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Determining Factors in Perceptions of Judicial Greatness

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While rankings of presidents are quite common, rankings of Supreme Court justices are much rarer. Herein we produce such rankings to see if perceived greatness on the High Court can be predicted. We do so by examining influences that indicate historical greatness for Supreme Court Justices. To accomplish this we develop a composite greatness score of all the Supreme Court Justices based on the limited previous research on the subject. Next, we examine potential determinants of such success; the time period when they sat on the Court, the length of their tenure, status as the Chief Justice, perception of quality of opinions, and the perceived quality of their appointing president. While some past research finds (limited) evidence that great presidents choose better Justices than mediocre ones, we find that more important indicators of judicial rank are longevity on the Court, serving as Chief Justice and being recognized as an important dissenter.

Introduction

Despite the inherent subjectivity of this undertaking, presidential scholars have long embraced the notion that presidents not only could, but should, be ranked in terms of historical greatness. Predominantly absent in the literature on Supreme Court justices is the same sort of analysis. Abraham (2008) draws attention to studies that began the process by categorizing justices based on some measure of quality, and others have ranked various subsets of justices (the various "Courts" i.e. "the Warren Court") based on their historical impact. In this work we elevate the study of justices on the Supreme Court to the same plane as chief executives by producing a comprehensive ranking of all Supreme Court justices. Further, we examine explanations of perceptions of judicial greatness. We ultimately present a model that describes attributes that highly ranked justices share, providing insight into the concept of what greatness on the Supreme Court is perceived to be. This model represents the most comprehensive yet of perceptions of judicial greatness, and these findings reveal the qualities desired in Supreme Court justices by political scientists, lawyers and law professors. Examining why these are desired attributes becomes the final point of analysis.

We approach this unique question by examining multiple factors that influence judicial greatness. First we explore the relationship between presidential greatness and those justices they appoint to the Supreme Court. We next examine what effect judicial activities have on judicial legacies. Here we account for the time period in which a justice served, the length of his or her tenure on the Court and his or her opinion acumen. Finally we look to institutional status and political effects to produce a well-rounded explanation of judicial greatness.

A Link Between Presidential Greatness and Judicial Quality?

We begin with the assumption that there is a historical relationship beyond each Supreme Court justice and the president who appoints them. However, research in this area overwhelmingly focuses on the ideological relationship between justices and presidents. This work, however, aims to extend presidential-judicial research by incorporating considerations of quality as a component of the presidential-judicial relationship.

Perhaps the first major examination of a potential link between presidential and judicial greatness comes from Richard Funston (1977). Appropriately titled "Great Presidents, Great Justices?" Funston explored correlations between presidents' prestige and the justices they appointed to the Court. Justices were classified into one of five historical groups: Great, Near Great, Average, Below Average, or Failure. The study examined presidents prior to President Kennedy and Justices who preceded Warren Burger. He found "no correlation between presidential greatness and the ability to secure the appointment of quality justices" (Funston 1977, 197). In fact, he finds that presidents in the "below average" group appointed the justices of the highest mean prestige. Funston also determined that justices classified as "failures" where appointed by presidents with a higher mean prestige rating than those classified as "great." In summation he observed that "not only are 'great' presidents not significantly more likely to select 'great' justices than are poor presidents, but also the 'great justices do not tend to have been selected by 'great' presidents" (Funston 1977, 197).

Herein we attempt to enhance Funston's work in several distinct ways. First we seek to address his core question with the benefit of an additional half century of data. Next, we attempt to explain what factors do have an impact on judicial greatness if in fact the quality of president appointing the justice is not one of them. Addressing both elements allows our work to update previous findings of a fluid nature (perceptions of presidential and

judicial quality are open to historical reevaluation, often changing over time) and add to the literature that explores specific elements that affect perceptions of Supreme Court justice quality.

Theoretical Developments in the Ranking of Supreme Court Justices

Like presidential rankings, one of the biggest challenges in attempting to rank Supreme Court justices is identifying the criteria to be used to make such a determination. Complicating the matter of ranking justices is the fact there are a far greater number of justices than presidents, and certainly many more historically obscure ones. Previously, this ambiguity led to incomplete examinations of only selected justices or Court "eras." This less comprehensive approach is partially responsible for the need of studies such as this one.

