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Who's in Charge of Whom?

A Study into the Deference Paid By Federal Court Judges to Executive Agencies

An Honors Thesis submitted in partial fulfillment of the requirements for Honors in the
Department of Political Science and International Studies

By
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Under the mentorship of Brett Curry, Ph.D.

ABSTRACT

With judicial decisions instigating much of the immediate political changes in recent history, this study delves into the relationship between a judge's tenure on the bench as well as other contributing factors, such as political ideologies, and the decision in cases relevant to politically charged agencies. This purposeful study into the United States Court of Appeals, District of Columbia Circuit, attempts to isolate specific determinants in cases involving the National Labor Relations Board and the Environmental Protection Agency. Logistic Regression analysis is used to determine the existence of possible relationships between judicial behavior and factors such as prior executive experience and one's experience as a judge.

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Introduction

The jurisprudence of the federal judiciary has expanded along with the role of the ever-changing government. From the establishment of judicial review under Chief Justice John Marshall¹ to the political hotspot of the Citizens United Case,² judges and justices alike have maintained a significant force in the political arena. Since the courts first opened their doors, each substantive decision has furthered the impact the judicial system has on the political status quo. This is achieved through the addition of precedent setting cases of substance that are brought before the courts to best interpret the law. Said interpretations become critical, such as the ruling in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*³ Precedent forged by Justice Stevens and the rest of the Court reinforced “deferential review” to a governmental agency’s interpretation of the legislation said agency is both guided by and based upon. In lay speak, this case set the precedent to allow the agencies of the executive branch some leeway to interpret their own roles and responsibilities (Berger 2011). From this beginning, a wide reaching debate has evolved amongst the three branches of government over the powers different participants hold in the governing system.

The Legislative Branch is impacted because statutes they instill, such as the National Environmental Policy Act⁴ (NEPA) or the National Labor Relations Act⁵ (NLRA), are constructed with the purpose of outlining the operational capabilities and responsibilities of agencies that are to be formed; however, as soon as these bills are

¹ Marbury v. Madison, 5 U.S. 137, 138 (1803).

² Citizens United v. Federal Election Comm'n, (558 U.S.310 (2010); Docket No. 08-205)

³ 467 U.S. 837, 842-43 (1984).

⁴ 42 U.S.C. §§4321-4370h

⁵ 29 U.S.C. §§ 151-169

signed into law by the President of the United States, Congress loses control of daily operations. The Executive Branch is responsible for the formation and institutionalization of federal agencies. As such, the President – as Chief Executive – is the highest ranking officer over any executive agency; however, agencies are relatively autonomous and their autonomy is normally only infringed upon via the use of Presidential Memorandums and Executive Orders (Deeks 2013). The somewhat new phenomenon introduced into what was previously a mostly two-way tug of war has been the intrusion of the federal judiciary (Cass 2015). With the Chevron case, judges have crafted precedent that has forged a whole new spear point in the arsenal of judicial review. Probably the most cited case in administrative law, the Chevron case itself (467 U.S. 837 (1984)) cemented the preferential judicial deferment to an agential authority (Merrill 1992). The Natural Resources Defense Council (NRDC), an environmental group, filed a suit against the Environmental Protection Agency (EPA) involving the change in admissions standards and issuance of permits for equipment. Initially winning the case, the NRDC found itself in court facing the Chevron Oil Company, an affected party of the initial ruling (Merrill 1992). Justice John Paul Stevens of the Supreme Court authored a two part opinion that established the long unwritten precedent to allow agencies to interpret their governing statutes in the indoctrination of their own policy (467 U.S. 837, 1984). Therefore, Chevron v. NRDC became the quintessential example of long established judicial deference towards agencies.

With the ability of agencies to make their own interpretations of their roles and responsibilities comes many a political headache. With the ability to determine what a law means comes the ability to expand agential power far outside the initial intention.

Such power has the potential to invalidate and overrule governmental activities within the legislature. While the deference to agencies is a release in power by the judiciary, the ruling was a brilliant tactical decision that further expanded the jurisdiction of the courts into the political spheres of the executive and legislative branches (Fisher 2015). Such infringing steps can fluster and concern both Congress and the Executive as both have had to watch as their once exclusive domain has been infringed upon by a once quiet actor.

