A Model of Voting Behavior by State Court Justices in Death Penalty Appeals

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Dedication

I dedicate my dissertation to Dr. Hemant Kumar Sharma who chooses to stand by me no matter what. His intelligence, integrity, kindness, and compassion helped me redefine human nature and the meaning of success. This work would not have been completed without his support and criticism, and I am honored to be his friend.

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Abstract

My dissertation will seek to explain the voting behavior of judges in state courts of last resort in death penalty appeals cases. To do this, I have constructed a dataset that encompasses all death penalty appeals cases in 30 states during the period 2000-2006. The dependent variable in my quantitative analyses is the vote rendered by each judge in each case, and can take on two values: a vote to uphold the sentence of death, or a vote to reverse or vacate the sentence of death. Drawing from the judicial literature, my independent variables will include personal factors, institutional factors, and environmental factors. Personal factors include the gender and race of the judge, which the literature suggests are related to differences in judicial behavior. I will also use ideology scores developed by Brace et al. (2000), but only for a subset of cases for which those scores are available. Institutional factors include the party identification of the governor at the time the judge was appointed or elected, the party identification of the governor at the time the case was decided, and the party composition of the state House and Senate at the time the case was decided. Environmental factors include the state murder rate, the number of executions since 1976, and the number of inmates on death row at the time of the decision. The theoretical underpinning of this research is derived from the new institutionalism, which posits that judges' decisions are shaped not only by judicial attitudes and strategic considerations, but by a variety of institutional and environmental factors. I hypothesize that the institutional and environmental factors previously enumerated will have a significant impact on the voting behavior of state high court judges in death penalty appeals. To test my hypotheses, I will use logistic regression to construct models incorporating all of the previously mentioned variables.

Preface

Chapter 1 is an introduction. In it, I will explain how I chose my topic and will discuss major Supreme Court cases and normative arguments about the death penalty. I will address the Supreme Court cases because state high courts are directly influenced by the high Court's rulings. I will discuss the normative arguments about the death penalty in order to explain why there are fewer death penalty cases in the United States today than in previous decades.

In Chapter 2, I will discuss the various models of judicial decision-making, focusing on the basic tenets of new institutionalism. In Chapter 3, (Research Design) I will present my theory of judicial decision-making in death penalty cases, and I will explain how I defined and measured various concepts in compiling the dataset. In Chapter 4, I will discuss my findings and explain how institutional factors influence judicial decision-making. Specifically, Chapter 4 will examine the impact of the composition of the state legislature and the executive branch on judicial decision-making. Lastly, Chapter 5 will conclude by offering suggestions for future research and elucidating the implications of my research.

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Chapter 1. Introduction

Section 1.1: Research Questions

My research begins by asking general research questions about judicial decision-making at the state level. What are the main factors influencing judicial decision-making in state high courts? How does the political environment influence judicial decision-making in state high courts? Does the interaction with political actors influence judicial decision making? Do state judges exhibit judicial independence? There are many unanswered questions about the voting behavior of state court judges, and this dissertation attempts to provide empirical answers to those questions. Ultimately, I aim to unveil the mysterious decision-making process of state high court judges in order to illuminate the judicial decision-making process at the state level, assess the level of judicial independence, and comment on implications for democracy.

I begin my dissertation by recognizing gaps in the literature on judicial politics. Numerous studies examine the nature of decision-making in the U.S. Supreme Court, but research at the state level is limited. Although the courts might appear to be similar in their decision-making processes, the Supreme Court and state high courts exhibit unique institutional and cultural differences. My research examines the voting behavior of state high court judges in death penalty appeals cases, and this will contribute to state courts scholarship. My main goal in this research is to empirically examine the factors that influence the voting behavior of state high court judges in deciding death penalty appeals cases. I ask whether or not state high court judges practice judicial independence and explain how state high court judges function within the context of our democratic system.

Section 1.2: New Institutionalism as Theoretical Basis

The new institutionalism is an approach to understanding American courts in the larger political system. Supporters of new institutionalism argue that it is not enough to understand the law and personal preferences of the judges to explain and predict judicial behavior. This approach is broad and comprehensive in that it "captures a more panoramic picture of the judiciary as colored and framed by complex, evolving institutions" instead of focusing solely on individual justices to understand judicial voting behavior (Lindquist, 1999, 541). In studying judicial behavior, supporters of new institutionalism argue that it is insufficient to study the law and personal preferences to explain voting behavior, and that one needs to study the influence of other branches to fully explain judicial behavior.

According to new institutionalism, judicial decision-making involves numerous factors beyond the law, case precedent, and personal preferences of judges. Supporters of new institutionalism agree that judicial decision-making is complicated and multidimensional, and that it requires exploration of myriad influences that may emanate from political actors. From a broad perspective, new institutionalists "evaluate the extent to which the Court influences and is influenced by broader political, economic, professional, and social forces in the United States" (Lindquist, 1999, 541). In essence, new institutionalism is described as "the analysis of judicial politics that stresses the interactive and interdependent nature of judicial decision-making" (Epstein and Knight, 2003, 232). This approach considers the judicial branch as part of the entire political system and views the court as "part of broader political processes" (Smith, 1988, p.89). Also, new institutionalism examines judicial behavior by evaluating how "choices are structured by the institutional setting in which they are made" (Epstein and Knight, 2000, 626).

