremacy of federal constitutional guarantees or such procedural, non-economic rights due the individual

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/356 (8-1)		Br	.71	3
77/413 (8-1)		Ca	1.00	1.5
78/484 (8-1)		St	1.00	1.5
#98; #99; #100		H	.67	4
77/159 (7-2)		R	.57	5
78/369 (7-2)		McR	.86	9
81/843 (7-2)	R .950	VanD	.52	6
78/315 (6-3)	MMR .755	Su	.57	7
81/78 (5-3)	NSR 8	Bu	.90	8
78/674 (5-4)				
76/984 (5-4)				
81/1066 (5-4)				
77/131 (4-5)				
79/603 (4-5)				
76/1054 (3-6)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
77/439 (2-7)				
78/381 (2-7)				

7. C - Jury Trial: same

8. Description

- C - Combined C-Due Process/Subconstitutional Fair Procedure and C-Substantive (n = 22)
- AO - persons deprived of non-economic and/or procedural rights by state/federal law
- AS - Supreme Court as rendering definitive interpretation of relevant statutory or constitutional provisions

6. Description

- C - Combined C-State and C-Procedural (n = 21)
- AO - persons denied non-economic and/or procedural rights under application of federal or state law
- AS - Court as guarantor of supremacy of federal constitutional guarantees or such procedural, non-economic rights due the individual

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/356 (8-1)		Br		.71	3
77/413 (8-1)		Ca		1.00	1.5
78/484 (8-1)		St		1.00	1.5
#98; #99; #100		H		.67	4
77/159 (7-2)		R		.57	5
78/369 (7-2)		McR		.86	9
81/843 (7-2)	R .950	VanD		.52	6
78/315 (6-3)	MMR .755	Su		.57	7
81/78 (5-3)	NSR 8	Bu		.90	8
78/674 (5-4)					
76/984 (5-4)					
81/1066 (5-4)					
77/131 (4-5)					
79/603 (4-5)					
76/1054 (3-6)					
79/1530 (3-6)					
77/212 (2-7)					
77/260 (2-7)					
77/439 (2-7)					
78/381 (2-7)					

7. C - Jury Trial: same

8. Description

- C - Combined C-Due Process/Subconstitutional Fair Procedure and C-Substantive (n = 22)
- AO - persons deprived of non-economic and/or procedural rights by state/federal law
- AS - Supreme Court as rendering definitive interpretation of relevant statutory or constitutional provisions

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.77	3
78/484 (8-1)		Ca	1.00	1.5
76/843 (7-1)		St	1.00	1.5
76/356 (8-1)		H	.68	5
78/968 (8-1)		R	.68	4
#98; #99; #100		McR	.82	9
77/159 (7-2)	R .966	VanD	.57	6
78/369 (7-2)	MMR .764	Su	.50	7
81/843 (7-2)	NSR 6	Bu	.86	8
78/315 (6-3)				
81/78 (5-3)				
77/64 (6-2)				
76/984 (5-4)				
81/1066 (5-4)				
77/131 (4-5)				
76/1054 (3-6)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
77/439 (2-7)				
78/381 (2-7)				

9. Description

C - Combined C-Statutory Construction and C-Federal Substantive (n = 15)

AO - persons denied non-economic, civil rights through operation of state/federal statutes

AS - determination of meaning of statute in instant case, and of statute's conformity to given constitutional guarantees

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.73	3
78/484 (8-1)		Ca	1.00	1.5
76/843 (7-1)		St	1.00	1.5
78/968 (8-1)		H	.67	5
81/843 (7-2)		R	.67	4
78/315 (6-3)		McR	.80	9
77/64 (6-2)	R .948	VanD	.50	6
81/78 (5-3)	MMR .752	Su	.60	7
76/984 (5-4)	NSR 5	Bu	.80	8
81/1066 (5-4)				
77/131 (4-5)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
78/381 (2-7)				

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.77	3
78/484 (8-1)		Ca	1.00	1.5
76/843 (7-1)		St	1.00	1.5
76/356 (8-1)		H	.68	5
78/968 (8-1)		R	.68	4
#98; #99; #100		McR	.82	9
77/159 (7-2)	R .966	VanD	.57	6
78/369 (7-2)	MMR .764	Su	.50	7
81/843 (7-2)	NSR 6	Bu	.86	8
78/315 (6-3)				
81/78 (5-3)				
77/64 (6-2)				
76/984 (5-4)				
81/1066 (5-4)				
77/131 (4-5)				
76/1054 (3-6)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
77/439 (2-7)				
78/381 (2-7)				