The Environmental Protection Agency (EPA), the Internal Revenue Service (IRS), the Federal Deposit Insurance Corporation (FDIC), the National Labor Relations Board (NLRB) and many more now find themselves before federal judges at an increasing rate. However, since the precedent was set for deference towards agencies through the Chevron case, governmental agencies have found their own internal rulings to be questioned, but normally upheld, before the courts. To be specific, the Federal Circuit Court of the District of Columbia (D.C. Cir.) sees an overwhelming amount of these cases as they are the most likely to host jurisdiction with the headquarters of many executive agencies finding a home in Washington D.C. (Goldman 1975). Said agencies have already made decisions coming down on one side or another of a controversy, but they must now plead their case to the best of their ability in order to defend their decision in front of federal court judges, whose duty it is to preside over the proceedings. While there are many substantial impacts on a judge that influence their decision, the goal of this endeavor is to better understand the components that make up a ruling's decision. The question this research hopes to expound upon is if there is a relationship between the

amount of experience a federal court judge has and the deference a federal judge offers towards a governmental agency.

To track and evaluate the interaction between the judiciary and the executive, this study will examine any correlation between the time spent by any one judge on the D.C. Cir. Court and the allegiance to an agency's original ruling. This task supposes that political leanings, while important in decision making, are not the sole factor in judicial decision making. I argue that as a judge sits longer on a court of appeals, especially if the judge has previous executive branch experience, the judge begins to better understand the law and be more comfortable overcoming precedent and not offering deference to the agency in question. This allows for the study of the idea that as a judge remains for the duration of their lifetime tenure, they become better acquainted with the importance of certain facts and concepts that allow them to better stand up to widespread deferment to political institutions. Research into such paradigms are important and impactful because it offers an insight of the interplay between an often overlooked judiciary and an often overestimated Executive Branch.

With the institutionalization of judicial review, judges opened a door with the potential to allow the courts to impact what laws are on the books via a ruling on the law's constitutionality, but with the institution of the judicial review of executive prerogatives, the Court has substantially furthered the power of the judiciary. With the power to review both legislative statutes and executive agencies, judicial power has encompassed an enormous block of our governmental structures. Willingly or not, this expansion in jurisdiction has offered the ability for judges to direct policy and governance in directions they ideologically agree with (Hammond 2013). Helpful to

political leaders, economists, lobbyists and the American population as a whole, this study hopes to offer a measure and a model of voting patterns and judicial intervention; additionally, this study seeks to more accurately model judicial decisions and to determine if there has been an increase or decrease in the amount of decisions overruled by federal court judges as their tenure and experience progresses.

With judges gaining more prominence, more scrutiny has also been placed upon the judges themselves. As such, it is undoubtedly true that judges are nominated, questioned, and confirmed about their political beliefs as much, if not more, than their mechanical decision making (Bell 2002). This study is applicable because it seeks to include both the ideological beliefs of sitting judges and said judges' tangible experience in both the executive and judicial capacities. With the hope of aiding future studies into the arc of judicial decision making, this study also endeavors to map a tangible link between two branches of our government, the judicial and the executive. As the executive evolves its many agencies to better wield newfound responsibilities bequeathed by Congress, the judiciary has found it just to institute its decisions as the final say when businesses or individuals confront the decisions of the executive branch. As a result, the judiciary has elevated itself into a position of power over the executive – but does it exploit this shift in the status quo?

I focus on the United States (US) Court of Appeals, District of Columbia (D.C) Circuit (D.C. Cir.) in order to maximize the ratio of cases involving specific political entities and the number of judges sitting and writing opinions. This is an effort to find the most conclusive results that are both practical and applicable.

Background

Components of the United States Court of Appeals for the D.C. Circuit have been institutionalized since the Secondary Judiciary Act of 1801.⁶ Surviving the “purge” (Roberts 2006, p380), involved some heavy political dodging between Jeffersonians and the outgoing Hamiltonians; however, the D.C. Circuit Court of Appeals remained. The resulting court was peculiar to say the least. The court hosted both a local jurisdiction over the area of Washington D.C, but as a Federal Court, it also held jurisdiction over federal matters. As a result, it was a body that was able to issue *writs of mandamus* to the elected officials of Washington D.C., something no other court could claim. Things changed during and after the Civil War. The D.C. Circuit became more of a national court as Lincoln appointed judges from far and wide across the feuding nation. The D.C. Circuit also broke ground in 1870 by being the first federal court given jurisdiction to review the decisions of a federal agency.⁷

