The Nature of Legal Change on the U.S. Supreme Court: Jurisprudential Regimes Theory and Its Alternatives

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Jurisprudential regimes theory (JRT) posits that legal change on the U.S. Supreme Court occurs in a drastic, structural-break-like manner. Methodological debates present conflicting evidence for JRT, which has implications for the important law versus ideology debate. We confront this debate by first elaborating two alternative theoretical perspectives to JRT—evolutionary change and legal stability. Our analytical framework focuses on two key substantive effects of jurisprudential categories on the Court's case outcomes—relative differences between categories over multiple time periods and longitudinal differences across time periods. Importantly, different pieces of empirical evidence can provide support for different dynamic processes. The extent to which "law matters" is not necessarily tied to one particular model of legal change. Empirical analysis of updated and backdated free expression data generates key findings consistent with JRT, legal stability, and evolutionary change. We discuss the implications of the results for understanding legal change and legal influence.

The "law versus ideology" debate in Supreme Court decision making continues to be a central frame for understanding how legal policy is produced. With increasing numbers of legal perspectives (e.g., Bailey and Maltzman 2008, 2011; Bartels 2009; Gillman 1999, 2001; Richards and Kritzer 2002) challenging the attitudinal model's claim of ideologically driven judging (Segal and Spaeth 2002), we think it is particularly timely to reexamine a debate ignited by Richards and Kritzer's (2002) jurisprudential regimes theory (JRT)—a legal perspective that has attracted perhaps the most scholarly attention and controversy—about the nature of legal change and constraint on the Supreme Court.

JRT posits a "revolutionary" form of legal change resembling a "punctuated equilibrium" (Baumgartner and Jones 1993). Judicial decision making proceeds in a stable fashion and rests on some key foundations, but then a landmark precedent by the Court shatters the old regime and creates a new regime, significantly altering the impact of key legal considerations on justices' votes. Law matters but not deterministically; justices' ideologies can still exhibit an independent, concurrent impact alongside law. In First Amendment free expression law, which we reexamine here, Richards and Kritzer argue that two 1972 decisions created a jurisprudential regime by assigning different legal standards to different types of free expression regulations. The authors produce empirical evidence showing that the new regime significantly altered the impact of key jurisprudential factors (and other case facts) on justices' votes. Evidence for JRT has also been produced in establishment clause (Kritzer and Richards 2003), search and seizure (Kritzer and Richards 2005), and administrative law (Richards, Smith, and Kritzer 2006). JRT has been influential for subsequent work as well (e.g., Bartels 2009; Luse et al. 2009; Scott 2006).

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The degree to which JRT represents a valid explanation of the Supreme Court has significant implications for our understanding of the nature of legal change and constraint, which highlights the importance of reevaluating JRT in the context of alternative explanations. JRT posits a particular dynamic underlying legal change, emphasizing the crucial importance of landmark precedents in creating a new regime of decision making that will be relatively stable until the next landmark precedent. If the theory is wrong, then we are left with an overstatement of the importance of these landmark precedents in structuring decision making in a legalistic manner and a hole in explanations for how law matters on the Supreme Court. If JRT is correct, then we are left with strong theory and evidence that challenges political science conventional wisdom about decision making provided by the attitudinal (Segal and Spaeth 2002) and strategic perspectives (Epstein and Knight 1998). If JRT's accuracy is conditional, then we need to think more intently about the conditions under which we would expect JRT and its alternatives to be especially operative.

Recent work has begun reexamining JRT's validity, though largely on methodological grounds. Lax and Rader (2010) argue that Richards and Kritzer's empirical tests (Chow tests) of whether a regime significantly alters the joint impact of case facts produce overconfident statistical inferences. When correcting for this overconfidence, they find that most of the statistical evidence for JRT disappears.[1] Their evidence against JRT, they conclude, implies that legal doctrine does not exhibit an impact on justices' choices, and they speculate about more gradual, evolutionary change.

In another study, Pang et al. (2012) challenge JRT's claim of significant legal change around one point in time. They argue that regime breaks should be empirically evaluated endogenously, allowing the data to determine (1) where in time the highest probability of regime change exists and (2) whether there are multiple regime breaks. In free expression law, none of the multiple regime breaks identified by Pang et al. coincide with the break posited by Richards and Kritzer (2002). A similar story emerges for search and seizure law, though the authors do find regime breaks consistent with JRT in both establishment clause and administrative law.

In this article, we attempt to reorient this debate around heretofore unaddressed substantive and theoretical issues surrounding the nature of legal change and influence. Our theoretical framework presents alternative expectations to JRT, explaining whether and when the Court's outputs over time will be more congruent with (1) JRT-like "revolutionary" change; (2) a more gradual, evolutionary dynamic; or (3) relative stability. Our approach specifies and distinguishes a number of substantive effects related to legal change in free expression law, emphasizes that different pieces of empirical evidence regarding these effects can provide support for different dynamic processes, and demonstrates that the extent to which "law matters" is not necessarily tied to any one particular model of legal change.

The stakes of the debate over legal change and constraint are high because they get to foundational questions in judicial politics about the core functions of the Supreme Court, the dynamics underlying the Court's legal policy, and the extent to which the Court and its justices are constrained by legal doctrine. On the whole, our work offers a more nuanced portrait of legal dynamics on the Court than prior work, speaks to the lingering question of law's impact, and offers a contribution to the important literature on legal dynamics and change (e.g., Epstein and Kobylka 1992; Hansford and Spriggs 2006; Hathaway 2001; Kersch 2004; Lindquist and Cross 2005; Pacelle 2009; Wahlbeck 1997).

Analytical and Theoretical Framework

Methodological debates surrounding JRT beg a larger substantive and theoretical question that we confront: What does the dynamic nature of legal change on the Court look like, and under what conditions will it take on a given form? One drawback of JRT is that it considers just one of multiple forms of legal change—drastic change occurring as a result of a landmark precedent, with decision making more or less stable before and after a new regime is created. Certainly, legal change can be gradual or quite stable as well, as described by Pacelle's (2009) account of how issues move through stages of development as a result of cycling interactions among the Supreme Court, lower courts, and litigants (see also Baird 2007; Pacelle, Curry, and Marshall 2011). New issues appear episodically and inconsistently at first, and doctrine remains unstable and idiosyncratic. As an issue becomes more salient, it

[1] For free expression, when including all justices in the analysis (rather than just those who participated in the *Grayned* and *Mosley* decisions), Lax and Rader (2010) find a statistically insignificant change in the joint impact of *all* case-level variables, which refutes JRT. However, in support of JRT, they do find statistically significant changes in both the joint impact and the individual impacts of the three jurisprudential variables—findings the authors do not strongly emphasize. When confining the analysis to justices who were a part of the *Grayned* and *Mosley* decisions, results show that none of these changes are statistically significant, providing evidence against JRT.

emerges as a consistent part of the Court's agenda, with issue-specific doctrine being developed and attempts to impose legal stability on lower courts. Landmark precedents can emerge during this stage. In elaborative and complex stages, the Court addresses the gray areas that exist in the current doctrine, where it is difficult to readily apply extant doctrine. Eventually, decision making on the issue can destabilize, leading to reworking of doctrine or exit from the agenda.