Abraham and others suggest that the first comprehensive attempt to rank all of the Supreme Court justices was carried out in 1970 by Blaustein and Mersky (Abraham 2008). *The First One Hundred Justices* reports the result of a survey of law school deans and professors of law, history, and politics. The survey asked respondents to evaluate justices as belonging in one of five categories: "Great", "Near Great", "Average", "Below Average", and "Failure." This survey captured the attention of many who followed the Court, leading to numerous articles identifying the ten best justices.

Bradley (1993) presented a list of great justices in "Who Are the Great Justices and What Criteria did They Meet?" Bradley's list featured John Marshall, Oliver Wendell Holmes, Earl Warren, Louis Brandeis, and William Brennan as the top five justices (Bradley 1993). He took the approach of classifying the evaluators by their professional identities - judges, attorneys, and students. Interestingly, the results were fairly consistent across all groups of evaluators. Bernard Schwartz's (1999) *A Book of Legal List: The Best and Worst in American Law* aims to identify the ten best and ten worst justices of all time. Yet again the findings are "closely conforming to the general view of the other rankers" (Abraham 2008, 343). This consistency of rankings parallels what is observed in describing the various presidential surveys.

Pederson and Provizer (2003) provide a comprehensive overview of the topic and suggest that leadership and greatness on the Court are contained in the following ideas: clarity in writing in terms of establishing reasoned guidelines for lower courts, consistency of principles with a willingness to reevaluate the past, initiative in shaping public opinion, the ability to build

consensus on the court, specific assistance to the legal profession, and the lasting impact of the principles espoused (Pederson and Provizer 2003). Ultimately they describe the leadership qualities that led to the greatness of sixteen justices from John Marshall to Sandra Day O'Connor.

Comiskey (2004) offers a more complex ranking system. Using survey data, he sought to determine the effect that increasingly hostile Senate confirmation battles were having on the perception of justice quality. He does so by comparing the rankings of more modern justices to those who served early in the 20th century. He finds that judges who served before 1967 are, on average, ranked lower in survey responses of judicial quality and that post-1967 appointments are consistently ranked higher. In short, Comiskey suggests that methodologically comparing justices against the mean ranking of their era is the best way to determine their overall value.

These works collectively highlight the difficulty of ranking Supreme Court justices. Given the relative obscurity of the early Court, the low profile of some justices, and perhaps some recency bias, ranking justices based on quality has proven complex. Many studies have attempted to rank some subset of justices; few have tried to rank them all. We join the latter group and explore additional factors that lead to an individual justice's placement in the rankings.

Factors that Impact Perceptions of Judicial Greatness

If in fact presidential quality has no discernable impact on judicial quality as previous studies suggest (a finding we seek to verify) then what factors do affect perceptions of judicial greatness? The following studies examined this question and contributed to our model of Supreme Court greatness.

Caldeira (1988) relied on the previously described Blaustein and Mersky ratings to test various hypotheses of influences on perceptions of judicial quality. Perhaps his most prominent finding was that prior judicial experience before serving on the Court was not correlated with judicial greatness. His findings supported the notion that there was no relationship between presidential greatness and judicial quality. Instead, certain types of judicial activity on the Court had the greatest impact on one's ranking. "Writing important opinions, forming a reputation as a dissenter, serving as chief justice- had a great deal to do with the evaluation received from the panel of experts" (Caldeira 1988, 261). Caldeira provides additional

components to be tested in our model and also provides theoretical comfort to those skeptical of ranking justices in the first place. We suspect it likely that most would think that a justice *should* be ranked based on their accomplishments on the Court (as opposed to external factors), and Caldeira's work suggests that this is in fact taking place.

As previously mentioned, Comiskey (2004) found that judges prior to 1967 were ranked lower in surveys of judicial quality compared with post-1967 appointments. Accounting for this notion of "era" impacting perceptions of judicial quality is essential. McGuire (2004) furthered this notion by describing the Court's changing role in American policy formation over time, arguing that as the Court became more ingrained to the federal policy-making structure, justices were more empowered to satisfy their own objectives. McGuire also notes that in terms of individual judicial influence the Court's institutional setting at the time had considerable implications for the justice's political impact. Considering that legal and political impact are directly correlated with perceptions of judicial quality overall, it becomes clear that a measure of the era in which a justice served must be accounted for in our model of judicial greatness.