The D.C. Circuit Court the United States we know today was institutionalized on February 9, 1893⁸. This is noticeably two years after the Evarts Act of 1891 which institutionalized the other original nine U.S. Courts of Appeals. Being the smallest geographic Circuit Court of Appeals, the D.C. Cir.is not host to a federal penitentiary, as such: the D.C. Circuit is not subject to the large amount of prisoner petitions that burden the dockets of other courts (Roberts 2006). In total, one-third of the D.C. Circuit’s docket is comprised of agential decisions, a number that rarely measures above twenty percent nationwide. As a result, this Circuit is a premier venue for governmental interaction

⁶ Feb. 27, 1801, ch. 15, § 3, 2 Stat. 103, 105-06 (repealed 1863).

⁷ 16 Stat. 198, 205 (repealed 1929).

⁸ 9, 1893, ch. 74, 27 Stat. 434 (current version at 28 U.S.C. § 41 (2000)).

between the judiciary and the executive branch—Roberts (2016) explains that approximately two-thirds of all cases argued and decided in front of the U.S Court of Appeals of the D.C. Circuit involve the federal government. It is no small wonder why many call it the second highest court in the land.

Literature Review

Though many have delved into questions surrounding the roots of judicial decision making, there is still much to be discovered and discussed. Focusing on research previously conducted on the interactions between governmental agencies and the judicial branch, one can hope to outline an abstract pattern from the conclusions of other sources—a pattern that might more accurately be mapped through on-going research. The goal of this review of previous research is to address the questions of where judicial decisions come from, what impact the individual beliefs of judges has on any one decision and if judges can become well acquainted enough with case material as to set an over-arching theme to case decisions.

Judicial Decision Making

There has been extensive research into the formula of judicial decision making. Topics such as race, appointing president, caseload and birthplace have all been pondered in the past, and there are multiple theories evolved around the prediction of judicial decision making. With the focus of this particular study being targeted more closely for time based variables, it was good to take note of C. Neal Tate's results found in his 1978 study. In said observation, Tate (1978) focused on the implications involved in using time based assumptions as a predictor on judicial making. Tate (1978) suggested that a

scholar might do well to expect there existed a relationship between the age of a justice and Supreme Court voting behavior. Tate (1978) explains that “the same is not true for tenure” (p 363). This appears to make sense at first glance.

The age of a justice or judge oftentimes allows for the creation of a generational gap between one another— which is expected to result in an ideological gap. Tate (1978) continues to analyze the contribution of many other variables into the judicial decision making process. Specifically, Tate (1978) utilized the variables of party identification, extent of judicial experience, type of prosecutorial experience and the appointing president.

Tate’s (1978) study, however, fails in many capacities to encompass the true extent of time based variables on judicial decision making. Tate (1978) not only focuses primarily on criminal and civil courts throughout the nation as well as the Supreme Court, he fails to address the many courts of appeals throughout the nation. This is a critical error because while concluding that tenure would not affect a judge’s decision, Tate (1978) fails to take into account the repetition and redundancy found in practicing law in a circuit court of appeals. This oversight does not take into account the experience a judge might gain as they have the ability to specialize in particular case types like no other judges may. The D.C. Cir. Court faces a case load overburdened by nearly identical cases. Such redundancy allows for a judge to become more knowledgeable about both the law itself, and the importance of certain facts in a case may hold. This undoubtedly might influence a judge’s decision, challenging Tate’s (1978) statement that tenure plays no part in judicial decision making.

While Tate (1978) focused on individual judges and their growth throughout their judicial tenure, one must take note that a single individual judge is not the deciding body of a D.C. Cir. case. Cases before the D.C. Cir Court stand before a three member judicial panel. As such, the interaction between judges on a panel undoubtedly plays a part in the final opinion of the court. Matthew Spitzer and Eric Talley (2013) conduct a brilliant analysis that results in the conclusion that “mixed panels may induce equilibria manifesting the markers of moderation among majority (and even minority) panelists” (p 672). This is explained by the hypothesis that if a single judge finds themselves impassioned with the content material of one case, said judge will have more knowledge, experience and remarks to offer in the discussion of an opinion. Primarily, Spitzer and Talley (2013) describe that the influx of additional information about a case’s topic material will result in a more moderate decision and lesser versed judges yield more ground to the center than otherwise anticipated before the addition of relevant information. Of course, this study adheres only to the court opinions authored by mixed panels rather than homogeneous ones—the result being more moderate and politically centered when compared to a panel of all Republican or Democratic presidential appointees. Spitzer and Talley (2013) begin to discuss the impact of additional knowledge in a case and its effects on judicial decision making. The study at hand here hopes to expound upon that idea by isolating the variable of additional knowledge and experience forged through time sitting on the bench and studying the impacts that additional knowledge might have on the decision to defer the judgment to an agency’s original ruling.