As a result, we may expect to observe different forms of legal dynamics depending on the types of cases and the time period. Moreover, evidence for or against any model of legal change should not be treated as a sufficient condition for concluding the existence of nonexistence of legal constraint, as Lax and Rader (2010) seem to imply regarding JRT. Patterns reflecting all models of legal change may also be consistent with legal influence, but the key is to uncover patterns of how the Court treats different legal categories over time and how we can interpret those patterns in the context of legal change and legal influence. In this section, we will revisit expectations from JRT and then discuss competing explanations of legal dynamics. Before doing so, however, we clarify some important conceptual and analytical foundations to understanding legal change.

Conceptual and Analytical Preliminaries

A Focus on Case Outcomes. Importantly, we seek to explain the Court's *case outcomes* as opposed to *justices' votes*, which JRT and its critics have analyzed. In other words, the Court's cases are our units of analysis instead of justice votes. When discussing JRT and legal dynamics more generally, it is important to note that there are essentially two theories being presented: a theory of legal change and a theory of decision making as a result of the change. While theories of judicial decision making typically require analyzing justices' votes (Segal and Spaeth 2002; see, though, Pacelle, Curry, and Marshall 2011), we contend that when studying legal change, analyzing the Court's case outcomes is crucial. After all, the Court's decisions determine winners and losers and provide the official legal policy in a given case.[2] This issue is related to Richards and Kritzer's (2002) additional focus on examining how a jurisprudential regime affected only the justices who participated in the regime-defining precedent (see also Lax and Rader 2010; Scott 2006). Richards and Kritzer argue that this analysis ensures that the effects from the "all justices" analysis are not artifacts of membership change. Lax and Rader (2010) place more weight on this analysis. But ultimately, legal doctrine exhibits its greatest impact when it influences future Supreme Court *outcomes* regardless of whether certain justices took part in a landmark case that created doctrine. We want to know whether doctrine has vitality and whether it continues to influence case outcomes over time (e.g., Hansford and Spriggs 2006).

Dynamics Across Multiple Time Spans. Because we are interested in analyzing dynamic processes other than just jurisprudential regime change, we must look at how the nature of case outcomes changes across *multiple time periods*—more than merely before and after a posited regime break. If the posited impact of legal doctrine does not persist across time, it suggests legal atrophy that could have its roots in membership change inducing outright reversal, new factual circumstances that make the doctrine less feasible, or general alterations to the precedent (e.g., Pacelle 2009).

Substantive Effects Related to Jurisprudential Factors. While Kritzer and Richards (2010) emphasize that the interpretive and qualitative inquiry, sensitivity tests, and substantive patterns of influence are all pieces of the JRT puzzle, we contend that they show an overreliance on the statistical Chow test, which provides Richards and Kritzer (2002) the "smoking gun" for regime change. Richards and Kritzer (2002) do not fully communicate the substantive implications of the effects of and changes in the jurisprudential variables. We contend that an empirical focus should be placed on two types of effects. The first involves *longitudinal comparisons* for a given jurisprudential category across time. Does the Court's treatment of cases for each jurisprudential category over time evince drastic change, evolutionary change, or relative stability? The second type is *relative differences between* each jurisprudential category for a given time period. If the Court is applying different legal standards to different categories of cases, then we should be able to generate clear expectations about how the Court treats these categories in relative terms.

Revisiting Richards and Kritzer's Theoretical Expectations

Richards and Kritzer (2002) argue that two 1972 companion cases, *Grayned v. City of Rockford* and *Chicago Police Department v. Mosley*, established a jurisprudential regime in free expression law that assigned (1) strict

[2]Section A of the supporting information includes an elaborate empirical justification for analyzing case outcomes over justices' votes.

scrutiny to "content-based" regulations in which government seeks to restrict the substance of an individual's expression and (2) intermediate scrutiny to "content-neutral" regulations aimed at an expression's noncommunicative impact, not necessarily at the specific content (e.g., "time, place, and manner" restrictions). Under strict scrutiny, regulations of expression are presumed to be unconstitutional; government must demonstrate a compelling interest for maintaining such a regulation. Under intermediate scrutiny, government should have moderate latitude in striking a balance between order and freedom. Richards and Kritzer argue that two "exceptions categories"—traditionally less protected types of expression (e.g., obscenity, expression in public schools and nonpublic places) and issues where the threshold for First Amendment protection is not met—are generally accorded lower levels of constitutional protection (akin to a "rational basis" standard).

Richards and Kritzer discuss hypotheses regarding longitudinal effects but do not explicitly issue a verdict on them based on the statistical analyses. Regarding longitudinal comparisons, Richards and Kritzer (2002, 311) posit that "after the *Grayned* regime was established, expression that is governed by both content-based and content-neutral laws was more protected than before, although expression regulated in a content-neutral manner should not have been as well protected as expression restricted by content-based regulations." They contend that the Burger Court (and onward) will be more willing to strike down content-based and content-neutral restrictions than it had been in the past because of *Grayned*'s purportedly new assignment of strict scrutiny and intermediate scrutiny, respectively, to these categories.

Richards and Kritzer do not explicitly state a hypothesis regarding the two exceptions categories, yet we think there is an implied longitudinal hypothesis. If Richards and Kritzer are correct in positing that *Grayned* was the key driver in applying a very low degree of constitutional scrutiny to these issues than had previously been applied, then we should expect these cases to be decided more conservatively after *Grayned* since a low degree of scrutiny gives government greater latitude to create reasonable restrictions of expression.

> *JRT Longitudinal Hypothesis*: (a) Content-based restrictions of expression will have a higher propensity of being struck down (decided liberally) after *Grayned* compared to before; (b) content-neutral restrictions of expression will have a higher propensity of being struck down after *Grayned* compared to before, but the pre-post difference will be smaller than for content-based restrictions; and (c) cases involving exceptions categories will have a lower propensity of being struck down (decided liberally) after *Grayned* compared to before.

Turning to hypotheses about relative comparisons between jurisprudential categories, Richards and Kritzer have expectations for after *Grayned* only. These expectations are based on the level of constitutional scrutiny given to each legal category. Richards and Kritzer (2002, 311) hypothesize that "content-based restrictions of expression are more likely to be unconstitutional than content-neutral regulations." Richards and Kritzer do not posit what level of scrutiny was given to these categories before *Grayned*, so they do not have pre-*Grayned* expectations for relative comparisons. We infer an additional hypothesis from JRT about how the relative differences between each of the three jurisprudential category pairings should change as a result of *Grayned*. That is, given the levels of scrutiny *Grayned* purportedly assigned to each class of case, drastic change should occur in the *differences* in how the Court treats the different categories. For instance, JRT would expect that the gap in liberal case outcomes between content-based restrictions (strict scrutiny) and the exceptions categories (low scrutiny) would significantly increase after *Grayned* compared to before. This implies the final JRT hypothesis:

> *JRT Relative Comparisons Hypothesis*: (a) After *Grayned*, content-based restrictions will garner the highest probability of being struck down (liberal outcome), followed by content-neutral restrictions, and then the remaining exceptions categories; (b) the difference in the propensity of a liberal case outcome between content-based restrictions and the exceptions categories should be greater after *Grayned* compared to before; (c) the difference in liberal propensities between content-based and content-neutral restrictions should be greater after *Grayned*; and (d) the difference in liberal propensities between content-neutral restrictions and the exceptions categories should be greater after *Grayned*.