The new institutionalism is rooted in Robert Dahl's classic 1957 *American Political Science Review* (APSR) article entitled "Decision Making in a Democracy: The Supreme Court in National Policy Making," in which Dahl concludes that "the policy views of the judicial branch are never for long out of line with the policy views dominant among the lawmaking majorities of the United States" (Dahl, 1957, p. 285). According to Dahl, this is due primarily to the process by which justices are nominated and confirmed to the Court. While his work addressed the Supreme Court of the United States, and although there is considerable variation in the methods by which state high court justices are selected and retained, there is reason to speculate that state court judges are influenced by the partisan character of the governors who appoint them.

As a starting point, governors are likely to appoint judges who reflect their values for the same reasons that presidents nominate judges who share their values. Members of the executive branch, at any level, prefer to appoint officials who will carry on their policy agendas, and this would clearly explain why they pick judges who share their values. Even a rudimentary analysis of Supreme Court voting patterns would reveal that Republican presidents nominate conservative justices and Democratic presidents appoint liberal justices. For this reason, I operate on the assumption that state court judges who are appointed by Republican governors are going to exhibit more conservative voting behavior than their counterparts, and Democratic appointees will exhibit liberal voting tendencies. In my dissertation, I will use New Institutionalism as the theoretical basis to examine the relationship among state high court judges, governors, and state representatives in the context of death penalty cases. My research question is as follows: To what extent do institutional and environmental factors influence judicial voting behavior?

Specifically, I will test Dahl's contention that the judicial branch is never too far out of line with national preferences, or those of the ruling regime, on major political issues. Because mine is a state-level study, I will argue that a state's judicial branch is never very far out of line from the state consensus on major political issues. I will argue that state judges, like federal judges, have incentives to respond to the preferences of the chief executive and legislators alike. In the American political system of checks and balances, judges must pay attention to the preferences of other political actors to achieve their goals. In other words, they must learn to compromise and to anticipate reactions from members of other branches to accomplish their goals effectively.

The goal of this research is to examine the role of various factors involved in the judicial decision-making process, and this requires a comprehensive approach to the process. More specifically, this dissertation explores how the state high court justices vote in death penalty cases and how the composition of the state legislature and governors influence their voting behavior. In order to study judicial behavior, it is imperative to examine institutional rules and political environments. Because new institutionalism is the most comprehensive approach in the field of judicial politics, this dissertation utilizes new institutionalism and evaluates the institutional, environmental, and personal factors relevant to the state judicial decision making process. The application of new institutionalism is instrumental in accomplishing the goals of this dissertation and answering all the research questions mentioned above.

Section 1.3: Research Questions

To explore the relationship between state high court judges and the larger political context in which they operate, I pose the following specific research questions:

1. **To what extent do institutional factors matter in judicial decision-making?**

1a. Does Republican control of the legislative branch result in more conservative voting behavior by state high court justices in death penalty cases? ("Conservative" here means voting to uphold the decisions of the lower court and affirming death sentences, while "liberal" refers to voting to reverse death sentences).

1b. Does Republican control of the executive branch result in more conservative voting behavior by state high court justices in death penalty cases?

1c. Does a divided government have influence on voting behavior by state high court justices in death penalty cases?

2. **To what extent do environmental factors matter in judicial decision-making?**

2a. Does a higher state murder rate result in more conservative voting behavior by state high court justices in death penalty cases?

2b. Does a higher number of executions in a state result in more conservative voting behavior by state high court justices in death penalty cases?

2c. Does a higher number of death row inmates result in more conservative voting behavior by state high court justices in death penalty cases?

3. **To what extent do personal factors matter in judicial decision-making?**

3a. Are minority judges more likely to support defendants in death penalty appeals?

3b. Are female judges more likely to support defendants in death penalty appeals?

3c. Are judges who have been on the bench longer more likely to support defendants in death penalty appeals?

Section 1.4: Supreme Court Cases

State high courts are directly influenced by the rulings of the U. S. Supreme Court, and a brief overview of Supreme Court cases is essential for understanding death penalty decisions at state high courts. The Supreme Court of the United States has addressed the constitutionality of the death penalty on numerous occasions. The power of judicial review gives the Court a unique role in interpreting the Eighth Amendment's relevance to the abolishment of the death penalty in America. The Court interpreted the Eighth Amendment in different ways at different points in history. In *Furman v. Georgia,* 408 U.S. 238 (1972), the Supreme Court declared that the death penalty, as then administered, constituted cruel and unusual punishment, and thus violated the Eighth Amendment. The Court mentioned that the imposition of the death penalty was arbitrary, in so much as it affected certain races disproportionately, and was applied differently across various types of crimes (Scheb and Scheb, 2010, p.609).