9. Description

C - Combined C-Statutory Construction and C-Federal Substantive (n = 15)

AO - persons denied non-economic, civil rights through operation of state/federal statutes

AS - determination of meaning of statute in instant case, and of statute's conformity to given constitutional guarantees

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.73	3
78/484 (8-1)		Ca	1.00	1.5
76/843 (7-1)		St	1.00	1.5
78/968 (8-1)		H	.67	5
81/843 (7-2)		R	.67	4
78/315 (6-3)		McR	.80	9
77/64 (6-2)	R .948	VanD	.50	6
81/78 (5-3)	MMR .752	Su	.60	7
76/984 (5-4)	NSR 5	Bu	.80	8
81/1066 (5-4)				
77/131 (4-5)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
78/381 (2-7)				

10. C - Constitutional Interpretation: same
 11. C - Federal Constitutional Interpretation: same
 12. C - Combined C-State Substantive and C-State
 Statutory Construction: same as these two
 separate scales were identical, therefore are
 merged here
 13. C - State Constitutional Interpretation: same

E Scale Set (N = 17 scales)

14. E - Regulation State/Federal: same
 15. E - State Tax: same
 16. E - Intergovernmental Tax Immunity: same
 17. E - Fourteenth Amendment, Equal Protection: same

18. Description

E - Combined E-Chain Store Tax and E-Contract
 Clause and E-Regulation of Milk Prices (n = 19)

AO - private business enterprise or some aspect of
 commercial negotiations subject to govern-
 mental (state or federal) intervention or
 regulation

AS - the limits of governmental legislative power
 in areas affected

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/893 (6-3)		Br		.89	3
78/413 (5-4)		Ca		.95	2
78/940 (5-4)		St		1.00	1
79/780 (5-4)		H		.53	4
79/912 (5-4)		R		.53	5
80/669 (5-4)		McR		.95	6
81/678 (5-4)	R 1.00	VanD		1.00	8
81/835 (5-4)	MMR .872	Su		1.00	8
81/1193 (4-3)	NSR 0	Bu		1.00	8
80/1309 (4-5)					
76/866 (3-6)					
77/929 (3-6)					
80/675 (3-6)					
#13; #14; #15					
81/22 (2-6)					
81/239 (2-6)					
(exp) 77/929					
(2-7)					
(exp) 79/912					
(1-8)					

19. E - State Regulation: same

20. Description

- E - Combined E-Police and E-Labor (n = 10)
- AO - object of state regulation/protection--
laborer or business
- AS - state regulatory power under XIV amendment
limitations

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
77/1180 (6-2)		Br		.80	3
81/703 (5-4)		Ca		1.00	1.5
81/1229 (5-4)		St		1.00	1.5
80/1347 (4-5)		H		.50	4
78/260 (3-6)		R		.70	5
79/1640 (3-6)		McR		.89	6
(exp) 80/1347	R .988	VanD		1.00	8
(3-6)	MMR .877	Su		1.00	8
76/747 (2-6)	NSR 1	Bu		1.00	8
79/949 (2-6)					

21. Description

- E - Combined E-Foreign Corporation and E-Commerce
Regulation (n = 22)
- AO - the corporation: as challenger of federal
statutory regulation or protestant against
alleged discrimination, by host state,
towards foreign corporations
- AS - congressional determination of scope of
federal commerce power (as statutorily
expressed); also, scope of state regulatory
power upon extrastate businesses within its
jurisdiction; in either case, regulation of
corporation as exercise of power to regulate
commerce

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
78/1160 (8-1)		Br		.91	2.5
80/688 (8-1)		Ca		.95	1
76/500 (7-2)		St		.91	2.5
80/220 (7-2)		H		.64	4
79/1070 (5-4)		R		.52	5
#419; #420-21;		McR		1.00	9
#422-23	R .981	VanD		.82	6.5
81/893 (5-4)	MMR .831	Su		.82	6.5
81/953 (4-5)	NSR 2	Bu		.91	8
(exp) 80/688					
(4-5)					