Competing Explanations of Legal Dynamics

Legal Stability. One alternative to JRT is that case outcomes for some legal categories may actually be quite stable over time. A raison d'être for precedent is that it imposes stability and consistency on the law, thereby sending concise signals to lower courts in their interpretations of progeny cases and to litigants who must

decide whether to appeal (e.g., Gerhardt 2008; Pacelle 2009). This feature of precedent is often seen as a normatively forceful justification for judges adhering to it. Unless a precedent is clearly flawed, it generally should not be disrupted (e.g., Gerhardt 2008). This constraining aspect of precedent becomes especially important when an ideologically transformed Court (due to membership change) has an opportunity to overturn an ideologically incongruent precedent. If legal stability occurs in the face of the membership change, it suggests a robust vitality to precedent (Hansford and Spriggs 2006). While Spaeth and Segal (1999) have found that individual justices rarely adhere to landmark precedents to which they initially dissented, the Court rarely overturns its own precedents (e.g., Gerhardt 2008).

When would the Court be particularly motivated to impose legal stability? It may issue more rules and standards to impose legal stability in an emergent stage where it hears increasing numbers of cases and establishes an issue as independent from others (Pacelle 2009). Once the Court applies a particular standard to a category of cases, we may see relative stability in case outcomes. Moreover, the more prescriptive or rule-like the legal doctrine, the more stability we may expect due to the Court constraining the set of viable outcomes for lower courts and future Supreme Courts (e.g., Bartels 2009).

> *Legal Stability Longitudinal Hypothesis*: Once the Court applies a legal standard to a legal category, case outcome propensities will remain stable over time.
>
> *Legal Stability Relative Comparisons Hypothesis*: Once the Court applies legal standards to a legal category, (a) the relative orderings of categories in terms of case outcome propensities will remain stable, and (b) the difference in case outcome propensities of a liberal case outcome between legal categories will remain stable over time.

The pattern of results that emerges from our empirical analysis will shed light on what legal standard the Court is actually employing and whether it is being applied consistently.

Evolutionary Change. By "evolutionary change," we mean that change is occurring more incrementally than JRT-like change; it is secular change instead of revolutionary change.[3] Why and when might evolutionary change occur? First, the Court is "passive" in its agenda setting and adheres to certain legal norms (justiciability considerations) for when a particular legal issue is appropriate for Supreme Court review. The Court must wait for litigants to bring cases containing significant legal questions and gray area that require the Court's ruling. Moreover, the Court is constrained by its own *sua sponte* doctrine that limits it to answering the questions the litigants bring to it. Because the Court makes policy on a case-by-case basis, it is significantly restrained from making "grand policy."

Because of these realities, we might expect at least some degree of evolutionary change. Even if the Court outlines a clear legal doctrine, there are always unforeseen circumstances to which it may not clearly apply. Litigants attempt to exploit openings and exceptions to doctrine by generating innovative new arguments, which can help shape the nature and scope of the law—sometimes expanding it, sometimes contracting it (e.g., Baird 2007; Wahlbeck 1997).

According to this view, legal policy is always in motion. The speed of evolutionary change is a function of both membership/ideological change on the Court (Baum 1992; Wahlbeck 1997) and the nature of legal doctrine. Evolutionary change occurs via cyclical interactions between the Supreme Court, lower courts, and litigants (e.g., Baird 2004; Pacelle 2009). As the Court decides cases, it sends signals to lower courts and litigants. Those signals have an ideological component and a legal/doctrinal component. Litigants take those signals and seek to the push the boundaries of extant doctrine given ideological and legal constraints. Lower courts are attempting to implement Supreme Court doctrine, but surely, innovative legal arguments by litigants produce gray areas that the Court must eventually confront. This cyclical process explains how legal change might take on an evolutionary dynamic. The ideological tenor of the Court will certainly have an influence in producing this change, but even drastic membership changes cannot instantly produce drastic legal change because of passive agenda setting and extant doctrinal constraints. Thus, evolutionary change induced by shifts in the ideological tenor of the Court can be a slow, case-by-case process.

The pace of evolutionary change is likely to be greatest in instances where the Court has not developed or consistently applied a clear doctrinal standard to a class of cases, which means lower courts will lack clear direction from the Supreme Court. Thus, the Court's cases are more likely to be fact-bound and contain lower-court

[3]Note that we are not proposing a model of legal change based on the competition and fitness of particular legal rules rooted in evolutionary theory à la Alford and Hibbing (2004; see also Gennaioli and Shleifer 2007; Posner 1973). We use the term *evolutionary change* as a contrast to JRT-like change; it is change that is more incremental as opposed to drastic.

splits. Without the horizontal constraint that clear standards provide, the justices' preferences have considerable leeway to operate. The combination of fact-bound cases and ideological discretion suggests that outcomes in these cases will lack the type of stability described above. We expect membership change will be a more important driver of change than in categories with more prescriptive legal standards (e.g., strict scrutiny and rational basis, which presume case outcomes), where we expect a lower degree of evolutionary change and something closer to stability.

> *Evolutionary Longitudinal Hypothesis*: (a) Changes in case outcome propensities for various legal categories will be gradual and evolutionary, as opposed to JRT-like or stable, and will reflect changes in the ideological tenor of the Court; (b) the pace of this change will decrease as a function of a legal standard's increasing prescriptive strength.

> *Evolutionary Relative Comparisons Hypothesis*: Once the Court applies legal standards to a legal category, (a) the relative orderings of categories in terms of case outcome propensities will remain stable, but (b) the difference in case outcome propensities between categories will again depend on a legal standard's prescriptive strength in conjunction with ideological change.

The pace of evolutionary change that we uncover empirically can shed light on the prescriptive strength of the standards the Court is employing.

Free Expression Context

To see how these explanations may apply to free expression law, we first question the appropriate attribution of *Grayned* in the doctrinal assignment of levels of scrutiny across jurisprudential categories—particularly content-based and content-neutral regulations. As noted, Richards and Kritzer's relative comparisons hypotheses apply after *Grayned*, implying that prior to *Grayned*, the Court's treatment of free expression cases lacked a coherent doctrine. We contend that components of the two-track distinction existed in the Court's jurisprudence long before *Grayned*—as far back as the 1930s (Stone 1983). The Court has consistently assigned content-based restrictions of speech a high degree of scrutiny since speech, per se, is a fundamental constitutional right. Of course, the Court has long recognized certain exceptions to this right.[4] The Court has generally treated content-neutral "time, place, and manner" restrictions as a balancing act between the fundamental right of free speech and the government's need to maintain order.