Still others have examined whether tenure on the Court or justice age affects a justice's legacy. Kosma (1998) measured over a million citations from 1793-1991 to determine that, contrary to conventional wisdom, older appointees had been no less influential than young appointees; in fact the opposite was true. Despite perception during the Rehnquist Court era that the justices were serving to much older ages, McGuire (2005) found that justice age at appointment and retirement remained relatively unchanged from the nineteenth century to the present. Crowe and Karpowitz (2007) also found that while the average tenure of justices has increased, it was not modern justices were serving substantially longer terms. Instead they found that the increase in mean tenure was caused by the reduction in the number of justices serving short terms. For example, of the most recent twelve justices to leave the Court, not one served less than fifteen years. Prior to 1970 nearly one in three met the definition of being a short term justice (Crowe and Karpowitz 2007).

We account for these studies (and several more referenced below) when building our model of judicial greatness by including variables related to the justice's appointing president, the justices individual activities on the Court, and the elements of judicial era and tenure length. By incorporating each element, our model represents the most comprehensive model of perceptions

of judicial greatness yet. The results of our analysis are germane to determining both the qualities desired in Supreme Court justices in addition to the noteworthy task of providing a historical ranking the justices themselves.

Data and Methods

Ranking the Justices

The rankings of Supreme Court justices are based on an original dataset created for this project. We combine several previous efforts of ranking the justices in order to create a complete ranking of 108 justices who have served on the Court. We have labeled this variable *Justice Rank*, and it is used as the dependent variable in our analysis.

The first set of rankings we used is presented in Bader and Mersky's *The First One Hundred and Eight Justices* (2004). These rankings are the results of a poll of 65 members of the academic community in 1970.[1] This poll evaluated all justices who served from 1789 through the appointment of Thurgood Marshall in 1967. They evaluated 96 justices and divided those justices into five categories. They concluded that there were twelve "Great" justices, fifteen "Near Great" justices, fifty-five "Average" justices, and six "Below Average" justices, and eight "Failures." This provides a data point for 96 of the 108 justices ranked in our model.

Next, we considered the list of judicial quality as reported by Michael Comiskey in *Seeking Justices: The Judging of Supreme Court Nominees* (2004). Comiskey ranks the fifty-two justices serving on the Supreme Court from the appointment of Oliver Wendell Holmes in 1902 to the appointment of Stephen Breyer in 1994 using a survey of 128 law school and political science professors. Respondents were asked to rate justices on the quality of their legal reasoning, their ability to communicate their decisions clearly, and their leadership on the Court. Respondents to Comiskey's survey determined that Louis Brandeis to be the most highly rated justice. Potter Stewart was the median justice in this survey, and Charles Whittaker was the lowest rated justice.

Next, we incorporated the ranking of all Supreme Court justices from John Jay through Anthony Kennedy as presented by Epstein et al. (1992).

[1] See Bader and Mersky (2004) pp. 22-24 for a complete list of participants in the survey.

This list of judicial greatness was compiled via a comparison with leaders in statistical categories from the National Basketball Association. Noting the similarities between the two "courts," the authors highlighted ten measures of performance that indicated greatness in each field.[2] They determined that William O. Douglas was the top justice, Noah Swayne and Joseph Story the median justices, and Alfred Moore was the lowest rated justice.

Finally, we consider justice longevity in creating our dependent variable. Inevitably a justice who serves longer on the Supreme Court can have a greater impact on the Court. With this in mind we ranked the justices according to tenure length (as of January 2015) and include this in our measure of *Justice Rank*.

These four measures are aggregated and weighted to account for the fact that not all of the justices were ranked in each the studies. The first fifty-seven Supreme Court justices are not included in Comiskey's analysis, while Justices Souter, Thomas, Ginsburg and Breyer were not rated in Epstein et al.'s work (1992). The longevity variable accounts for all 108 justices in our model.[3]

Control Variables

To create the *Presidential Rank* variable we relied on several previous presidential rankings to measure the effect of presidential greatness. We make use of an aggregate measure that averages six unique presidential rankings.[4] There is a great deal of consistency among these rankings. The

[2] The ten categories with their basketball corollaries are the following: 1.) cases decided (*games played*) 2.) total opinions written (*points scored*) 3.) majority opinions written (*field goals made*) 4.) majority opinions written in significant cases (*three-point shots made*) 5.) signed majority opinion in significant cases (*assists*) 6.) concurrence blocking majority opinion formation (*blocked shots*) 7.) voting with the majority to overrule precedent (*steals*) 8.) dissenting votes in cases later overturned (*rebounds*) and 10.) books and articles written about the justices (*All NBA First or Second Team*).