79/1468 (4-5)
 #636; #649; #650
 80/1161 (4-5)
 81/573 (4-5)
 77/652 (3-5)
 (exp) #636; #649;
 #650 80/1161
 (3-6)
 (exp) 77/652 (2-6)
 #135; #260 79/446
 (1-8)

- 22. E - ICC: same
- 23. E - Contracts; Bonds; Contract Systems: same
- 24. E - Insurance Contracts: same
- 25. E - Noninsurance Contracts: same
- 26. E - Gold Clause: same
- 27. E - Antitrust: same
- 28. E - Government Agency: same
- 29. E - Liability: same
- 30. E - Bankrupt: same

F Scale Set (N = 7 scales)

- 31. F - Federal Taxation of Gifts: same
- 32. F - Combined E and F Tax: same

33. Description

- F - Combined E-State Statutory Construction and E-State Constitutional Challenge and F-Federal Constitutional Challenge (n = 49)
- AO - taxpayer challenge directed at state/federal tax legislation per se or at the source of this legislation in the tax power of these respective sovereigns
- AS - legislative (state/federal) intent statutorily expressed and/or constitutionally sanctioned bounds of tax power exercised, given the limitations of state police power and other federal directions

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/1102 (8-1)		Br		.96	3
77/844 (8-1)		Ca		.95	1.5
(exp) 81/1279		St		.98	1.5
(8-1)		H		.63	5
76/1136 (8-1)		R		.61	4
(exp) #724; #797;		McR		.88	8
81/1245 (8-1)	R .973	VanD		.77	6
81/666 (7-2)	MMR .833	Su		.80	7
81/814 (7-2)	NSR 11	Bu		.92	9
(exp) 81/1279					
(7-2)					
81/1307 (7-2)					
#75; #76 80/500					
(6-3)					
76/893 (6-3)					
79/780 (5-4)					
#724; #797					
81/1245 (5-4)					
81/1279 (5-4)					
81/1193 (4-3)					
76/815 (4-5)					
78/1411 (3-5)					
76/248 (3-6)					
76/313 (3-6)					
77/710 (3-6)					
77/929 (3-6)					
(exp) 76/815 (3-6)					
#454; #455; #456;					
#457 79/1054					
(3-6)					
79/1520 (3-6)					
80/91 (3-6)					
80/233 (3-6)					
80/241 (3-6)					
80/299 (3-6)					
80/402 (3-6)					
80/477 (3-6)					
80/532 (3-6)					
#251; #252 76/422					
(2-6)					
76/772 (2-6)					
76/793 (2-6)					
80/1236 (2-6)					
#13; #14; #15					
81/22 (2-6)					
81/239 (2-6)					
(exp) 77/929 (2-7)					
78/381 (2-7)					
81/691 (2-7)					

34. F - Revenue Acts: same
 35. F - Federal Tax for Reasons of Social Policy: same
 36. F - Federal Taxation involving Testamentary Trusts:
 same

37. Description

F - Combined F-Refund and F-Federal Statutory
 Construction (n = 39)

AO - taxpayer challenging application of federal
 tax statute (either immediately upon its
 application or "ex post facto")

AS - congressional intent and merits of taxpayer's
 claim

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
#77 78/365 (8-1)		Br		.90	2
78/1311 (8-1)		Ca		.89	3
81/162 (8-1)		St		1.00	1
81/1143 (8-1)		H		.55	4
81/1265 (8-1)		R		.67	6
81/1272 (8-1)		McR		.74	7
77/844 (8-1)	R .960	VanD		.64	5
(exp) 81/1279	MMR .773	Su		.72	8
(8-1)	NSR 16	Bu		.85	9
79/367 (7-2)					
79/372 (7-2)					
(exp) 81/1279					
(7-2)					
#75; #76 80/500					
(6-3)					
77/784 (6-2)					
77/1439 (5-4)					
80/62 (5-4)					
81/1279					
(5-4)					
80/29 (4-5)					
80/35 (4-5)					
78/719 (3-6)					
#873; #899					
78/1361 (3-6)					
78/634 (3-6)					
78/645 (3-6)					
#24; #110; #111;					
#439; #494					
80/83 (3-6)					
80/233 (3-6)					
80/241 (3-6)					