Stromberg v. California (1931) struck down a content-based restriction aimed at critics of organized government, while *Schneider v. New Jersey* (1939), though invalidating a content-neutral ban on door-to-door canvassing, ruled that the government did not use the least restrictive means to achieve a valid purpose. In *Cox v. New Hampshire* (1941), the Court ruled that a city ordinance requiring a parading permit was constitutional because the city had an interest in maintaining social order. These are very early examples of the Court showing a willingness to treat content-neutral regulations with less scrutiny than content-based regulations.[5] Justice Frankfurter's concurrence in *Niemotko v. Maryland* (1951) explicitly notes the difference between regulations based solely on the content of speech and other more general regulations. *Konigsberg v. State Bar of California* (1961) formally recognized that not only can the government restrict speech in distinct and different ways, but also evaluation of these restrictions requires distinct approaches by the justices (see Tribe 1988, 791).

Because free expression is a fundamental constitutional right and has comprised a significant part of the Court's jurisprudence over time, the Supreme Court would seemingly have an interest in imposing stability on the law, at least regarding the distinction between content-based and content-neutral restrictions. If the Court has consistently applied particular legal standards to these two categories of cases, we should expect a high degree of stability in these categories across time—a stability that occurs despite *Grayned* and ideological change. Richards and Kritzer (2002) contend that *Grayned* accorded content-neutral regulations intermediate scrutiny, though some legal scholars contend that these regulations have generally been accorded an even lower level of scrutiny throughout time—something more akin to rational basis (e.g., Ducat 2013). Importantly, our analytical framework and empirical analyses can shed light on

[4] *Stromberg v. California* (1931) noted that "the right [of free speech] is not an absolute one, and the State, in the exercise of its police powers, may punish the abuse of this freedom" (283 U.S. 359, 368). *Chaplinsky v. New Hampshire* (1942) established that the First Amendment does not protect "fighting words" (see also *Schenck v. United States* 1919).

[5] Later examples of the Court's willingness to make distinctions for content-neutral time, place, and manner restrictions include *Poulos v. New Hampshire* (1953), which upheld a city ordinance denying all religious groups the right to use public space for meetings. *Adderley v. Florida* (1966) upheld the convictions of students arrested for protesting in front of a county jail.

what level of scrutiny the Court is actually using for a particular category of cases and whether it is being applied consistently.

For the exceptions categories, it is evident that the Court has struggled to issue clear and consistent legal standards because of changing circumstances involved in these cases (Ducat 2013; Richards and Kritzer 2002; Tribe 1988). Because these categories are exceptions to the two-track framework, one can envision how outcomes may evolve over time and reflect changes in the ideological tenor of the Court due to membership changes. As litigants seek to challenge existing holes in doctrine, the cases have considerable gray area, leaving the justices ample discretion to decide on the basis of their ideological preferences. This leaves outcomes roughly reflecting the ideological tenor of the Court, and these signals are sent back to litigants considering future appeals and to lower courts as well.

Empirical Analysis

Data and Variables

To test these competing perspectives, we have updated and backdated the Richards-Kritzer free expression data—which originally covered the 1953–97 terms—to range from the 1946 to 2004 terms. The data cover the Vinson, Warren, Burger, and Rehnquist Courts.[6] Instead of examining change over two distinct time spans (pre- versus post-*Grayned*), we break up our newly expanded time frame into five time periods (discussed below), which provides the potential of uncovering different dynamic processes. Given our emphasis on types of substantive effects—both longitudinal and relative comparisons—that are central to explaining legal dynamics, we think our approach is capable of uncovering unique substantive insights building on past work.

The data consist of 628 cases over 59 terms. The dependent variable is the *case outcome* produced by the Court (1 = liberal [pro-expression], 0 = conservative [anti-expression, pro-government]). The key independent variable is the jurisprudential category, which Richards and Kritzer (2002) operationalize as a four-category nominal variable for whether a case involves a content-based regulation (CB), a content-neutral regulation (CN), a less protected expression (LP), or fails to meet the threshold for First Amendment protection (FM). Recall that the latter two categories are the exceptions categories to the two-track regime. Because of the very low number of FM cases in the data (34) and because the dependent variable for FM cases does not vary within certain time periods, we were forced to exclude these cases from the data. Henceforth, what we have called the "exceptions categories" should be applied to the LP category only. An alternative was to combine FM and LP cases (both exceptions categories), which generates very similar substantive conclusions.[7] Our jurisprudential variable, then, consists of three categories (CB, CN, and LP).

Our central empirical goal is to generate the two types of effects concerning the jurisprudential categories over several time spans. If we had thousands of cases over time and a sizable number of cases per year and per jurisprudential category, we could estimate year-level effects of these dummies and then track them to ascertain their dynamic nature. Data limitations preclude this approach, given the small number of cases for some jurisprudential categories within certain eras.[8] The empirical challenge, then, is balancing the necessity of employing a temporal unit that gives us a sufficient number of time spans to allow us to test competing perspectives of legal change with the necessity of specifying time spans that contain a sufficient number of cases per jurisprudential category in order to make meaningful generalizations for each time period. Thus, our goal is to use a temporal unit that is not an arbitrary collection of years but instead represents a substantively meaningful subset of Court terms where membership and ideological change were low—as close to a natural court as possible. The solution we adopt balances these considerations by separating the 1946–2004 time period into five relatively cohesive "chief justice time periods": (1) the Vinson Court (1946–52 terms), (2) the "first" Warren Court (1953–61),[9] (3) the "second" Warren Court all the way up to the *Grayned* and *Mosley* decisions (1962–71),[10] (4) the Burger Court from *Grayned*

[6] In updating and backdating the data, we followed the case selection procedures in Richards and Kritzer (2002, 312), selecting cases that "presented a free press, free expression, or free speech issue" using the Supreme Court Database (Spaeth et al. 2011). The supporting information outlines the rules we used for updating and backdating the data and includes illustrative examples for most of the variables.

[7] In response to Lax and Rader (2010), Kritzer and Richards (2010, 286) downplay the importance of FM cases, stating that they "had not hypothesized and did not find the threshold not met variable to be conditioned by the [*Grayned*] regime."

[8] For instance, the number of cases pre-*Grayned* is CB = 181, CN = 15, and LP = 57; the number of cases post-*Grayned* is CB = 189, CN = 41, and LP = 145.

[9] The "second Warren Court" was much more liberal in general than the "first Warren Court." Since our goal is to group together cohesive eras, we separate these two eras.

[10] The *Grayned* and *Mosley* decisions, which are excluded from the data set, were announced on June 26, 1972 (toward the end of the 1971 term). For the 1971 term, eight decisions precede *Grayned* and

and *Mosley* onward (1971–85), and (5) the Rehnquist Court (1986–2004). These time periods represent relatively cohesive eras in terms of the nature of policy outputs and membership turnover and replacement. Note how our approach differs from Pang et al. (2012), who allow the data to determine where cutpoints have the highest probability of occurring. While we take no position on which is superior, we see our approach as necessary for testing the key substantive effects we have placed at the center of the analysis.