However, many states gradually reinstated the death penalty in late 1970s after the Supreme Court upheld a revised version of the death penalty statute in *Gregg v. Georgia*, 428 U.S. 153 (1976). The Supreme Court's decision in *Gregg* reinstated the death penalty because the Court ruled that a punishment of death does not violate the Eighth Amendment, per se. This ruling was based on the new procedures established to standardize, somewhat, the death penalties application. Under the bifurcated trial system in Georgia, separate proceedings are used to establish guilt and punishment. In order to impose the death penalty upon a defendant who has been convicted, the jury has to find aggravating factors listed in the Georgia statute, and deem that these factors outweigh any potential mitigating factors (Scheb and Scheb, 2010, p.609).

Recently, the Supreme Court has refined death penalty laws in *Atkins v. Virginia,* 536 US 304 (2002) and *Roper v. Simmons*, 543 U.S. 551 (2005). The former prohibited the imposition of the death penalty on mentally ill defendants, while the latter prohibited its imposition on minors under the age of 18. The underlying rationale in these cases dealt with the diminished capacity of these groups for understanding the consequences of behavior. In addition, both cases appeared to defer to the feelings of legislative majorities, as both opinions made specific references to the number of states that had already acted to protect these groups from capital punishment. *Roper* even made reference to an international consensus against executing minors.

Some might have thought that these decisions signaled a trend toward the abolition of the death penalty. However, in April of 2008, the Court announced its ruling in *Baze v. Rees*, 553 U.S. 35 (2008). In this case, two inmates in Kentucky brought a constitutional challenge and asked the Court whether the use of a four-drug lethal injection violated the Eighth Amendment's ban on cruel and unusual punishment. In deciding that it does not violate the Eighth Amendment, Justice Roberts wrote the opinion of the Court and said, "some risk of pain is inherent in any method of execution—no matter how humane—if only from the prospect of error in following the required procedure." Justice Roberts added that "it is clear that the Constitution does not demand the avoidance of all risk of pain in carrying out executions" 553 U.S. 35 (2008). Inherent in this decision, though, was another instance of the Court essentially deferring to state legislatures and state law enforcement officials when it comes to the application of the death penalty. This seems to imply that Supreme Court justices minimize the scope of their intervention in state matters regarding the death penalty. This makes analysis of state court behavior on this topic a matter of particular interest for scholars.

Section 1.5: State Courts and the Death Penalty

Typically courts are divided into three tiers, and cases are tried at district courts, appeals are handled by a court of appeals, and state supreme courts are third in the process from a sequential standpoint. In the states of Texas and Oklahoma, court of criminal appeals deals with cases involving the death sentence, rather than state supreme courts. However, in other states, state supreme courts are likely to hear death penalty appeals. As Scheb and Scheb note, "Many states provide automatic appeals of death sentences to their highest court" (Scheb and Scheb, 2010, p.648). Given the layers involved in the process, it is easy to understand that the judicial system is complex. Ultimately, this is to ensure that the judicial system protects the constitutional rights of individuals and reduces errors. As a result, there are a variety of channels and methods for challenging a sentence of death.

Challenging state court convictions is possible through numerous venues such as appeals on procedural grounds, state habeas corpus hearings, federal habeas corpus hearings, post-conviction relief, and clemency by governors. Habeas corpus provides prisoners with a legal remedy and protection "from unlawful confinement" (Scheb and Scheb, 2010, p.717). In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act (AEDP) in an attempt to limit the number of subsequent habeas corpus petitions by state prisoners, and the act also imposed a one-year time limit to file a petition on prisoners (Freedman, 2001). Post-conviction relief allows prisoners to challenge their convictions after trying other methods of appeals (Scheb and Scheb, 2010, p.723). Defendants in all states are eligible to seek post-conviction relief for various reasons: the discovery of new evidence after the trial, ineffective counsel of trial lawyers,

false testimony of witnesses, withholding of evidence by the prosecution at trial, violation of due process or a fair trial, and any other type of constitutional violation (Bass, 2010).

The legal process is extremely time-consuming and costly, and it is highly unlikely for a case to reach the U.S. Supreme Court. Because the U. S. Supreme Court only reviews a small number of cases annually, state supreme courts become the courts of last resort for many criminal defendants who are sentenced to death. Consequently, state supreme courts play a critical role in deciding who will be put to death. My research focuses on the judicial behavior of state supreme court judges in death penalty appeals cases. My research only analyzes death penalty appeals cases and excludes all the other cases. For instance, my dataset does not include post-conviction relief petitions mainly because the nature of the legal question is very different from the questions presented in appeals cases. For instance, whether to hear a petition or not is very different from ruling whether the lower court decision is affirmed or reversed. Herein, I examine death penalty appeals cases and recorded judicial votes that indicate whether judges affirmed or reversed decisions from lower courts.