Specialization

Specialization, of course, comes from practice. The practice of law and the time spent on a bench are both sums in the equation of prestige. David Klein (1999) and Darby Morrisroe (1999) authored a study constructing a model that introduces both an equation for prestige and the implementation of a study analyzes the likelihood of a more prestigious judge's opinion would more likely be picked up by other circuit courts. The findings of Klein and Morrisroe's (1999) study can be conducive to the micro-judicial scale as well. If a single judge on the D.C. Cir. is considered prestigious enough that their opinion be more likely to affect a judge in another circuit entirely, imagine what that prestige must translate to behind the closed doors where decisions are made. The application to this study is that the time spent on a court could very well offer not only experience, specialization, and additional knowledge, but also prestige. Prestige that may be utilized to impact the decisions of other judges on a panel that might chose not otherwise chose to defer to the NLRB or the EPA when it comes to the individual agency's prior ruling.

With the implementation of a panel of judges overseeing a case, there also becomes a difficulty in picking out what each judge specifically ruled in favor of. While Spitzer and Talley (2013) offer that a more impassioned judge impacts the final opinion, Burton M. Atkins (1974) offers a glimpse into the possibility that circuit court judges are specializing in certain opinions, therefore becoming more impassioned by case material, but instead of said specialization being for the sake of judicial interest, Atkins (1974) argues that it is to streamline judicial efficiency. Atkins (1974) offers that judicial specialization at the US Appeals Courts of the nation would naturally progress as the

caseload ceaselessly increased. Furthermore, Atkins (1974) said that “that opinion assignments involve considerations such as maximizing the potential for a successful majority coalition, dispensing positive rewards or negative sanctions to members of the court, or making a potentially controversial decision more palatable to those who might oppose it” (Atkins (1974). Because of this, the study done by Atkins (1974) allows for a foundation of the expectation of specialization that contributes spectacularly to this study. With the idea of specialization at the federal circuit court of appeals level, one can assume that time spent sitting on the bench will allow for the specialization and better understanding judges will have when it comes to individual decisions. This additional knowledge due to specialization and experience is the primary concern of study such as this, which hopes to focus on the impacts of experience on the deference to a political agency’s prior decision.

Delving further into the issue of judicial specialization, Brett Curry and Banks Miller expound on the concept of both specialization and the ideological impacts on decision making (Curry & Miller 2015). Most importantly, the targeted effort of Curry and Miller to study said impacts at the level of US Courts of Appeals allows for a fundamental foundation to pursue parallels in the special case of the D.C. Cir. Court. As outlined by Curry and Miller, specialization – and the study thereof – is often limited to courts with similarly limited jurisdictions. The D.C. Cir., while not explicitly limited in its jurisprudence, does indeed face an increase in specific types of cases involving the executive agencies of the United States Government. In addition the explanation and separation between two types of specialization offered by Curry and Miller allows for a more targeted study. Miller and Curry further constrain their target of study by

specifically coding cases involving anti-trust regulation. Curry and Miller (2015) intend to discover the extent to which specialization and expertise potentially leads towards a more ideologically founded opinion written by a judge specializing in anti-trust work. Within the data collection and analysis itself, Curry and Miller (2015) offer a fairly comprehensive list of variables to account for any impact specialization and expertise might have in decision making. This list includes accounting for the potential expertise of panel members, prior service in the federal trade committee and years served on the bench. Curry and Miller (2015) offer many additional variables; however, key to the research at hand is the discussion of whether the United States or one of her agencies is a party in the case.

The conclusions to Curry and Miller's (2015) work offer some potential insights into the interaction between specialization and decision making. Simple contributors such as the relation between a memorandum opinion reduces the likelihood of a "liberal" decision as well as the participation of the United States as a party in a case correlates to a 27 percent increase in the outcome of a liberal decision. Conclusively finding sufficient evidence for the an interaction between the presence of an opinion specialist and the likelihood of an ideological decision, Curry and Miller (2015) leave a grandiose foundation to build upon in a more targeted fashion involving the governmental agencies of the United States.