Control Variables. While the chief justice period dummies present one means of accounting for the Court's ideology, we employ an additional control, which we measure using the Martin-Quinn (MQ; 2002) score for the median justice in a given term.[11] This measure is essentially controlling for residual variation—primarily within chief justice eras—not accounted for by the chief justice time period dummies. Richards and Kritzer (2002) use Segal-Cover (1989) scores, though results using those scores (yearly medians) produce substantively similar results. The types of differences between ideology measures are not as likely to manifest themselves in a case-level analysis like ours relative to a justice-vote analysis. We need to control for changes in the Court's ideological tenor across years, and using the Court's median justice over time, in addition to the time period dummies, accounts for such changes.

Case facts variables employed by Richards and Kritzer (2002) and subsequent studies are also included, which control for the type of action involved, the level of government making the regulation, and the identity of the individual engaging in expression.[12]

Model Specification

The goal of our empirical model is to generate the probability of a pro-expression (liberal) case outcome for each jurisprudential category for each of the five time periods and then communicate (1) longitudinal comparisons for each jurisprudential category and (2) relative differences between jurisprudential categories for each time period. To do so, we employ a two-level hierarchical random intercept logit model via maximum likelihood estimation. The Court's cases (level-1 units) are nested within the Court's annual terms (level-2 units). Since this framework explicitly recognizes that cases are not necessarily independent but are grouped within terms, concerns regarding the observational independence assumption raised by Lax and Rader (2010) are alleviated. Another value of the random intercept model is that it accounts for unobserved year-level heterogeneity in case outcomes, which enhances model specification and generates more accurate estimates of the core parameters of interest.

For the jurisprudential variable, we include the CB and CN dummies; LP is the baseline (excluded) category. To generate time-period-specific effects of the jurisprudential variables, as well as predicted probabilities, we include (1) dummy variables for four of the five time periods (Vinson, Warren 1, Warren 2, and Rehnquist; Burger is the baseline); and (2) interactions between each of the time period dummies and each jurisprudential dummy. As mentioned, we also include controls for median ideology and the additional case facts variables specified by Richards and Kritzer (2002).

Results

Our core results are displayed graphically in Figures 1 and 2, which rely on post-estimation predicted probabilities to show both the substantive and statistical significance of the effects we intend to communicate. Table 1, which we will return to in the discussion section, provides a summary of our results. Table A1 in the appendix includes the full model results, and Table A2 displays the results communicating relative differences between jurisprudential categories for each of the five time periods.[13] As shown in Table A1, model fit is good; the likelihood ratio test shows

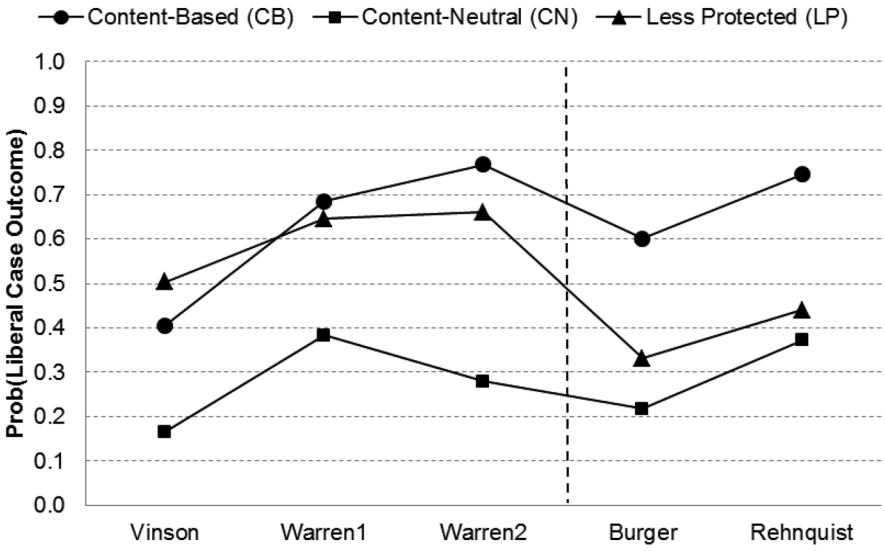
Mosley, and eight decisions come after *Grayned* and *Mosley*. Thus, our "second Warren Court" time span overlaps with the first 2½ terms of the Burger Court (1969, 1970, half of the 1971 decisions), and our "Burger Court" time span begins 2½ terms into the actual Burger Court. We wanted to make sure that *Grayned* and *Mosley* marked the end of one time span and the beginning of another.

[11]Debates about "who controls the majority opinion" (e.g., Bonneau et al. 2007; Carrubba et al. 2012) are not necessarily relevant to our analysis. We simply require a measure of the Court's ideological tenor, yet the question of who owns the majority is a *consequence* of the vote on the merits. Thus, who is the median of the majority (and who is in the majority to begin with) and who is opinion author are the results of the conference vote and are finalized once all the justices cast their final votes. We would therefore not want to include ideology measures of the median of the majority or opinion author as an independent variable in our analysis.

[12]Section B of the supporting information includes a further discussion of these case facts as well as a discussion of the results regarding their effects in our statistical model.

[13]The results in Table A2 were generated by changing the baselines for both the jurisprudential variable and the time periods. Results from Table A2 are logit coefficient analogues to the results from Figure 2B, which report changes in the probability of a liberal outcome.

FIGURE 1 Predicted Probability of a Liberal Case Outcome Across Timespans, by Jurisprudential Category



Note: The dashed, vertical line between Warren 2 and Burger represents the *Grayned* rulings.

that the random intercept model is statistically superior to a reduced, pooled logit model.

We discuss our results in three subsections. We first discuss general patterns regarding *relative orderings of jurisprudential categories over time* contained in Figure 1, which displays the predicted probability of a liberal case outcome by jurisprudential category and by time period; Figure 1 also facilitates discussion for the next two subsections. Second, we will discuss the *longitudinal differences* in Figure 2A, which displays the change in the probability of a liberal case outcome from one time period to the next for each jurisprudential category. Note that Figure 2A focuses on changes between a particular time period and the period directly preceding it (e.g., Burger–Warren 2), as opposed to comparing a time period with another period two or more periods before. Third, we discuss the *relative differences* between categories for each time period in Figure 2B, which displays the difference in the probability of a liberal case outcome for each jurisprudential category pairing for each time period. Figures 2A and 2B present the substantive size and statistical significance of each type of effect. In each graph, the dot represents the point estimate (the change in predicted probabilities), and the horizontal lines through each dot represent 95% confidence intervals.[14] If the vertical "zero" line falls outside of the confidence interval, the difference is statistically significant.