Table 1.1 illustrates numerous death penalty cases, and it shows the intricacy and complexity of the death penalty in a nutshell. Cases are picked from Cornell Law School's topical list under the death penalty. Since state courts are indirectly influenced by the Supreme Court rulings, an illustration of Supreme Court rulings is conducive to understanding state court decision-making. In studying these cases, it is worth paying close attention to the ways in which deference to state legislatures seems apparent in the Supreme Court's line of death penalty cases.

Table 1.1: Death Penalty Cases Considered by the U.S. Supreme Court, 1972-2010

Year	Name of the Supreme Court Case
1972	*Furman v. GA*
1976	*Gregg v. GA*
1977	*Corker v. GA*
1978	*Lockett v. OH*
1986	*Ford v. Wainwright*
1987	*McCleskey v. Kemp*
1988	*Thompson v. OK*
1989	*Stanford v. Kentucky*
2002	*Ring v. AZ*
2002	*Atkins v. VA*
2005	*Roper v. Simmons*
2006	*Kansas v. Marsh*
2006	*House v. Bell*
2008	*Medellin v. TX*

2008	*Baze v. Rees*
2008	*Kennedy v. LA*
2009	*Harbison v. Bell*

http://topics.law.cornell.edu/wex/Death_penalty

Section 1.6: Death Penalty and the Future

At this juncture, I briefly discuss the normative arguments about the death penalty in order to lay an ideological foundation for my empirical research findings and to explain why the number of executions has decreased in the United States in recent years. The death penalty is concentrated in a few states, and it is unknown what the future holds for the death penalty in America. As of March 2011, 34 states have the death penalty in America while the other 16 states officially have abolished the death penalty. For instance, New Jersey and New Mexico abolished the death penalty legislatively, and many states unsuccessfully attempted to repeal the death penalty recently. Executions are rare in many states today, and twelve states have executed fewer than three people since they reinstated the death penalty in *Gregg v. Georgia* (1976).

Opponents argue that death penalty should be abolished because of its inability to deter crime. The general consensus in the research community is that the death penalty does not deter crime. Radelet and Akers did a survey to find out what the leading criminologists thought about the impact of the death penalty and its role as a deterrent to crime in America. Their goal was to assess expert opinions on whether the death penalty has a general deterrent effect on criminal

homicide (Radelet and Akers, 1996; Radelet and Lacack, 2009). They surveyed 67 of the 70 current and former presidents of three professional Criminology Organizations, including the American Society of Criminology, Academy of Criminal Justice Sciences, and Law and Society Association. Over 80 percent of these experts indicated in the survey that the existing research fails to support a deterrence justification for capital punishment.

Also, opponents argue that the death penalty should be abolished because people of color are impacted disproportionately, although the death penalty is supposed to treat everyone with impartiality in order to honor the "equal protection clause" of the 14th Amendment. It goes without saying that it is only fair to apply the law to everyone without being arbitrary or discriminatory. There are numerous research findings indicating that the death penalty affects people of color disproportionately. Race has an impact in the administration of justice, and empirical evidence shows that there is a legitimate reason to abolish the death penalty. Many scholars argue, "blacks are indicted, charged, convicted, and sentenced to death in disproportionate numbers" (Johnson, 1957; Garfinkel, 1949). Also, Bowers and Pierce (1984) found in their studies that black offenders whose victims are white are punished disproportionally. Ross (1994) found similar evidence in his analysis of 227 executions throughout the states, confirming that blacks are impacted by the death penalty disproportionately. "While 86 black or minority prisoners were executed for murdering white victims," noted Ross, "only two white murderers were executed for the death of a non-white" (Ross, 1994). Zeisel found in his research that the likelihood of defendants being sentenced to death was influenced by the race of both the victims and the defendants (Zeisel, 1981). According to his research, only 24 percent of the white defendants were arrested and sentenced

to death for murdering a white victim while forty-seven percent of the black defendants were arrested and sentenced to death for murdering a white victim.

In addition, opponents believe that the death penalty should be abolished because of its error rates. The system is flawed in that innocent people are executed. Wrongful convictions happen for numerous reasons such as false confessions, improper forensic science, eyewitness misidentification, and so on. The administration of capital punishment produces human errors just like any other public policy. But what is disturbing here is that the human errors create irreversible outcomes if the society continually executes the innocent and repeats mistakes even after recognizing the error. It is unjust to execute innocent people who do not deserve to be executed, and it is irresponsible to acknowledge the pattern and do nothing. Since 1973, 138 people have been released from death row after finding sufficient evidence to support their innocence. If innocent people are wrongfully convicted and put to death, we as a nation should be embarrassed and deeply concerned. Table 1.2A and 1.2B illustrate the number of people exonerated by year and by state respectively as of October 27, 2010. In theory, we have a system that guarantees due process for all, but in practice, we have a "broken system" that executes innocent people in this country (Liebman et al., 2002). A non-profit organization, Death Penalty Focus states in their report that the judicial system of CA has made errors in the administration of the death penalty, and that is "intolerable in a society dedicated to the rule of law and the sanctity of human life" (Death Penalty Focus).