#251; #252 76/422
(2-6)
76/772 (2-6)
76/793 (2-6)
80/1268 (2-7)
81/1324 (2-7)
79/623 (1-8)
79/1343 (1-8)

III. Twenty-Five Variable SetsJ Scale Set (N = 3 scales)

1. J - State Jurisdiction: same*
2. J - Federal Jurisdiction
description same; (n = 4)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/389 (7-1)		Br	1.00	1
80/54 (7-2)		Ca	.67	4.5
77/1148 (2-7)		St	.75	2
79/1546 (1-8)		H	.50	4.5
		R	.75	7.5
		McR	.75	9
	R .944	VanD	.50	4.5
	MMR .685	Su	.75	7.5
	NSR 1	Bu	.50	4.5

3. J - Full Faith and Credit
description same; (n = 5)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
79/1100 (8-1)		Br	.80	3.5
80/9 (8-1)		Ca	.80	2
80/220 (7-2)		St	1.00	1
78/1206 (4-5)		H	.80	3.5
78/269 (2-7)		R	.60	6
		McR	.80	9
	R 1.00	VanD	.60	6
	MMR .733	Su	.60	6
	NSR 1	Bu	.60	8

C Scale Set (N = 3 scales)

4. C - Statutory Construction State/Federal Mix
description same; (n = 7)

* Used thus, "same" indicates identity with the corresponding scales in the previous sets (i.e., the fifty-six and thirty-seven variable sets respectively).

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/968 (8-1)		Br	.86	4
76/843 (7-1)		Ca	1.00	2
77/641 (6-2)		St	1.00	2
78/315 (6-3)		H	.86	5
76/984 (5-4)		R	.86	2
81/1066 (5-4)		McR	.57	7
77/131 (4-5)	R .931	VanD	.50	6
	MMR .786	Su	.57	8
	NSR 5	Bu	.86	9

5. C - Procedural State/Federal Mix
description same; (n = 8)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.88	3
78/484 (8-1)		Ca	1.00	1.5
76/356 (8-1)		St	1.00	1.5
78/369 (7-2)		H	.75	4
81/843 (7-2)		R	.63	6
79/603 (4-5)		McR	.88	9
76/1054 (3-6)	R 1.00	VanD	.63	6
77/439 (2-7)	MMR .794	Su	.63	6
	NSR 1	Bu	.75	8

6. C - Due Process/Subconstitutional Fair Procedure
description same, with additional specification
that cases here involve procedure guaranteeing
the integrity of the federal criminal trial
(especially amendments IV - VIII) (n = 9)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#98; #99; #100		Br	.56	3
77/159 (7-2)		Ca	1.00	1.5
81/78 (5-3)		St	1.00	1.5
78/674 (5-4)		H	.56	4.5
79/1530 (3-6)		R	.56	6
77/212 (2-7)		McR	.89	8
77/260 (2-7)	R .975	VanD	.56	4.5
78/381 (2-7)	MMR .755	Su	.67	7
	NSR 2	Bu	1.00	9

E Scale Set (n = 15)

7. E - Bankrupt: same

8. E - Liability
description same; (n = 6)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/903 (7-1)		Br	1.00	1.5
77/743 (7-2)		Ca	1.00	3
78/348 (7-2)		St	1.00	1.5
78/216 (5-4)		H	.67	4.5
76/598 (3-5)		R	.67	6
(exp) 76/903 (2-6)		McR	.83	8.5
	R .976	VanD	.67	4.5
	MMR .815	Su	.67	7
	NSR 2	Bu	.83	8.5

9. E - Gold Clause: same

10. E - Insurance Contract: same

11. E - Noninsurance Contract
description same; (n = 4)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
80/105 (8-1)		Br	.75	3
78/1206 (4-5)		Ca	1.00	1.5
76/866 (3-6)		St	1.00	1.5
81/720 (2-6)		H	.75	4
		R	1.00	9
		McR	.75	6.5
	R .961	VanD	.75	6.5
	MMR .883	Su	.75	6.5
	NSR 1	Bu	.75	6.5