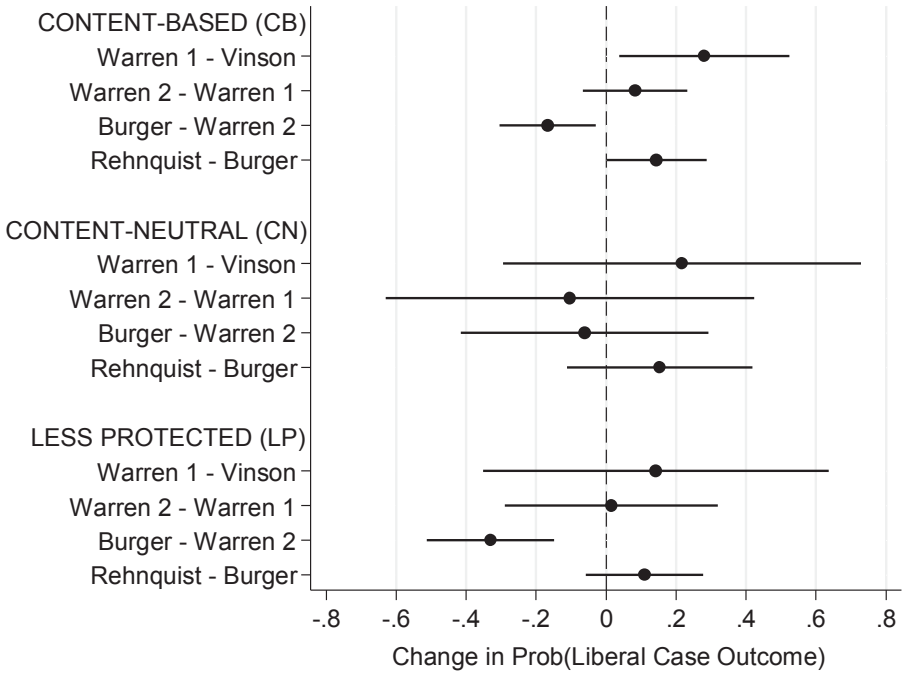
Relative Orderings of Jurisprudential Categories over Time

Figure 1 (and Appendix Table A2) shows that in all time periods except for the Vinson Court, the relative ordering of the jurisprudential categories in the probability of a liberal case outcome is stable. CB cases maintain the highest probability of a liberal outcome compared to CN and LP cases, suggesting that since the Warren Court, the Court has consistently given the most protection to expression governed by content-based restrictions. During Vinson, there are only four LP cases, which partly explains the anomaly of those results; CB cases still elicited a significantly higher liberal propensity than CN cases. Given that *Grayned* purportedly assigned intermediate scrutiny to CN regulations, the JRT Relative Comparisons Hypothesis (a) implies that these cases will receive the second highest degree of protection in the Burger and Rehnquist periods following *Grayned* and LP cases will possess the lowest probability of a pro-expression ruling given the low degree of scrutiny supposedly applied to restrictions of traditionally less protected forms of expression. This is

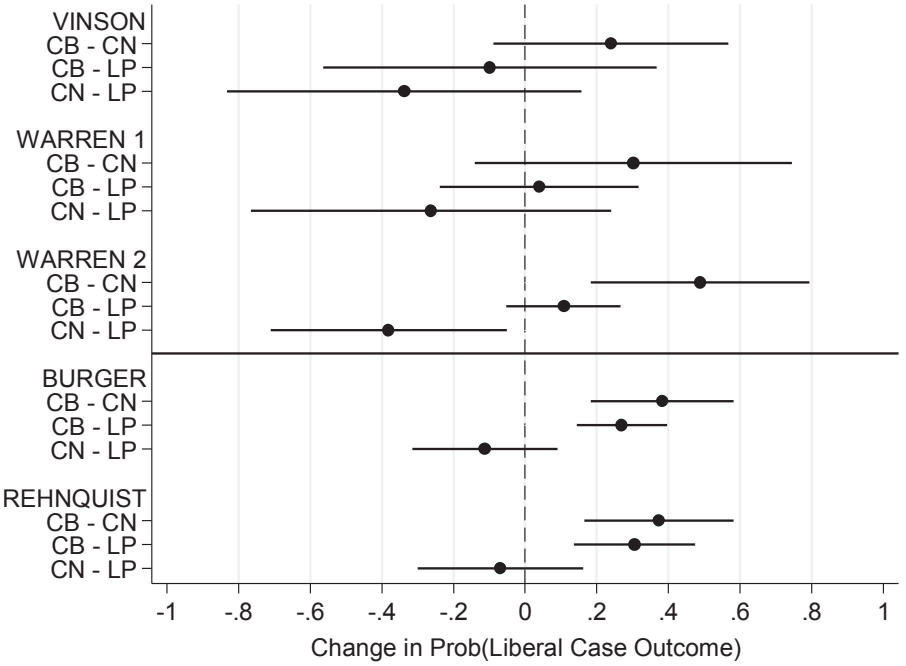
[14]Predicted probabilities and differences were calculated using average partial effects (see, e.g., Wooldridge 2005; see also Gelman and Hill 2007; Hanmer and Kalkan 2013) in which one sets the variable(s) of interest at particular values and then averages over both the unobserved heterogeneity and the observed variables as well. Standard errors in Figure 2 are calculated using post-estimation parameter simulation akin to the Clarify procedure (King, Tomz, and Wittenberg 2000).

FIGURE 2 Model Results

A. Longitudinal Differences in Predicted Probabilities Between Successive Timespans for Each Jurisprudential Category



B. Relative Differences in Predicted Probabilities Between Jurisprudential Categories



Note A: Recall that the *Grayned* ruling is relevant to the "Burger – Warren 2" comparison.
Note B: CB=Content-based; CN=Content-neutral; LP=Less Protected. The solid, horizontal line between Warren 2 and Burger represents the *Grayned* ruling.

not the case, however, and provides evidence against this component of JRT.

In support of the legal stability perspective, the findings suggest that the Court has consistently applied a lower level of scrutiny than intermediate to CN regulations (e.g., Ducat 2013). Moreover, there is no substantial change across time—since Warren 1—in the relative orderings of the jurisprudential categories, lending considerable evidence to the Relative Comparisons Hypothesis (a) from the legal stability perspective. This evidence supports our prior discussion of how the Court has long recognized the legal distinctions between content-based and content-neutral regulations and has done so consistently, even before *Grayned* and even in the face of ideological change from the Warren to Burger to Rehnquist eras. We certainly do not see drastic, JRT-like change in the Court's relative treatment of these categories.

Longitudinal Differences for Each Jurisprudential Category

Figures 1 and 2A display the substantive nature of the longitudinal effects and changes across the five time periods. When looking at across-time changes for CB cases, Figure 1 shows that the probability of a liberal case outcome increases substantially—nearly doubles—from Vinson to Warren 2. The top third of Figure 2A shows that the change from Vinson to Warren 1 (the plot for "Warren 1–Vinson") is statistically significant, while the smaller change from Warren 1 to Warren 2 is not. Contrary to JRT Longitudinal Hypothesis (a), Figure 1 shows that the probability of a liberal case outcome actually *decreases* in the Burger period immediately following *Grayned*, and this decrease is statistically significant (see "Burger–Warren 2" in Figure 2A). This steady increase from Vinson to Warren 2 is reflective of a more evolutionary dynamic. But the significant decrease from Warren 2 to Burger—between the two time periods separated by *Grayned*—suggests a sudden change in the opposite direction than Richards and Kritzer's prediction.