Conclusion

Despite the plethora of studies having taken place in recent years, compare governmental experience in an individually targeted circuit court. The research expounded upon by this observation will cover those holes. Additionally, there has yet to

be a model of prediction taking into account the combination of time based variables of tenure and the political ideologies of judges as a possibility of better understanding court opinions in regards to two divisive agencies. It is the hope of this study to better acquaint the academic world with these listed variables so that more might be done to understand the operations of judicial decision making.

Theory

The question of whether it is knowledge or wisdom that is more useful in society will not be answered today; however, it may be possible to measure the concepts of experience on the bench and how it affects the decisions of sitting judges. To best accomplish this, there must be a consistent case or caseload approached in order to maintain consistent results. To this end, I found the most reasonable approach to be measuring the effects of time in government on a judge's decisional leanings in terms of deference to a political agency. This assumption is attributed to my hypothesis that as a judge sits on a bench and presides over a plethora of similar cases, that judge is likely to become specialized in those specific disputes as they gain expertise.

H1: As judge's judicial tenure in government increases, there is a decrease in the amount of deference paid to agencies

H3: If a sitting judge has had previous executive experience, then they are more likely to offer deference to agencies

H3: As the total tenure of a panel increases, the amount of deference paid to agencies decreases

It follows that with specialization comes more comfort with the law and more knowledge of how the law is 'best' applied. Not to mention that I would argue that the

constant interactions between the judges themselves and the representatives of the governmental agencies might foster the construction of substantial professional rapport which grants the representatives of agencies a certain privilege above newcomers to a court. I additionally argue that this rapport and working relationship, along with the judges' well versed and practiced knowledge of the law allows the amount of deference paid to governmental agencies to slacken over time. The better understanding of law that accompanies specialization can be attributed to the knowledge and experience in law gained via enduring interaction between a judge, the specific laws in question, the governmental agencies in question and other actors in the judicial system. Specifically, the relationship, theoretically, can be attributed to the specialized knowledge and understanding of certain laws and precedents that evolves from practice and repeated interaction with the laws themselves. This is unavoidable when one hears dozens of cases stemming from interpretations of specific laws a year. I theorize that both the law, and the social aspects associated with repeatedly trying and hearing significantly similar cases allows for a governmental agency to leave the court unsuccessful in gaining deference from the D.C. Cir.

While under the assumption that political ideology does indeed play a part in judicial decision making, there is also much room to consider other outside influences on a decision. Specifically, this study will record and control for the executive branch tenure, and the GHP (Giles, Hettinger, & Peppers) score of political ideology to help encompass a multitude of social and political impacts on an author of the opinion in order to isolate the variable of judicial tenure.

Research Design

To find circumstances in which there is consistent interaction between the court system and governmental agencies, I must isolate the most likely circuit to handle specific governmental agencies. Because the Supreme Court of the United States is often over studied and shrouded by politics, unpublished data and a smaller case load, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) seems a better case study. Aiding this decision is the enormous difference in total case load; the D.C. Cir. fields many more controversial disputes that often involve governmental agencies such as the Environmental Protection Agency, the National Labor Relations Board and the Internal Revenue Service. My hypothesis is that such a court would offer more fruitful results when it comes to the direct interaction between the judicial and executive branches of the United States Government. In this study specifically, the focus will be upon cases involving the National Labor Relations Board and the Environmental Protection Agency. This can be attributed to the fact that not only are these two agencies at the center of much political controversy, but that these agencies both have their own internal decision making body, and both the NLRB and the EPA are consistently before the D.C. Cir. This allows for a standardized structure that can be studied and evaluated. The theory this research hopes to validate is that this standardized and formulaic structure can offer statistically significant evidence of deference paid not only to the governmental agencies themselves, but a decrease in the amount of deference paid by specific judges over their tenure.

Explicitly studying the effects certain variables have upon the deference contained in a court's decision, I gathered and coded data on the judicial opinions written between

2012 and May 2016, a condensed a timeline that allows for a targeted study of the active judges on the court, that mention the National Labor Relations Board (NLRB) or the Environmental Protection Agency (EPA) as either a petitioner or a respondent in the D.C. Cir. Utilizing a quantitative analysis, I include numbered cases forming a total population of seventy six mentioning the aforementioned agencies as parties. The opinions for each of these cases are available via the website⁹ of the D.C. Cir. Court and have been compiled into a data set that examines all variables to be mentioned and explained later.