12. E - ICC: same

13. E - Federal Government Regulatory/Administrative
Agencies
description same; (n = 9)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/659 (8-1)		Br	.78	3
77/796 (8-1)		Ca	1.00	1.5
80/688 (8-1)		St	1.00	1.5
77/706 (7-2)		H	.67	4
78/1007 (4-5)		R	.56	7
(exp) 80/688		McR	.89	9
(4-5)	R .962	VanD	.56	5.5
80/1015 (3-6)	MMR .743	Su	.67	8
77/1114 (3-6)	NSR 3	Bu	.56	5.5
78/1353 (2-7)				

14. E - Antitrust
description same; (n = 5)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/825 (8-1)		Br	1.00	2
#568; #569; #570		Ca	1.00	2
76/999 (4-2)		St	1.00	2
80/1300 (3-6)		H	.50	6.5
		R	.80	4
		McR	.60	5
	R 1.00	VanD	.80	8.5
	MMR .777	Su	.50	6.5
	NSR 1	Bu	.80	8.5

15. E - Commerce Regulation
description same; (n = 13)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#419; #420-21;		Br	.85	2.5
#422-23 81/893		Ca	1.00	1
(5-4)		St	.85	2.5
81/953 (5-4)		H	.62	4
79/1468 (4-5)		R	.69	5
#636; #649;		McR	1.00	7.5
#650 80/1161	R 1.00	VanD	1.00	7.5
(4-5)	MMR .89	Su	1.00	7.5
(exp) #636;	NSR 0	Bu	1.00	7.5
#649; #650				
80/1161				
(3-6)				
#135; #260				
79/446 (1-8)				

16. E - Intergovernmental Tax Immunity
description same; (n = 5)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/666 (7-2)		Br	1.00	1.5
76/893 (6-3)		Ca	.80	3
76/815 (4-5)		St	1.00	1.5
80/1236 (2-6)		H	.60	5
(exp) 76/815		R	.80	4
(3-6)		McR	.80	8
	R .954	VanD	.80	6.5
	MMR .844	Su	.80	6.5
	NSR 2	Bu	1.00	9

14. E - Antitrust
description same; (n = 5)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/825 (8-1)		Br	1.00	2
#568; #569; #570		Ca	1.00	2
76/999 (4-2)		St	1.00	2
80/1300 (3-6)		H	.50	6.5
		R	.80	4
		McR	.60	5
	R 1.00	VanD	.80	8.5
	MMR .777	Su	.50	6.5
	NSR 1	Bu	.80	8.5

15. E - Commerce Regulation
description same; (n = 13)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
#419; #420-21;		Br	.85	2.5
#422-23 81/893		Ca	1.00	1
(5-4)		St	.85	2.5
81/953 (5-4)		H	.62	4
79/1468 (4-5)		R	.69	5
#636; #649;		McR	1.00	7.5
#650 80/1161	R 1.00	VanD	1.00	7.5
(4-5)	MMR .89	Su	1.00	7.5
(exp) #636;	NSR 0	Bu	1.00	7.5
#649; #650				
80/1161				
(3-6)				
#135; #260				
79/446 (1-8)				

16. E - Intergovernmental Tax Immunity
description same; (n = 5)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
81/666 (7-2)		Br	1.00	1.5
76/893 (6-3)		Ca	.80	3
76/815 (4-5)		St	1.00	1.5
80/1236 (2-6)		H	.60	5
(exp) 76/815		R	.80	4
(3-6)		McR	.80	8
	R .954	VanD	.80	6.5
	MMR .844	Su	.80	6.5
	NSR 2	Bu	1.00	9

17. E - Fourteenth Amendment, Equal Protection: same
18. E - State Tax Policy re Corporations (within state boundaries but having extrastate connections) (n = 6)
- AO - corporation (foreign or with extrastate connections) as constituting a special category within state tax policy hence recipient of differential treatment regarding tax law administration
- AS - judgment as to the nature (constitutional or unconstitutional) of the burden such differential policy entails

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
76/1102 (8-1)		Br		1.00	2
81/814 (7-2)		Ca		1.00	2
76/313 (3-6)		St		1.00	2
77/710 (3-6)		H		.67	5
80/91 (3-6)		R		.67	5
80/299 (3-6)		McR		.83	8
	R	.977	VanD	.83	8
	MMR	.833	Su	.67	5
	NSR	1	Bu	.83	8