[3] We must note that the appointments of Presidents George W. Bush (John Roberts and Samuel Alito) and Barack Obama (Sonia Sotomayor and Elena Kagan) are not included in our analysis due to their relative lack of experience on the court and a lack of consensus about their job performance; however, we will discuss their placement among the other justices in the conclusion of this paper.

[4] The presidential rankings averaged are from the United States Presidency Center (2011), The Siena University presidential rankings poll (2010), the 2008 presidential rankings released in *The Times,* the 2005 presidential rankings released by *The Wall Street Journal*, and two presidential rankings released by C-Span – one in 1999 and one in 2009. The presidential rankings averaged are from the United States Presidency Center (2011), The Siena University presidential rankings

rankings are highly and positively correlated with our aggregate presidential ranking. The mean correlation statistic for all six presidential rankings was .948. Table 1 displays the rank ordering of the forty-one chief executives in our study that makes up *Presidential Rank*.[5] Since we are expecting highly rated president to appoint greater Supreme Court justices, we propose the following hypothesis:

Hypothesis 1: An increase in the value Presidential Rank will result in an increase in the value of Judicial Rank.

Keep in mind that, since we are ranking both presidents and justices, the absolute values of the ranks of greater presidents and justices will be smaller. Therefore, if greater presidents choose greater justices, the coefficient in our model should be positive. The ranking of a given Supreme Court justice should increase (meaning he or she is not rated as highly as a justice rated 1st or 2nd, for example) as the ranking for that justice's nominating president increases.

Other factors exogenous to the effect of *Presidential Rank* on *Justice Rank* most certainly influence whether a Supreme Court justice is considered a great justice, and we control for several of these in our analysis. First, we include a variable measuring the *Appointing President's Number of Appointments* to control for its effect on justice quality. We expect that presidents will be more likely to select a great justice if they are given more opportunities to do so. This leads us to our second hypothesis:

poll (2010), the 2008 presidential rankings released in *The Times,* the 2005 presidential rankings released by *The Wall Street Journal*, and two presidential rankings released by C-Span – one in 1999 and one in 2009.

[5] Among the many helpful comments we received was an inquiry as to why there is no measure of Congressional greatness and whether one could be found. Ranking Congresses would be an interesting objective in its own right. However, we are unaware of any comprehensive rankings of Congress to use in our model. There are measures of Congressional productivity that theoretically could be used to rank Congresses, but no one has ranked Congresses based on this data. We are not sure that productivity can be used to measure 'great' Congresses. After all, the quality of legislation Congress produces may in no way match its quantity. We are also not sure if Congressional legislative productivity translates into better advice and consent on Supreme Court nominees. Future research should find whether greater Congressional legislative quantity translates into quality.

Table 1: Overall Ranking of the Presidents

Rank	President	Supreme Court Appointments
1	Washington, George	10
2	Lincoln, Abraham	5
3	Roosevelt, Franklin	8
4	Roosevelt, Theodore	3
5	Jefferson, Thomas	3
6	Truman, Harry	4
7	Eisenhower, Dwight	5
8	Wilson, Woodrow	3
9	Kennedy, John F.	2
10	Madison, James	2
11	Monroe, James	1
12	Jackson, Andrew	6
13	Johnson, Lyndon	2
14	Adams, John	3
15	Polk, James K.	2
16	Clinton, Bill	2
17	Reagan, Ronald	4
18	Adams, John Quincy	1
19	Cleveland, Grover	4
20	McKinley, William	1
21	Taft, William Howard	5
22	Bush, George H.W.	2
23	Ford, Gerald	1
24	Carter, Jimmy	0
25	Van Buren, Martin	2
26	Grant, Ulysses S.	4
27	Arthur, Chester A.	2
28	Hoover, Herbert	2
29	Garfield, James A.	1
30	Coolidge, Calvin	1
31	Hayes, Rutherford B.	2
32	Taylor, Zachary	0
33	Harrison, Benjamin	4
34	Nixon, Richard	4
35	Harrison, William Henry	0
36	Tyler, John	1
37	Fillmore, Millard	1
38	Johnson, Andrew	0
39	Pierce, Franklin	1
40	Harding, Warren	4
41	Buchanan, James	1

Hypothesis 2: An increase in the number of appointments a president has to the Supreme Court will result in a decrease in Justice Rank.