Despite this pattern, we note that even during the Burger era, as seen in Figure 1, the Court's liberal behavior in CB cases is still quite high (predicted prob[liberal case outcome] = .60), even in the face of the increasing number of Republican appointees to the Court. Moreover, Figure 1 shows that the liberal probability for CB cases increases substantially (to roughly .75) from the Burger to the Rehnquist Court, a change that is statistically significant (Figure 2A). Of course, the Court during the Rehnquist era became even more increasingly staffed by Republican appointees. Thus, we see that the Court, even after becoming more conservative after *Grayned*, has maintained a high degree of protection for expression restricted by content-based regulations.[15] While we do not see a pattern reflective of regime change vis-à-vis JRT, the findings suggest a degree of constraint by long-standing legal doctrine that content-based regulations of expression should receive high levels of scrutiny and thus have a high likelihood of being struck down. The findings support our general contention that even in the face of ideological change induced by membership change, the speed of evolutionary change will be quite low when the Court issues a prescriptive legal standard, which, our results imply, the Court has seemingly done with content-based restrictions.

Moving to the longitudinal trends for CN cases, Figure 1 shows that the probability of a liberal case outcome is relatively low across all five periods. It was lowest in the Vinson era and then hovered between .20 and .40 in the remaining eras. None of the differences between successive periods are statistically significant, providing evidence against JRT Longitudinal Hypothesis (b) and in favor of a legal stability perspective, which suggests that once the Court prescribes a legal standard, particularly one that is quite prescriptive, we should expect to see relative stability. Once again, the results suggest that the Court has long applied a fairly low level of scrutiny to CN cases, which means it has given a good degree of deference to the government in these cases.

Figure 2A uncovers interesting dynamic changes for LP cases. LP cases were decided in an increasingly liberal fashion from Vinson to Warren 2. Liberalism in this category peaks during Warren 2, and then there is a dramatic and statistically significant decrease—from .66 to .33—in the probability of a liberal case outcome from Warren 2 to the Burger period immediately following *Grayned*; this probability increases somewhat in the Rehnquist period, though the difference from Burger to Rehnquist is statistically insignificant. Overall, this finding is consistent with JRT Longitudinal Hypothesis (c) and the notion that traditionally less protected categories of speech were to be granted a lower degree of protection.[16] While this significant change occurs as the Court becomes increasingly conservative, we contend that this result, in

[15] One speculation is that conservatives on the Rehnquist Court have been using the "liberal" strict scrutiny standard to advance more Republican or conservative policies. Investigating the occurrence and frequency as well as the impact of this potential phenomenon is beyond the scope of the present article since our main goal is to confront the conflicting findings resulting from Richards and Kritzer (2002).

[16] *Miller v. California* (1973) also accorded a very low degree of constitutional protection to this type of expression.

conjunction with the longitudinal effect for CB cases (in which the Court maintains relatively high liberal propensities even after *Grayned*), cannot be due solely to membership change.

Relative Differences between Jurisprudential Categories

To help explain these results from the last paragraph, we turn to the relative comparisons results for CB versus LP in Figures 1 and 2B (and Table A2). Note that the gulf between CB and LP cases in the probability of a liberal case outcome is nearly indistinguishable during the Vinson and Warren 1 eras; the differences are not statistically significant, as seen in Figure 2B. From Warren 2 to Burger to Rehnquist, this gulf steadily increases, and it is statistically significant in the Burger period immediately following *Grayned* as well as in the Rehnquist period. In fact, the difference between CB and LP cases more than doubles (from .11 to .27) from the Warren 2 period immediately preceding *Grayned* to the Burger period immediately following *Grayned*. The Court appears to treat CB cases and LP cases significantly differently *only* during the periods immediately following *Grayned*, whereas in the three periods before *Grayned*, this difference is insignificant. This pattern reflects a drastic change that is consistent with JRT—and the associated Relative Comparisons Hypothesis (b)—that *Grayned* significantly differentiated the degree of constitutional protection to CB versus LP cases. It continued to grant CB cases a high degree of scrutiny while significantly lowering the degree of scrutiny given to LP cases.

Figures 1 and 2B show how the difference between CB and CN cases is substantively large for all time periods and statistically significant for Warren 2, Burger, and Rehnquist. From Warren 2 (prior to *Grayned*) onward, this gulf remains quite stable over time. The Court's differential treatment of CB versus CN cases is not significantly altered by *Grayned*, thereby providing evidence against JRT Relative Comparisons Hypothesis (c).[17] The results seem to support our prior contention that the Court has consistently treated these cases in different ways—even well before *Grayned* and regardless of membership change—clearly demonstrating its willingness to strike down content-based restrictions of expressions at a higher rate than content-neutral restrictions. The findings are mostly consistent with a stability perspective, though they are reflective of a low degree of evolutionary change from Vinson to Warren 2. Once the Court applies legal standards to categories, which the Court appears to have done very early on with CB and CN categories, the gap in outcome propensities between the categories will remain quite stable over time. The foundations of the two-track regime differentiating CB and CN regulations were implemented long before *Grayned*, as we argued earlier, and the Court has consistently sought to maintain distinctions between these categories over time.

As seen in Figure 2B, the difference between CN and LP cases is significant in just one time span, Warren 2, where the Court was significantly less likely to issue a liberal outcome in CN cases relative to LP cases. The direction of this effect is consistent across time spans, and interestingly, in the two periods after *Grayned*, the difference is small and statistically insignificant. While this reflects a substantial change, the evidence is not supportive of JRT (Relative Comparisons Hypothesis [d]). The pattern reflects the Court reigning in LP cases and generally giving this type of expression lower protection (hence the lower liberal propensity) in the periods after *Grayned*. But, as discussed, LP cases continue to possess a higher likelihood of a liberal outcome than CN cases even after *Grayned*, which is again inconsistent with what Richards and Kritzer (2002) predict, given that *Grayned* purportedly accorded CN regulations intermediate scrutiny and the LP category should be given a lower degree of scrutiny.

Discussion and Conclusion

Table 1 summarizes the seven key pieces of evidence we have presented and whether each piece is consistent with JRT, evolutionary change, or legal stability. As is clear from our preceding discussion and Table 1, the evidence on the whole neither completely refutes Richards and Kritzer's (2002) findings in free expression law of drastic and significant regime change nor provides a smoking gun for either an evolutionary approach or legal stability. As summarized in Table 1, we have presented two key pieces of evidence that are consistent with JRT-like regime change, yet five other pieces of evidence suggest either evolutionary change or stability. What our approach makes clear—and what prior work does not—is that multiple pieces of evidence may exist that do not necessarily support a unified story of legal change. Thus, our results suggest that the question going forward is not whether jurisprudential regimes exist, per se. Instead, we should focus on which of the several empirical findings comports with different processes of legal change. Legal change over many years is complex and nuanced. The Supreme Court

[17] The interaction representing the difference of the difference between CB and CN cases from Warren 2 to Burger is statistically insignificant.