19. E - State Police Power and Regulation via Comm'ns description same; (n = 14)

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
77/288 (8-1)		Br		.86	3
77/1180 (6-2)		Ca		1.00	1.5
78/413 (5-4)		St		1.00	1.5
78/940 (5-4)		H		.57	4
80/669 (5-4)		R		.50	5
81/835 (5-4)		McR		.85	6
81/573 (4-5)	R	.973	VanD	.92	7
81/1223 (4-5)	MMR	.847	Su	.93	8
78/260 (3-6)	NSR	3	Bu	1.00	9
79/1365 (3-6)					
79/1640 (3-6)					
80/675 (3-6)					
76/747 (2-6)					
79/949 (2-6)					

20. E - State Provisions for Labor: same

21. E - State Regulation of Foreign Corporations
description same; (n = 6)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/1160 (8-1)		Br	1.00	1.5
80/220 (7-2)		Ca	.83	3.5
76/500 (7-2)		St	1.00	1.5
79/1070 (5-4)		H	.67	5
77/652 (3-5)		R	1.00	3.5
(exp) 77/652		McR	1.00	9
(2-6)	R 1.00	VanD	.50	6.5
	MMR .814	Su	.50	6.5
	NSR 0	Bu	.83	8

F Scale Set (N = 4 scales)

22. F - Federal Taxation of Gifts
description same; (n = 6)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/844 (8-1)		Br	1.00	1.5
77/784 (6-2)		Ca	1.00	3
80/29 (4-5)		St	1.00	1.5
80/35 (4-5)		H	.60	4
76/772 (2-6)		R	.67	6
76/793 (2-6)		McR	.67	6
	R 1.00	VanD	.67	6
	MMR .826	Su	.83	8
	NSR 0	Bu	1.00	9

23. F - Federal Taxation for Reasons of Social Policy:
same

24. F - Federal Taxation involving Tax Refunds, Discounts
Permissible Deductions
description same; (n = 10)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/365 (8-1)		Br	.90	3
78/1311 (8-1)		Ca	1.00	1.5
81/1265 (8-1)		St	1.00	1.5
81/1272 (8-1)		H	.70	5.5
79/367 (7-2)		R	.80	9
79/372 (7-2)		McR	.70	5.5
#75; #76 80/500	R 1.00	VanD	.80	4
(6-3)	MMR .788	Su	.60	7
78/719 (3-6)	NSR 2	Bu	.60	8
81/1324 (2-7)				

21. E - State Regulation of Foreign Corporations
description same; (n = 6)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/1160 (8-1)		Br	1.00	1.5
80/220 (7-2)		Ca	.83	3.5
76/500 (7-2)		St	1.00	1.5
79/1070 (5-4)		H	.67	5
77/652 (3-5)		R	1.00	3.5
(exp) 77/652		McR	1.00	9
(2-6)	R 1.00	VanD	.50	6.5
	MMR .814	Su	.50	6.5
	NSR 0	Bu	.83	8

F Scale Set (N = 4 scales)

22. F - Federal Taxation of Gifts
description same; (n = 6)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/844 (8-1)		Br	1.00	1.5
77/784 (6-2)		Ca	1.00	3
80/29 (4-5)		St	1.00	1.5
80/35 (4-5)		H	.60	4
76/772 (2-6)		R	.67	6
76/793 (2-6)		McR	.67	6
	R 1.00	VanD	.67	6
	MMR .826	Su	.83	8
	NSR 0	Bu	1.00	9

23. F - Federal Taxation for Reasons of Social Policy:
same

24. F - Federal Taxation involving Tax Refunds, Discounts
Permissible Deductions
description same; (n = 10)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
78/365 (8-1)		Br	.90	3
78/1311 (8-1)		Ca	1.00	1.5
81/1265 (8-1)		St	1.00	1.5
81/1272 (8-1)		H	.70	5.5
79/367 (7-2)		R	.80	9
79/372 (7-2)		McR	.70	5.5
#75; #76 80/500	R 1.00	VanD	.80	4
(6-3)	MMR .788	Su	.60	7
78/719 (3-6)	NSR 2	Bu	.60	8
81/1324 (2-7)				