After identifying the total population of cases, I gather the desired variables from each of the seventeen sitting judges on the D.C. Cir. Court that heard at least one of the seventy six cases. These collected variables describing the judges themselves are: a judges' ideology, entitled "conservatism," time spent by each judge on the bench (or judicial tenure), and if a judge has spent any time participating in the Executive Branch. GHP, in terms of conservatism, is included as a control variable to account for as judge's political ideology. Variables concerning executive experience and tenure come from different sources, but primarily rely on the personal biographies of the seventeen recorded judges in being studied. Independent variables about the individual cases that are of interest include the coding experience in the Executive Branch by each of the three judges (coded 1 for previous executive experience; 0 otherwise). Each case is coded as involving either the NLRB or the EPA, this is done by the coding of a 1 for a case involving the NLRB and a 0 for the EPA under the control variable concerning which agency is a participant. Additionally, the time on the bench for each case is addressed by

⁹ (<https://www.cadc.uscourts.gov/internet/opinions.nsf>) using keywords "EPA" and "NLRB," cases were identified. Each case opinion was then read and deciphered in order to categorize the results

years between the decision itself and the time each judge was appointed. The summation of all judge's time on the bench for each individual case is also tallied as a measure of the combined tenure of the panel, and both time on bench variables are included as independent variables.

The dependent variables of a liberal leaning decision handed down by an individual judge and if said judge offered deference to the agency are coded as 1 if the individual judge offered an opinion that was liberal in nature or favored the agency, respectively. Additionally, dependent variables at the panel level concerning the panel wide decision as being in favor of liberalism or in favor of the agency are both included and coded to use 1 in the affirmative. The examination into the ideological leaning of a decision was controlled for with the control variable of the political ideology of the lower decision, with 1 representing a liberal decision and 0 representing a conservative opinion. Liberal decisions at both the lower level and within the D.C. Circuit are constituted as involving the implementation of governmental regulation over a private business or other rational understandings of liberalism and conservatism. In this study, many cases involved worker's rights and the unionization and organization of workers. As such, any case that offered more leniency and operating power to the organizational structures of workers was coded as more liberal; i.e., the liberal decisions at both the individual and panel level are coded as 1. Additionally, the EPA cases were coded as liberal if they enforced a policy that limited conventional perceptions of states' rights, or regulated business on grounds of environmental complaints.

The scale determining judge's ideology, which is characterized by the GHP (Giles, Hettinger & Peppers 2001) score, is an independent variable based in the

assumptions that actors involved in placing judges on courts of appeals seek to appoint judges that reflect similar ideologies and that there exists a strong model of senatorial courtesy. This scale is widely used and a positive number indicates a more conservative leaning whilst a negative details a more liberal ideology. These ideologies are measured on a range from -1 to +1, with higher values indicating greater conservatism. These numbers are created by incorporating the nominating president and the ideological leanings of the relevant senators voting in confirmation tallies.

A judge's experience in the executive will be coded by a one for yes and a zero for no. This is to serve as a dichotomous variable that I expect to impact the probability for deference to an executive agency. Positions within the Attorney General's and Solicitor General's office as well as any position held in agencies more closely associated with the presidency will result in the coding of a 1 for that specific judge. Note, I only understood executive experience in this case as to dealing with the federal executive. Judge Karen Henderson, for instance, was the Attorney General for the State of South Carolina¹⁰, but I did not code her as having executive experience because it was not a position within the federal executive.

The independent variables mentioning time are easy to observe from the primary sources of which will inevitably be the personal biographies of the seventeen sitting judges' in question. A simple formula will be utilized to devise the amount of time, in years, between the appointment of a judge and when a specific opinion was published. The collection of this and other variables offers a diverse pool of variables that I believe

¹⁰ Based on her biography found at the D.C. Cir.'s website (<https://www.cadc.uscourts.gov/internet/home.nsf/content/VL+-+Judges+-+KLH>)

likely to produce an observable relationship between the extent of ideology and experience and the deference allotted by the court towards the EPA or NLRB.