TABLE 1 Summary of Results

Finding	Evidence Consistent With What Type of Legal Change?
Relative Orderings of Jurisprudential Categories Over Time	
1. Since Warren 1, CB>LP>CN	Stability; inconsistent with jurisprudential regimes
Longitudinal Differences for Each Jurisprudential Category	
2. CB: Increasing liberalism from Vinson to Warren 2; then significant *decrease* after *Grayned*; significant increase from Burger to Rehnquist period	Mix of evolutionary change mixed with drastic change *inconsistent* with JRT; though the Court is consistently protective of expression governed by content-based regulations
3. CN: Low liberalism across all periods; no significant changes	Stability
4. LP: Significant decrease in liberalism after *Grayned*	Jurisprudential regimes
Relative Differences Between Jurisprudential Categories	
5. CB>CN for all time periods; statistically significant from Warren 2 (i.e., pre-*Grayned*) onward	Mostly stability, some evolutionary change from Vinson to Warren 2
6. Gulf between CB and LP cases becomes large (CB>LP) and significant only after *Grayned*	Jurisprudential regimes
7. Gap between CN and LP significant in the period before *Grayned* but not significant in the two periods following *Grayned*	Drastic after *Grayned*, but not supportive of JRT expectations

Note: CB = Content-based; CN = Content-neutral; LP = Less Protected. When we use the "greater-than" symbol (i.e., >), we mean "more *liberally* decided" by the Court.

can produce drastic change in one facet of an issue, induce evolutionary change on another facet, and impose legal stability on yet another facet—all within the same issue area. Our argument is that only when one looks at these various facets separately—examining longitudinal and relative comparisons—can we get a complete story of legal change, even if it is nuanced, with evidence potentially supporting multiple processes of legal change.

A major theme of this article has been that evidence in favor of one type of dynamic process is not necessarily a sufficient condition for concluding legal constraint or influence. In contrast to Lax and Rader (2010), we again stress that dynamics inconsistent with JRT do not necessarily foreclose the influence of legal doctrine. Regardless of how legal change occurs—be it JRT-like change, evolutionary change, or stability—it is still possible to witness legal influence and constraint. The key is to analyze and interpret how the Court treats different legal categories and how those patterns change over time. Regardless of whether certain pieces of evidence are consistent with JRT, some of those pieces clearly show Court behavior conforming to legal doctrine. For example, our evidence suggests that the Court has long distinguished content-based and content-neutral restrictions, applying different levels of scrutiny to each category consistently over time. This legal stability would be consistent with a legal constraint perspective. We also found that the Court only began significantly differentiating CB and LP cases in the time period following *Grayned*, which is consistent with JRT. And even in the face of conservative membership change (during the Burger and Rehnquist Courts), the Court has decided CB cases in a relatively liberal manner. After *Grayned*, the Court has decided LP cases significantly less liberally, in line with JRT expectations. This evidence is also consistent with legal constraint, but it happens in a different manner as a result of a shift in legal doctrine. After that shift, the Court seems to be constrained by the new doctrine.

This aspect of our work stresses the importance of differentiating *legal change* from the *impact of law on behavior*, yet also recognizing that these aspects must be analyzed in conjunction with each other. Our focus has been on the former in order to sort out the dynamics underlying the Court's outcomes, but our findings have implications for the latter aspect as well. Of course, in order to analyze this latter aspect, a justice-level analysis is called for, but it must recognize the dynamic nature underlying the Court's decisions in order to truly understand the nature and degree to which justices are constrained by legal doctrine.

While our analysis and findings will surely not be the last word on this topic, we believe our theoretical and

analytical framework and empirical examination have provided a substantial step forward in the study of both legal dynamics and the role of law more generally in Supreme Court decision making. Our general approach can provide a launching pad for further empirically rigorous examinations of this topic and can be applied to most issue areas. Indeed, examining the subtle and not-so-subtle changes that occur in the complex world of Supreme Court decision making, where legal change can take on different dynamic paths, is a topic certainly worthy of much additional inquiry.

Appendix

TABLE A1 Random Intercept Model Results Explaining Case Outcomes, Free Expression Data, 1946–2004 Terms

Variable	Coef.	SE	p
Median Ideology	5.60	(1.99)	0.01
Juris. Category (Baseline = Less Protected (LP))			
Content-based (CB)	1.46	(0.38)	0.00
Content-neutral (CN)	−0.78	(0.74)	0.30
Time Period (Baseline = Burger)			
Vinson	0.97	(1.37)	0.48
Warren 1	1.51	(0.84)	0.07
Warren 2	0.76	(0.63)	0.23
Rehnquist	0.64	(0.48)	0.19
Juris. Category by Time Period Interactions			
CB × Vinson	−2.03	(1.50)	0.18
CN × Vinson	−1.64	(1.94)	0.40
CB × Warren 1	−1.25	(0.90)	0.16
CN × Warren 1	−0.84	(1.78)	0.64
CB × Warren 2	−0.75	(0.64)	0.24
CN × Warren 2	−1.78	(1.41)	0.21
CB × Rehnquist	0.18	(0.56)	0.75
CN × Rehnquist	0.40	(0.97)	0.68
Type of Action (Baseline = Civil)			
Criminal	0.87	(0.37)	0.02
Deny expression	0.86	(0.40)	0.03
Deny benefit	−0.53	(0.50)	0.28
Disciplinary	2.51	(0.79)	0.00
Lose employment	0.09	(0.53)	0.87
Regulation	0.63	(0.52)	0.22
Government (Baseline = State)			
Other	−0.59	(1.56)	0.71
Private	−0.29	(0.50)	0.56
Education	−1.04	(0.58)	0.07
Local	−0.18	(0.31)	0.57
Federal	−0.88	(0.26)	0.00
Identity of Speaker (Baseline = Other)			
Politician	0.20	(0.70)	0.78
Racial minority	1.51	(0.59)	0.01
Alleged communist	0.49	(0.43)	0.25
Military protester	−0.56	(0.68)	0.40
Business	0.50	(0.32)	0.12
Religious	1.53	(0.60)	0.01
Print media	0.99	(0.41)	0.02
Broadcast media	0.57	(0.46)	0.21
Intercept	−5.43	(1.53)	0.00

Note: Number of cases = 628; number of years = 59. LR test of random intercept model versus pooled logit: $\chi^2 = 9.71$, $p < .001$.

TABLE A2 Results Showing Relative Differences between Jurisprudential Categories for Each Time Period

	Coef.	SE	p
Vinson			
CB (relative to CN)	1.84	(1.38)	0.18
CB (relative to LP)	−0.57	(1.44)	0.69
CN (relative to LP)	−2.41	(1.81)	0.18
Warren 1			
CB (relative to CN)	1.83	(1.49)	0.22
CB (relative to LP)	0.21	(0.85)	0.80
CN (relative to LP)	−1.62	(1.63)	0.32
Warren 2			
CB (relative to CN)	3.26	(1.18)	0.01
CB (relative to LP)	0.71	(0.55)	0.20
CN (relative to LP)	−2.55	(1.22)	0.04
Burger			
CB (relative to CN)	2.24	(0.74)	0.00
CB (relative to LP)	1.46	(0.38)	0.00
CN (relative to LP)	−0.78	(0.74)	0.30
Rehnquist			
CB (relative to CN)	2.01	(0.61)	0.00
CB (relative to LP)	1.64	(0.48)	0.00
CN (relative to LP)	−0.37	(0.63)	0.55

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

Section A: Further Justification for Analyzing Case Outcomes over Justices' Votes
Section B: Coding Rules for Updating and Backdating Data from Richards and Kritzer (2002)