25. F - Federal Taxation involving Testamentary Trusts
description same; (n = 11)

<u>Data</u>	<u>Results</u>	Justice	Scale	Score	Rank
77/1439 (5-4)		Br		1.00	1.5
80/62 (5-4)		Ca		.82	3
#873; #899		St		1.00	1.5
78/1361 (3-6)		H		.82	5
78/634 (3-6)		R		.64	4
78/645 (3-6)		McR		1.00	7.5
#24; #110; #111;	R .979	VanD		1.00	7.5
#439; #494	MMR .920	Su		1.00	7.5
80/83 (3-6)	NSR 2	Bu		1.00	7.5

IV. Twenty-One Variable SetsJ Scale Set (N = 3)

1. J - State Jurisdiction: same as in original corresponding 56 variable set
2. J - Federal Jurisdiction: same as in corresponding 25 variable set
3. J - Full Faith and Credit: same as in corresponding 25 variable set

C Scale Set (N = 2)

4. C - Statutory Construction: same as in corresponding 25 variable set
5. C - Combined C-Procedural (State/Federal Mix) and C-Due Process/Subconstitutional Fair Procedure description same; (n = 17)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/413 (8-1)		Br	.71	3
78/484 (8-1)		Ca	1.00	1.5
76/356 (8-1)		St	1.00	1.5
#98; #99; #100		H	.65	4
77/159 (7-2)		R	.53	6
78/369 (7-2)		McR	.88	9
81/843 (7-2)	R .984	VanD	.59	5
81/78 (5-3)	MMR .752	Su	.53	7
78/674 (5-4)	NSR 3	Bu	.88	8
79/603 (4-5)				
76/1054 (3-6)				
79/1530 (3-6)				
77/212 (2-7)				
77/260 (2-7)				
77/439 (2-7)				
78/381 (2-7)				

E Scale Set (N = 12)

6. E - Contracts (private; insurance); Bonds; Contract Systems description same; (n = 9)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
80/105 (8-1)		Br	.67	3
76/490 (7-1)		Ca	.71	2
76/648 (7-1)		St	.88	1
78/1206 (4-5)		H	.56	4
76/866 (3-6)		R	.78	8
81/720 (2-6)		McR	.89	9
77/197 (2-7)	R .942	VanD	.67	6
78/999 (1-8)	MMR .722	Su	.67	6
78/934 (1-8)	NSR 4	Bu	.67	6

7. E - Intergovernmental Tax Immunity: same as in corresponding 25 variable set
8. E - Liability: same as in corresponding 25 variable set
9. E - Commerce Regulation: same as in corresponding 25 variable set
10. E - Federal Regulatory/Administrative Agencies: same as in corresponding 25 variable set
11. E - Antitrust: same as in corresponding 25 variable set
12. E - State Regulation
description same; (n = 23)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/288 (8-1)		Br	.91	3
78/1160 (8-1)		Ca	.96	2
80/220 (7-2)		St	1.00	1
76/500 (7-2)		H	.61	4
77/1180 (6-2)		R	.57	5
78/940 (5-4)		McR	.91	8
79/1070 (5-4)	R .975	VanD	.82	6.5
80/669 (5-4)	MMR .852	Su	.83	6.5
81/703 (5-4)	NSR 6	Bu	.96	9
81/835 (5-4)				
81/1229 (5-4)				
80/1347 (4-5)				
81/573 (4-5)				
81/1223 (4-5)				
77/652 (3-5)				
78/260 (3-6)				
79/1365 (3-6)				
79/1640 (3-6)				

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
80/105 (8-1)		Br	.67	3
76/490 (7-1)		Ca	.71	2
76/648 (7-1)		St	.88	1
78/1206 (4-5)		H	.56	4
76/866 (3-6)		R	.78	8
81/720 (2-6)		McR	.89	9
77/197 (2-7)	R .942	VanD	.67	6
78/999 (1-8)	MMR .722	Su	.67	6
78/934 (1-8)	NSR 4	Bu	.67	6