Table 1.2A: Number of Exonerations by Year

Year	Number
1973	1
1974	1
1975	4
1976	4
1977	1
1978	2
1979	1
1980	2
1981	4
1982	2
1983	0
1984	0
1985	1
1986	3
1987	8
1988	2
1989	3
1990	4
1991	3
1992	1
1993	6
1994	1
1995	5
1996	8
1997	5
1998	2
1999	8
2000	9
2001	5
2002	4
2003	12
2004	6
2005	2
2006	1
2007	3
2008	4
2009	9

Source: Death Penalty Information Center (http://www.deathpenaltyinfo.org/innocence-and-death-penalty).

Table 1.2B: Death Row Exonerations by State since 1973

States	Numbers
FL	23
IL	20
TX	12
OK	10
AZ	8
LA	8
NC	7
PA	6
AL	5
GA	5
OH	5
NM	4
CA	3
MA	3
MO	3
MS	3
SC	2
TN	2
IN	2
ID	1
KY	1
MD	1
NE	1
NV	1
VA	1
WA	1

Source: Death Penalty Information Center (http://www.deathpenaltyinfo.org/innocence-and-death-penalty)

Supporters of the death penalty may have lost faith in the rehabilitation of criminals, especially repeat offenders. They may argue that there are criminals who cannot be redeemed because they are a drain on society, and the best way to deal with them is to execute them. Supporters of the death penalty argue that they believe in the legitimacy of the death penalty and justify their belief by arguing that murderers should be punished and executed for retributive reasons, and that they deserve to suffer and die since imprisonment for life is not enough to punish them (Bedau, 1978; Finckenauer, 1988).

Section 1.7: Decreased Support

Fewer people support the death penalty in recent years according to a national omnibus poll done by RT Strategies. The factors include the execution of innocent people, the lengthy appeals process, the high costs of the death penalty, and religion (Dieter, 2007). In regard to the appeals process, the Bureau of Justice Statistics indicate that the average time from sentencing to execution has increased from 10 years in 1996 to 13 years in 2009.

Also, the decreased numbers of executions indicate that the death penalty is no longer accepted in many states. For example, the death penalty is highly concentrated in seven states: Texas, Virginia, Oklahoma, Florida, Georgia, South Carolina, and Ohio. In his concurring opinion in *Ring v. Arizona*, 536 U.S. 584 (2002), Justice Breyer acknowledged that half of the death penalty cases come from seven states. The decline of the death penalty might explain why some argue that the “state-by-state repeal of the death penalty could spark nationwide repeal” (Scherzer, 2009, 257). Chief Justice Warren noted in *Trop v. Dulles*, 356 U.S. 86 (1958) that the Eighth Amendment must draw its meaning from the “evolving standards of decency that mark

the progress of a maturing society." Perhaps we are already showing signs of progress at the state level, and reduced numbers of executions are the living proof of that.

My goal is to empirically examine the role of institutional factors in the administration of the death penalty. I aim to evaluate the influence of institutional, environmental, and personal factors. With that in mind, I will study the role of various factors influencing death penalty decisions in state high courts. I intend to find out how institutional factors influence state high court judges in their judicial decision making. With the decrease in the number of death penalty cases in the U.S., researchers face more challenges in conducting quantitative analyses of voting behavior in death penalty appeals cases. Table 1.3 illustrates the decreased number of the death penalty cases in the U.S., and some might speculate that this is a precursor of the abolition of the death penalty in the U.S. The number of executions slowly increased after the U.S. Supreme Court decision in *Gregg v. Georgia* (1976), and the number has dwindled since 1999. In 2010, there were only 6 executions.

Table 1.3: Number of Executions in the United States, by Year, 1976-2010

Year	Number
1976	0
1977	1
1978	0
1979	2
1980	0
1981	1
1982	2
1983	5
1984	21
1985	18
1986	18
1987	25
1988	11
1989	16
1990	23
1991	14
1992	31
1993	38
1994	31
1995	56
1996	45
1997	74
1998	68
1999	98
2000	85
2001	66
2002	71
2003	65
2004	59
2005	60
2006	53
2007	42
2008	37
2009	52
2010	6

Source: http://www.deathpenaltyinfo.org/executions-year

The dwindling number of executions around the country as a whole, and the specific concentration of executions in seven states, serves to highlight the fact that state criminal statutes vary in the way they handle crimes eligible for the death penalty. On the next page, it shows the specific crimes punishable by the death penalty in various states, to illustrate diversity and variation of state statutes. As per the Supreme Court's ruling in *Kennedy v. Louisiana*, 554 U.S. 407 (2008), the death penalty can only be applied to homicide crimes. The *Kennedy* case specifically overrules a sentence of death for child rape. Even with this general guideline regarding homicide, different states have arrived at specific delineations of the type of homicide that can legally warrant a sentence of death.