These variables were chosen in order to target the pointed interest of this research. The experience and political ideologies of each of the individual judge plays a key role in understanding the context and perhaps mindset of the judges in question. The addition of experience within the executive branch offers a direct and tangible link between the two branches of government and offers a spotlight on the interaction between said branches, exactly what this study is focusing on. The culmination of these variables is expected to offer the clearest picture into what, if any, relationship exists between the judicial deference allotted to the EPA and NLRB and the judges presiding over those courts and writing the final decision.

Method

After the compilation of variables a regression analysis will be conducted to see if any relationship exists between time in government and the deference allotted to the previous decision. Specifically, because the intended dependent variable of deference is dichotomous, a logistic regression analysis will also study the specific impact of the aforementioned independent variables on the likelihood of whether or not deference to the political agency in question was offered.

Analysis

I estimate a series of logit models that have been accounted for errors clustered on the judge. The clustering of errors on the individual judge controls for the fact that the judges appear multiple times throughout the dataset as they sit upon different panels

covering different cases, all which are also included within the dataset. This was done for both major models as I examined the interaction between the judicial deference towards the executive branch as well as the deference towards a liberal decision.

Variable	Mean	Standard Deviation	Min	Max
Conservatism	.164	.468	-.532	.559
Judge's Tenure	17.154	9.170	0	35
Panel Total Tenure	51.461	14.794	20	86
Executive Experience	.654	.477	0	1
NLRB	.645	.480	0	1
Judge Favors Agency	.667	.472	0	1
Judge Favors Liberalism	.645	.480	0	1
Panel Favors Agency	.671	.471	0	1
Panel Favors Liberalism	.671	.471	0	1

A simple examination of the data leads to some interesting statistics. As displayed in the descriptive statistics of table 1, throughout the 76 usable cases, yielding 228 total observations, there exist some interesting trends. Unsurprisingly, the court exemplifies a slightly conservative ideology when averaged throughout the judges. Easily explained by the one seat advantage judges nominated under republican presidents holds. Additionally, there is evidence of vast deference allowed to the executive agencies. Throughout the dependent variables describing individual judges and panels as a whole alike, a large

majority of all examined decisions were in favor of either the NLRB or the EPA. This is outlined by the mean of the variable describing the panel outcome within table 1 as being over .67. Since said variable was coded to describe a 1 as a decision being handed down in favor of the agency, the average being greater than .5 decidedly supports the deference towards executive agencies institutionalized by the Chevron case. Of course, with the panel decision falling in favor of the agency, it bears to reason that the individual judge's votes also heavily favor the agencies, this is also exhibited in the data with the average of two thirds all judicial votes being in favor of the agency in question.

Table 2			
Judge's Stance with Agency	Judge's Ruling Ideology		Total
	Conservative	Liberal	
Oppose Agency	70	6	76
Favor Agency	11	141	153
Total	81	147	228

With the conservative leaning court (Average GHP of .1640219), it is interesting to see the amount of liberal decisions crafted within the dataset and displayed in table 2. Perhaps detailing the mechanisms of mechanical jurisprudence over ideological decision making, judges often defer to political agencies. As a result, decisions favoring political agencies often elicit more liberal results such as remanding a business for infringement upon the right to organize or allowing the EPA to enforce and more heavily regulate a business. Judicial deference towards political agencies acts as a catalyst for government to interact and impact the corporate and private sector, typically ideologically liberal practices.

TABLE 3			
Variable	Coefficient	S.E.	P > z
Conservatism	-.753	.375	0.045
Tenure	-.006	.012	0.630
Executive Experience	.187	.241	.437
NLRB	-.325	.296	.272
Ideology of Agency Decision	.635	.390	.104
Constant	.449	.591	.448
N	228		
Log Likelihood	-.140.373		
Prob > chi ²	0.0080		
Pseudo R ²	0.0327		

After the conclusion of the model estimates, there was not much surprise to be found within the data. Due to the limited three year time span of the study, there was not enough evidence to prove a relationship between the time spent on the bench and the handing down of a deferential opinion towards either the EPA or the NLRB. With the estimation of two models involving individual judge's deference, one exploring the judge favoring the agency (pictured in table 3) and the other exploring the liberalism of the ruling itself (table 4), a more detailed explanation was expected. However, after 228 observations, the only statistically significant relationship found within the first model displayed in table 3, concerning the interaction between the judiciary and the deference towards a political agency, was the control of the GHP. This trend continued into the model investigating a relationship between the ideological leaning of the decision and the time served on the bench by the individual judges shown in table 4. This can possibly be

explained by the impact of judicial ideology on each ruling. This original model proved unsuccessful in determining the existence of a relationship between the judicial tenure of a judge and the deference allotted an executive agency, but that may be due to several limiting factors to be explained later.