7. E - Intergovernmental Tax Immunity: same as in corresponding 25 variable set
8. E - Liability: same as in corresponding 25 variable set
9. E - Commerce Regulation: same as in corresponding 25 variable set
10. E - Federal Regulatory/Administrative Agencies: same as in corresponding 25 variable set
11. E - Antitrust: same as in corresponding 25 variable set
12. E - State Regulation
description same; (n = 23)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/288 (8-1)		Br	.91	3
78/1160 (8-1)		Ca	.96	2
80/220 (7-2)		St	1.00	1
76/500 (7-2)		H	.61	4
77/1180 (6-2)		R	.57	5
78/940 (5-4)		McR	.91	8
79/1070 (5-4)	R .975	VanD	.82	6.5
80/669 (5-4)	MMR .852	Su	.83	6.5
81/703 (5-4)	NSR 6	Bu	.96	9
81/835 (5-4)				
81/1229 (5-4)				
80/1347 (4-5)				
81/573 (4-5)				
81/1223 (4-5)				
77/652 (3-5)				
78/260 (3-6)				
79/1365 (3-6)				
79/1640 (3-6)				

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
80/105 (8-1)		Br	.67	3
76/490 (7-1)		Ca	.71	2
76/648 (7-1)		St	.88	1
78/1206 (4-5)		H	.56	4
76/866 (3-6)		R	.78	8
81/720 (2-6)		McR	.89	9
77/197 (2-7)	R .942	VanD	.67	6
78/999 (1-8)	MMR .722	Su	.67	6
78/934 (1-8)	NSR 4	Bu	.67	6

7. E - Intergovernmental Tax Immunity: same as in corresponding 25 variable set
8. E - Liability: same as in corresponding 25 variable set
9. E - Commerce Regulation: same as in corresponding 25 variable set
10. E - Federal Regulatory/Administrative Agencies: same as in corresponding 25 variable set
11. E - Antitrust: same as in corresponding 25 variable set
12. E - State Regulation
description same; (n = 23)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
77/288 (8-1)		Br	.91	3
78/1160 (8-1)		Ca	.96	2
80/220 (7-2)		St	1.00	1
76/500 (7-2)		H	.61	4
77/1180 (6-2)		R	.57	5
78/940 (5-4)		McR	.91	8
79/1070 (5-4)	R .975	VanD	.82	6.5
80/669 (5-4)	MMR .852	Su	.83	6.5
81/703 (5-4)	NSR 6	Bu	.96	9
81/835 (5-4)				
81/1229 (5-4)				
80/1347 (4-5)				
81/573 (4-5)				
81/1223 (4-5)				
77/652 (3-5)				
78/260 (3-6)				
79/1365 (3-6)				
79/1640 (3-6)				

80/675 (3-6)
 (exp) 80/1347 (3-6)
 76/747 (2-6)
 (exp) 77/652 (2-6)
 79/949 (2-6)

13. E - ICC: same as in corresponding original 56 variable set
14. E - Bankrupt: same as in corresponding, original 56 variable set
15. E - Gold Clause: same as in corresponding, original 56 variable set
16. E - Labor: same as in corresponding, original 56 variable set
17. E - State Tax minus Intergovernmental Tax Immunity description same; (n = 29)

<u>Data</u>	<u>Results</u>	Justice	Scale Score	Rank
76/1102 (8-1)		Br	.97	3
76/1136 (8-1)		Ca	1.00	1.5
(exp) #724; #797		St	1.00	1.5
81/1245 (8-1)		H	.64	4
81/814 (7-2)		R	.66	5
78/987 (6-3)		McR	.93	9
79/788 (5-4)	R .995	VanD	.86	7
#724; #797	MMR .861	Su	.83	6
81/1245 (5-4)	NSR 2	Bu	.86	8
81/1193 (4-3)				
78/1411 (3-5)				
76/248 (3-6)				
76/313 (3-6)				
77/710 (3-6)				
77/929 (3-6)				
#454; #455; #456				
#457 71/1054				
(3-6)				
79/1520 (3-6)				
80/91 (3-6)				
80/299 (3-6)				
80/402 (3-6)				
80/532 (3-6)				
#13; #14; #15				
81/22 (2-6)				
81/239 (2-6)				
(exp) 77/929 (2-7)				

F Scale Set (N = 4 scales)

18. F - Federal Taxation of Gifts: same as in corresponding 25 variable set
19. F - Federal Taxation for Reasons of Social Policy: same as in corresponding, original 56 variable set
20. F - Federal Taxation involving Tax Refunds, Discounts, Permissible Deductions: same as in corresponding 25 variable set
21. F - Federal Taxation involving Testamentary Trusts: same as in corresponding 25 variable set

APPENDIX B

DISSENSUAL CASES 1931-1936

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