Second, we account for the theory that chief justices of the Supreme Court have been more highly regarded historically compared to associate

justices by including a dichotomous variable – *Chief Justice* – in the model. This is a binary variable that is coded as '1' for all Chief Justices and 0 otherwise. Based on the literature, we believe Chief Justices will be rated more highly (meaning they will have a lower value of *Justice Rank*) compared to associate justices.

Hypothesis 3: Chief Justices will have a lower value of Justice Rank compared to associate Justices.

Next we account for the length of time the justice sat on the Supreme Court. Our expectation is that justices who serve longer on the Supreme Court will be rated higher than justices who serve on the Court for shorter periods of time. This leads us to our fourth hypothesis:

Hypothesis 4: An increase in a justice's longevity on the Supreme Court will result in a lower value of Justice Rank.

Justice Longevity is measured by the number of terms a given justice sat, or has currently sat, on the Supreme Court. Although longevity is an endogenous factor in our dependent variable, we still decided to include a longevity measure due to its importance in determining judicial greatness. This does not create insurmountable problems in our analysis for two reasons. First, as discussed above, longevity was captured in our dependent variable to allow for a component of *Justice Rank* that contained a measure for all 108 justices in the study. Second, as discussed in the literature, longevity is endogenous to the ranking process in any event. After removing the longevity component from our dependent variable, it was still highly correlated with our longevity measure (r = .50). This leads us to conclude that the previous ratings used to measure the dependent variable also relied on longevity to estimate judicial greatness.[6]

We also include a measure of the era in which the justice served, *Historical Period.* This variable places the justices in one of five different historical categories. The first historical category groups together the Supreme Court nominees of George Washington and John Adams. The second category includes all justices nominated and confirmed from Thomas Jefferson to James Buchanan. The third category includes all justices

[6] We conducted several additional analyses and post-estimate diagnostics using different dependent variables and functional forms of our longevity variable, and the results of our analyses were generally similar to the results reported here.

nominated and confirmed from Abraham Lincoln to William McKinley. The fourth category includes all justices nominated and confirmed from Theodore Roosevelt to Herbert Hoover. The final category includes all justices nominated and confirmed from Franklin D. Roosevelt to Bill Clinton. With the exception of the first group, each historical grouping is approximately fifty years in length. Given the proclivity of those who have previously ranked justices to rank more recent justices more highly than justices who served in the past, we believe more current justices will be ranked more highly than justices from older eras.

Hypothesis 5: An increase in the value of Historical Period will result in a decrease in the value of Justice Rank.

Additional factors that may affect whether a justice is considered great come from their activities on the Court. *Significant Opinions* was created by tallying the number of opinions authored by individual justices that are annotated in five different Constitutional Law textbooks.[7] This leads us to the following hypothesis:

Hypothesis 6: An increase in the number of significant opinions authored by a justice will result in a decrease in the value of Justice Rank.

Another variable included in the model – *Dissenter* – is a dichotomous variable measuring whether or not a justice is recognized for authoring a landmark dissent.[8] Since many landmark dissents have been used as justifications for changing the course of Supreme Court precedent and policy in the future, we believe that justices who have written landmark dissents will be rated more highly than those justices who have not. This leads us to our seventh hypothesis:

Hypothesis 7: Justice who authored landmark dissents will have lower values of Justice Rank than those who have not authored landmark dissents.

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[7] We used two textbooks specifically discussing institutional powers and constraints (Epstein and Walker 2014a; O'Brien 2014a), two textbooks specifically discussing civil rights and liberties (Epstein and Walker 2014b; O'Brien 2014b), and one textbook that covers both topics in the same volume (Varat, Cohen, and Amar 2013).