Crimes Punishable by the Death Penalty, State by State

	The Bureau of Justice Statistics lists the following as capital crimes, by state as of December 2009:
Alabama	Intentional murder with one of 18 aggravating factors.
Arizona	First-degree murder accompanied by at least 1 of 14 aggravating factors.
Arkansas	Capital murder with a finding of at least 1 of 10 aggravating circumstances; treason.
California	First-degree murder with special circumstances; sabotage; train wrecking causing death; treason; perjury causing execution of an innocent person; fatal assault by a prisoner serving a life sentence.
Colorado	First-degree murder with at least 1 of 17 aggravating factors; first-degree kidnapping resulting in death; treason.
Connecticut	Capital felony with 8 forms of aggravated homicide.
Delaware	First-degree murder with at least 1 statutory aggravating circumstance.
Florida	First-degree murder; felony murder; capital drug trafficking; capital sexual battery.
Georgia	Murder; kidnapping with bodily injury or ransom when the victim dies; aircraft hijacking; treason.

Idaho	First-degree murder with aggravating factors; first-degree kidnapping; perjury resulting in death.
Illinois	First-degree murder with 1 of 21 aggravating circumstances
Indiana	Murder with 16 aggravating circumstances.
Kansas	Capital murder with 8 aggravating circumstances.
Kentucky	Murder with aggravating factors; kidnapping with aggravating factors.
Louisiana	First-degree murder; treason.
Maryland	First-degree murder. Can apply to either premeditated murder or murder during the commission of a felony.
Mississippi	Capital murder; aircraft piracy
Missouri	First-degree murder.
Montana	Capital murder with 1 of 9 aggravating circumstances.
Nebraska	First-degree murder with a finding of at least 1 aggravating circumstance.
Nevada	First-degree murder with at least 1 of 15 aggravating circumstances.
New Hampshire	Murder committed in the course of rape, kidnapping, or drug crimes; killing of a law enforcement officer; murder for hire; murder by an

	inmate while serving a sentence of life without parole.
New Mexico	First-degree murder with at least 1 of 7 statutorily-defined aggravating circumstances.
New York	First-degree murder with 1 of 13 aggravating factors.
North Carolina	First-degree murder.
Ohio	Aggravated murder with at least 1 of 10 aggravating circumstances.
Oklahoma	First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances.
Oregon	Aggravated murder.
Pennsylvania	First-degree murder with 18 aggravating circumstances.
South Carolina	Murder with 1 of 12 aggravating circumstances
South Dakota	First-degree murder with 1 of 10 aggravating circumstances.
Tennessee	First-degree murder with 1 of 15 aggravating circumstances.
Texas	Criminal homicide with 1 of 9 aggravating circumstances.
Utah	Aggravated murder.

Virginia	First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31).
Washington	Aggravated first-degree murder.
Wyoming	First-degree murder; murder during the commission of sexual assault, sexual abuse of a minor, arson, robbery, escape, resisting arrest, kidnapping, or abuse of a minor under 16.

Source: http://www.deathpenaltyinfo.org/crimes-punishable-death-penalty#BJS

Beyond different statutes that can allow for the death penalty, in addition, states also have different methods of judicial selection. Table 1.4 displays these methods of selection of state high court judges in 50 states. The method of judicial selection is important because it can potentially influence judicial outcomes. For instance, the gubernatorial appointment system grants enormous amount of power to governors in picking judges who share similar values, whereas the method of election gives people more influence in picking judges. Where people have power in the process, judges might be required to heed the leanings of public opinion when crafting decisions. Although federal judges are insulated through the grant of life tenure, state judges are in fact subject to the whims of the masses—a fact that seems contrary to notions of judicial independence. An aspect of my work will examine whether such a selection method does in fact compromise this ideal.

In short, methods of selection vary by states, and Table 5 illustrates the variation. Seventeen states employ merit selection to increase accountability, and this is a method of selection that combines both gubernatorial appointment and election. It involves judges being

appointed by a governor, and then facing “retention election” from the people at a later date. However, a pure election for appointment to a judgeship remains the most common method of selection, with both partisan and nonpartisan election being employed in the United States.