Variable	Coefficient	S.E.	P > z
Conservatism	-.950	.342	0.005
Tenure	-.021	.011	0.045
Executive Experience	.192	.183	.295
NLRB	-.082	.254	.745
Ideology of Agency Decision	.163	.542	.003
Constant	-.408	.543	.453
N	228		
Log Likelihood	-138.043		
Prob > chi ²	0.0001		
Pseudo R ²	0.0695		

While the first model offered the absence of statistical significance, the most surprising finding within the models involving individual judges was the significance of time on the bench served by individual judges on the liberalism of a decision. Explained with a p-value ($p > |z|$) of .045, this critical comparison depicted in table 4 outlines the effects judicial tenure can have on the direction of a decision. Highlighted by the conservative GHP of the D.C. Cir., the relationship between time spent on the bench and the liberalness of the decision is very interesting. Aiding this result is the absence of correlation between an individual judge's tenure and the other significant variables of

conservatism and ideological direction of the lower court's ruling. In fact, the correlation between the judicial tenure and both conservatism and the direction of the lower court's ruling is below .05.

TABLE 5			
Variable	Coefficient	S.E.	P > z
Conservatism	-.670	.265	0.011
Total Panel Tenure	-.016	.007	0.019
Executive Experience on Panel	-.396	.539	.462
Ideology of Agency Decision	.859	.479	.073
Constant	1.256	.667	.060
N	228		
Log Likelihood	-.139.176		
Prob > chi ²	0.0006		
Pseudo R ²	0.0363		

At the panel level, a relationship exists between judicial tenure of the panel as well as the decision being a liberal one. Displayed in table 5, total judicial tenure, or the amount of years each of the judges on a panel has served on the bench combined, is related to the panel as a whole voting in favor of a liberal decision. There is no notable correlation between the combined tenure of the panel and any other relevant, significant, variables. This remains important because it implies that while judges will adhere to precedent, they will drift and shift ideologically. This could well be the result of specialization and interest in specific cases as their tenure develops. With the better understanding and practiced knowledge gained through repetitious cases, judges could be

more likely to ideologically realign as they become more comfortable with the law in question and the agential decisions before them.

With both the individual and panel wide tenure being significant upon the liberalness of a decision, the coefficients of both levels of interaction being negative is also important. Displaying an inverse relation, both tables 3 and 4 indicate that as tenure increases, liberalism decreases. This is important because deference coincides with liberal decisions, a shift from liberal to conservative rulings offers promise for the extension from conservative ruling to refusing to defer to the political agency.

Conclusion

After the conclusion of the estimations, much has been discovered. With the relationship between liberal decisions and judicial tenure being established in cases involving executive agencies, doors have been opened for more exploration into the impact tenure has on deference to the executive branch. My results suggest and support the establishment of judicial deference at both the individual and judicial panel level. The results above offer some surprising and intriguing results that warrant further study, especially in this age of modern government. The rise in jurisdiction of the judiciary and the rise in importance and power of the executive in the minds of American citizens have gone hand in hand, and the data above supports as much. This limited 3-year study was meant to strategically target and evaluate the actions of the court in this most recent light. The fact that a relationship exists and is supported between the tenure of a judge and a liberal decision at both the individual and panel wide level is extremely interesting considering the relatively short timeframe. For future studies I would recommend an

examination of a wider timeframe to allow for the introduction and control for political landscapes and trends both long-term and immediate.

Offering a tangible link between an individual judge's tenure and their tendency to vote more liberally in cases involving executive agencies is important because when that information is combined with the heavy correlation between a ruling that defers action to the executive agency and that ruling being liberal, there is a good possibility that under further examination a direct causality may be found. With a more detailed and extensive search, a link should be able to be established directly between judicial tenure at both the individual and panel wide levels and the deference said actors undoubtedly allot to executive agencies.

While unable to definitively support the more significant half of my hypotheses that dealt directly with judicial tenure and deference (H1, H2), there was evidence to support the latter hypothesis (H3) that dealt with liberalism on the court as it relates to judicial tenure. Promising intriguing results under further examination, there very possible could be a direct relationship between the time a judge serves and their attitudes and opinions towards the executive branch, recorded in the deference they allow agencies like the EPA and NLRB.

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