[8] This measure is derived from the list of "Famous Dissents" hosted by PBS as part of the series "The Supreme Court: Law, Power, and Personality. This list can be accessed online at http://www.pbs.org/wnet/supremecourt/personality/landmark.html.

A final measure controls for the political preferences of individual Supreme Court justices. While there are a multitude of excellent measures of justice-level ideology, there is no current dataset that measures the ideology of *all* of the Supreme Court justices. Therefore, we rely on using the party affiliation of the president nominating the Supreme Court justice. This ideology variable – *Republican Appointee* – is coded as '1' if the justice was nominated by a Republican president and '0' otherwise.[9] Our expectations for the effect of this variable are unclear, as it has not been discussed in the literature. However, since Republican presidents have made more appointments to the Supreme Court than presidents of other parties, we anticipate more of the highest rated justices to be appointed by Republican presidents.

Hypothesis 8: Justices appointed by Republican presidents will have lower values of Justice Rank than justices nominated by presidents from other parties.

Table 2 provides descriptive statistics for all of the variables used in our model, along with the expected signs of the coefficients based on our hypotheses. Since our dependent variable is continuous we estimate our model using ordinary least squares with robust standard errors to account for possible heteroskedasticity in our error term.

Table 2: Descriptive Statistics

Dependent Variable	Mean	St. Dev	Min	Max	Expected Sign
Justice Rank	54.5	31.32	1	108	
Independent Variables					
Presidential Rank	16.31	12.73	1	43	+
Historical Period	3.34	1.4	1	5	-
Justice Longevity	16.81	9.78	1	36	-
Number of Appointments	4.34	2.55	1	10	-
Chief Justice	0.148	0.357	0	1	-
Significant Opinions	2.62	5.18	0	30	-
Dissenter	0.083	0.278	0	1	-
Republican Appointee	0.454	0.5	0	1	-

Source: Author's Data

[9] We must note that this variable is not always ideal as the ideological tenor of the parties is not consistent across the entire length of this study. Said another way, the Republican Party of 1850 is certainly different than the Republican Party of 2000. However, despite this flaw, this is the measure best able to account for ideology spanning such a lengthy study.

Results

Table 3 presents the results of our analysis. Overall model fit is good, and the R-squared statistic is large. The F-statistic is also large and significant, allowing us to reject the hypothesis that the variables in the model are jointly equal to zero. The *Presidential Rank* variable is statistically significant and its sign is negative instead of positive, which is contrary to our expectations specified in our first hypothesis. Recall that our hypothesis states that greater presidents will appoint greater justices. It appears that presidents not ranked as highly are more likely to select better justices. However, the substantive effect of this variable is minimal – especially considering the effects the other variables that are included in the model. A one-unit increase in *Presidential Rank* decreases *Judicial Rank* by .30. In substantive terms, this variable on its own could only move a justice up twelve positions in our rankings if we were to move from the lowest rated president (James Buchanan) to the highest rated president (George Washington). In short, if asked whether great presidents appoint great justices, the answer is a clear 'no.'

Table 3: OLS Regression Estimates of Predictors of Judicial Greatness

Independent Variables	**Estimate**	**(Std. Error)**
Presidential Rank	-.300***	-.108
Historical Period	-8.92***	-1.11
Justice Longevity	-2.43***	-.158
Number of Appointments	-1.22**	-.523
Chief Justice	-15.91***	-3.51
Significant Opinions	.575	-.361
Dissenter	-13.76***	-4.32
Republican Appointee	-4.4	-3.03
Constant	139.24***	-5.87
N	108	
R^2	.84	
F	92.56***	
Mean Square Error	13.22	

* = p ≤ .10, ** = p ≤ .05, *** = p ≤ .01 (two-tailed tests)
Notes: Coefficients are unstandardized OLS regression coefficients. Robust standard errors.