Table 1.4: Method of State High Court Judicial Selection

Method of Selection	States
Gubernatorial appointment	California, Maine, New Hampshire, New Jersey
Merit Selection (Missouri Plan)	Arizona, Alaska, Colorado, Delaware, Hawaii, Indiana, Iowa, Kansas, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, Rhode Island, Utah, Vermont, Wyoming
Partisan election	Alabama, Arkansas, Illinois, New York, North Carolina, Pennsylvania, Tennessee, Texas, West Virginia
Nonpartisan election	Florida, Georgia, Idaho, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Washington, Wisconsin.
Legislative appointment	Connecticut, South Carolina, Virginia

Source: http://www.ajs.org/selection/sel_state-select-map.asp

Section 1.8: Importance of This Research

As I describe above, this dissertation addresses numerous research questions at the state level. Addressing these questions is important because the ideas of new institutionalism have not been put to empirical test at the state level. Without rigorous empirical testing, no theory can be regarded as sound. This study seeks to contribute to the field of judicial politics by examining relationships among state high court judges, governors, and state representatives. It is unclear whether state judges practice judicial independence or whether they defer to the lead of members of other branches. Judicial decision-making is an important aspect of the policy-making process in America, and this research addresses many unanswered questions about the voting behavior of state high judges. This will ultimately contribute to our understanding of the judicial branch in the administration of justice, and its place in the overall American democratic system. The Founding Fathers envisioned a system that would employ checks and balances and also respect judicial independence. My research will examine the interaction of these competing ideals.

Chapter 2. Models of Judicial Decision Making

Section 2.1: Introduction

Chapter 2 will discuss various models of judicial decision-making, while focusing on new institutionalism, which is the approach this dissertation is going to take.

The Supreme Court is an institution that essentially makes public policy by interpreting the Constitution and provisions of law (Baum, 2007). As the guardian of the Constitution, the Court "decides major questions of public policy by bringing political controversies within the language, structure, and spirit of the Constitution" (O'Brien, 2003, p.369). Although its influence is "usually subtle and indirect," the Court influences American life profoundly by "appealing to the country to respect the substantive value choices of human dignity and self-governance embedded in the Constitution" (p. 369). In order to understand the institution of the Supreme Court, judicial scholars have tried to solve the puzzle of judicial decision-making with different approaches. Four models of judicial decision-making have contributed to our understanding of the Supreme Court—the legal model, the attitudinal model, the strategic model, and new institutionalism.

Section 2.2: The Legal Model

Traditional inquiry into the Supreme Court is often termed as the "legal model," and it assumes "judicial votes result from the application of use of professional interpretative techniques" (Brisbin, 1996, p.1004). Haines states that the legal model describes judges as if "they were mere instruments of the law" in the way they apply the law (Haines, 1908, 221). In other words, in making judicial decisions, judges "interpret the law rather than create the law"

(Wrightsman, 2006, p.111). According to the legal model, judges do not let their values and politics get in the way in the decision-making process. They simply come to their decisions based on the law itself, and their values and views do not influence the process at all. For this reason, one can expect that judicial outcomes will be the same if judges uniformly use the legal model (Wrightsman, 2006, p.20).

To put it broadly, the legal model includes mechanical jurisprudence and more sophisticated variants, but they share the assumption that judicial decision-making is "influenced by the facts of the case in light of the plain meaning of statutes and the Constitution, the intent of the Framers, and precedents" (Segal and Spaeth, 2002, p.48). Plain meaning holds that "judges rest their decisions in significant part on the plain meaning of the pertinent language" (Segal and Spaeth, 2002, p.53). "Framers' intent" refers to the way judges read the Constitution and maintain the original meaning instead of creating new interpretations of the Constitution. Precedents are previous legal decisions and rulings that judges use in deciding cases at hand.

Another depiction arising from the legal model is called mechanical jurisprudence, which is the idea that judges make decisions solely based on statutes and case laws (Pound, 1908). Under this theory, judges read the law without using extra-legal factors, and it simplifies the entire judicial decision-making process. This approach is technical and deductive, and it led Pound to develop his theory of sociological jurisprudence. Pound stated that the law must be stable, but it must not stand still. He was deeply concerned with practical implications of judicial decisions and expressed his skepticism toward mechanical jurisprudence. He believed that it was "quite erroneous for the judiciary as well as the legal profession to entertain the belief that judges could find the pre-appointed code pigeonhole for each concrete case, to put the case in hand into

it by purely logical process and to formulate the result in a judgment" (Pound, 1922, p.124; Becker, 1964, p.45). According to Pound, the main problem with mechanical jurisprudence is that it is "unrealistic and it perpetrates injustice" (Becker, 1964, 46). He was concerned with the notion of justice, and he believed that mechanical jurisprudence was an inadequate approach for judges to use when they deal with human relationships. Without paying attention to the situation, simply focusing on the precedent is insufficient to explain human relationships (Becker, 1964, p.46). This is why judges should understand the situation rather than simply applying the precedent in order to reach a just decision. Pound states that "the certainty attained by mechanical application of fixed rules to human conduct has always been illusory" (Pound, 1922, p.141; Becker, 1964, p.46). Justice Benjamin Cardozo also criticized mechanical jurisprudence, and his criticism of mechanical jurisprudence comes from the fact that judges only take statutes and precedents into account and disregard human factors. According to Becker, "to Cardozo the idea of a simplistic, deductive thought process was a poor joke and a dangerous illusion" (Becker, 1964, p.47; Rodell, 1939). In other words, mechanical jurisprudence is too simple to be taken seriously.