Based on the model, the variables that most improve a justice's ranking are longevity, whether a justice served 'as chief justice, and whether the justice had a reputation for being an important dissenter on the Court. A justice who serves the mean number of terms on the Court will increase his or her judicial rank by nearly forty-one positions. All else being equal, a justice who serves as Chief Justice and was also an important dissenting

voice on the Court will rank nearly thirty positions ahead of other associate justices that do not have a record of important dissents. *Historical Period* is also an important predictor of *Judicial Rank.* All else being equal, a one-unit increase in *Historical Period* increases a justice's ranking by 8.92 positions. The number of appointments made by a president is significant in the model as well. The only insignificant variables in our model are *Significant Opinions* and *Republican Appointee.* These results allow us to reject hypotheses 6 and 8 stated above. In all, these results demonstrate that, although there is some evidence that great presidents choose better Supreme Court justices than more mediocre presidents, the difference in the abilities of different presidents to choose great Supreme Court justices is quite small.

To give our results some perspective, they go a long way to explaining William Rehnquist as the highest rated justice in our analysis. He spent thirty-three years on the Supreme Court. He was Chief Justice of the Supreme Court for over half that time. The president who appointed him (Richard Nixon) was a Republican president who was not ranked highly in our presidential ratings; however, Nixon appointed four justices to the Court who fundamentally reshaped the Court's ideological direction for decades to come. Still more importantly, Rehnquist was often considered to be an ideological outsider on the Court until the 1980s and 1990s when more conservative justices like Antonin Scalia and Clarence Thomas were appointed to the Supreme Court. This resulted in him frequently dissenting with his colleagues from his initial appointment until the 1980s, earning him the nickname 'The Lone Dissenter.' Yet after these latter justices joined the Court and Rehnquist was elevated to the position of Chief Justice, issue positions Rehnquist previously held alone soon became mainstream, and the Court's jurisprudence was altered in ways that still shape the direction of legal interpretation today. Ideological positions aside, one would be hard pressed to justify why Chief Justice Rehnquist was not a great justice.

Ranking More Recent Supreme Court Justices

The data used in this paper does not include Presidents George W. Bush or Barack Obama's confirmed Supreme Court nominees. Fortunately, our model enables us to rank these justices. Table 4 displays a rank ordering of Supreme Court justices based on our model, and includes Chief Justice John Roberts, and associate justices Samuel Alito, Sonia Sotomayor, and Elena Kagan. Since the judicial rankings generated from our model are predictions based on the coefficients of our linear regression model, we generated rankings for these four justices by multiplying the coefficients from our

model by the values of the variables for each of the four new justices. Although our model allows us to add these justices to our rankings, two points must be raised.

Table 4: New Judicial Rankings Based on Model of Judicial Greatness

1	William H. Rehnquist	38	Robert H. Jackson	75	Wiley Rutledge
2	William O. Douglas	39	David J. Brewer	76	Thomas Todd
3	Stephen Field	40	Morrison Waite	77	Samuel Blatchford
4	Hugo Black	41	John Catron	78	Sherman Minton
5	Oliver Wendell Holmes	42	William Johnson	79	Sonia Sotomayor
6	John Paul Stevens	43	Samuel Nelson	80	Joseph Lamar
7	William J. Brennan	44	John Marshall Harlan II	81	Elena Kagan
8	Byron White	45	George Sutherland	82	Horace Lurton
9	Antonin Scalia	46	Lewis F. Powell	83	Benjamin Cordozo
10	Harry A. Blackmun	47	William Howard Taft	84	John McKinley
11	Harlan F. Stone	48	Horace Gray	85	Henry Baldwin
12	Joseph Story	49	John G. Roberts	86	Stanley Matthews
13	Edward D. White	50	Bushrod Washington	87	Abe Fortas
14	Willis Van Devanter	51	Tom C. Clark	88	Henry B. Livingston
15	Sandra Day O'Connor	52	William Day	89	Benjamin Curtis
16	Clarence Thomas	53	Nathan Clifford	90	Samuel Chase
17	John Marshall Harlan I	54	Owen J. Roberts	91	William B. Woods
18	Warren E. Burger	55	Henry B. Brown	92	James F. Byrnes
19	John Marshall	56	Noah H. Swayne	93	Arthur Goldberg
20	Louis D. Brandeis	57	Harold Burton	94	William H. Moody
21	Roger B. Taney	58	Fred Vinson	95	William Paterson
22	Potter Stewart	59	Gabriel Duvall	96	John H. Clarke
23	Felix Frankfurter	60	Robert C. Grier	97	John Jay
24	Thurgood Marshall	61	Maholn Pitney	98	Howell E. Jackson
25	Anthony Kennedy	62	Frank Murphy	99	John A. Campbell
26	Charles Evans Hughes	63	Samuel Alito	100	Lucius Lamar
27	James C. McReynolds	64	Pierce Butler	101	William Cushing
28	John McLean	65	Edward T. Stanford	102	James Iredell
29	James M. Wayne	66	Salmon P. Chase	103	John Wilson
30	Melville Fuller	67	Peter V. Daniel	104	John Rutledge
31	Earl Warren	68	David Davis	105	Philip Barbour
32	Samuel F. Miller	69	George Shiras	106	Levi Woodbury
33	Joseph McKenna	70	Smith Thompson	107	John Blair, Jr.
34	Ruth Bader Ginsburg	71	Ward Hunt	108	Oliver Ellsworth
35	David Souter	72	William Strong	109	Robert Trimble
36	Stephen Breyer	73	Rufus Peckham	110	Thomas Johnson
37	Stanley Reed	74	Charles Whittaker	111	Alfred Moore

First, time served will have a significant effect on the rankings of these justices. These rankings are fluid, and subject to change as the number of terms these justices serve on the Court increases. Time will also enable these justices to author more significant opinions and – more importantly from our model – author important dissents.

Second, time will also factor into the ranking of these justices nominating presidents. Although scholars and pundits are continually assessing the legacies of George W. Bush and Barack Obama, it is still too early to properly rank these presidents among their predecessors. To highlight this point, the aggregate measure of presidential greatness we use ranks George W. Bush as the thirty-fourth president, and ranks Barack Obama as the fourteenth president. Perceptions of these presidents have undoubtedly changed since the last presidential ranking used in our aggregate measure (2011), and will continue to change as time progresses. To be sure, presidential greatness is a substantively small predictor of judicial greatness; however, it is still a variable used in our model, and it needs to be understood when placing these justices in updated rankings.

Based on our model, Chief Justice John Roberts would be ranked 49 out of 111 justices. His status as Chief Justice and his greater longevity contributes to his higher ranking compared to the other three justices. Our model places Samuel Alito at number 63. Justices Sotomayor and Kagan are placed quite proximate to one another, with Justice Sotomayor placing at number 79, while Justice Kagan places at number 81. Yet as noted, with additional longevity and opportunities to make their mark on the Court, we would anticipate that each of these rankings will improve throughout each jurist's career.

Conclusions

This study opens new avenues for research other than providing an answer to the potential relationship between presidential and judicial greatness. Future research should follow Comiskey's approach to developing rankings of justices based on each justice's contribution to the Court within specific historic eras. Another way to improve assessments of justices is to account for the relative strength of the judicial branch at the time of each appointment. We find that historic period is an important predictor of judicial rank. We generally concede that the modern Supreme Court is more powerful than previous courts. This makes it easy to say that modern judges are more "impactful." However, it may be interesting to

consider whether this is tantamount to being "better" or "greater." Said another way, could Oliver Ellsworth have been a more effective judge if he was serving on a more powerful Court? This finding furthers the previously stated need to better account for a justice's era when evaluating their service.

In this work we find minimal direct correlation between presidential greatness and the quality of Supreme Court justices they appoint. In fact, lower rated presidents are on average more likely to select better justices. However, some of this is explained by the relatively high ranking of many early presidents who were appointing justices to the Court during its weakest period. We must also acknowledge the comparatively lower number of appointments made by the lowest ranked presidents. Of those ranked below Richard Nixon, only Warren Harding made more than one appointment.

Perhaps the most important contribution of this work is in identifying factors that *do* impact perceptions of judicial greatness. Longevity, serving as Chief Justice and being recognized as an important dissenter on the Court leads to greater perceptions of judicial greatness. The longevity and Chief Justice findings are important although probably not surprising, but the perception of being a great dissenter is of particular interest. It is possible that this says more about the evaluators than the justices themselves. Challenging the majority in cases where evaluators believe the Court "got it wrong" creates an aura of judicial intuitiveness that may be retroactively rewarded. No doubt this would be welcome news for Supreme Court justices concerned with their legacy who write dissents that are critical of the majority. Will that be enough for them to be considered great? Considering the fluid nature of our rankings, we can only answer by stating "time will tell."

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