In addition, critics of the legal model and mechanical jurisprudence argue that plain meaning alone does not explain the outcome of judicial decisions. Finding "mathematical exactness in the use of English" is impossible (Segal and Spaeth, 2002, p.110). Leo Strauss (1959) stresses the importance of finding the intentions of the framers in reading the Constitution. But it is difficult to find the intentions of the framers; some words are naturally ambiguous and what it meant before may not apply in today's standard. Precedents also fail to explain judicial decisions (Segal and Spaeth, 2002). *Stare Decisis* is a term used to describe

judge's adherence, deference, or respect to precedents. However, many cases are overturned through the appeals process, and *stare decisis* alone does not explain or predict judicial voting outcomes in reality. If precedent clearly governed, it would be easy to predict case outcomes. In some cases, precedent can be used to support both sides of an argument.

Traditional public law scholarship like the legal model was dominant prior to the onset of behavioralism. From a methodological standpoint, the traditional approach is normative, descriptive, and historical. Although traditional public law scholars lack scientific and methodological rigor, the legal model still makes a contribution to the field of judicial politics by providing information on judicial decision-making. Cross (1997) argues that some cases are explained by legal principles alone. Bailey and Maltzman find in their research that legal factors play an important role in Supreme Court decision-making, but the effect of legal variables varies across justices (Bailey and Maltzman, 2008, p.369).

Many scholars argue that the primary contribution of the legal model is that it helps to legitimize the Supreme Court. According to Scheb and Lyons, "The myth of legality holds that cases are decided by the application of legal rules formulated and applied through a politically and philosophically neutral process of legal reasoning" (Scheb and Lyons, 2000, p. 930). Gibson, Caldeira, and Baird (1998) also argue that "judges help perpetuate the myth of legality among their attentive publics by framing their decisions in legalistic terms" (cited in Scheb et al., 2000, p. 933). The legal model legitimizes the judicial decision-making; "the fictive idea of principled legality" (Brisbin, 1996) is a crucial source of the Court's institutional legitimacy (Fiscus, 1991). Although the general public subscribes to the legal model, almost all judicial

scholars prefer other models of judicial decision-making, largely because the legal model fails to present falsifiable hypotheses that can be empirically tested.

Section 2.3: The Attitudinal Model

In the mid-20th century, judicial scholars studied the Supreme Court by focusing on the individuals as their unit of analysis. The behavioral approach advanced our understanding of the Supreme Court by studying the Court quantitatively and scientifically. According to Segal and Spaeth, "The attitudinal model has its genesis in the legal realist movement of the 1920s" (Segal and Spaeth, 2002, p. 87). Legal realism refers to the movement against mechanical jurisprudence, and Karl Llewellyn and Jerome Frank are associated with legal realism, along with other legal scholars such as Holmes. Llewellyn's views were consistent with Cardozo's in that he remained critical of the formalistic method of judicial interpretation. Justice Benjamin Cardozo criticized mechanical jurisprudence, and his criticism of mechanical jurisprudence comes from the fact that judges only take statutes and precedents into account and disregard human factors. "To Cardozo the idea of a simplistic, deductive thought process was a poor joke and a dangerous illusion" (Becker, 1964, p. 47; Rodell, 1939).

Oliver Wendell Holmes is also associated with the legal realism movement and he states that "the life of the law has not been logic; it has been experience" (Holmes, 1881, p. 5). Along with John Chipman Gray, he launched an attack on the "theory of what the thought-process of the judge should be" (Becker, 1964, p. 43). His dissenting opinion in *Lochner v. New York*, 198 US 45 (1905) is known as the "point of departure for most of the legal realist discourses against the Coke-Blackstone-Beale-Roberts fundamentalism" (Becker, 1964, p.43). Frank states that the

law "deals with human relations in their most complicated aspects" (Frank, 1949, p.6). He emphasized that laws should adapt to changes in the environment, and one should not forget that our societal, industrial, and political conditions change over time (Frank, 1949). Specifically, he said, "Situations are bound to occur which were never contemplated when the original rules were made" (Frank, 1949, p.7). Legal realists set the stage for the behavioral movement by questioning the formalistic method of judging. In essence, a sociological jurisprudence was a precursor to the attitudinal model in political science.

The behavioral movement in political science influenced the way judicial scholars conducted their research. "The behavioral movement in judicial studies arose as an effort to link the study of courts to a general methodology for political science" (Maveety, 2003, p. 30). Instead of focusing on doctrinal analysis of the law, then, behavioral scholars focused on the individual judges as a way to understand Supreme Court decision-making, and they conducted empirical analysis on judicial voting behavior. Using quantitative data, behavioral scholars offer research that is theory-driven. Moreover, they try to explain and predict (Somit and Tanenhaus, 1967). The emphasis in this type of judicial behavior research is "on empirically testable theories and generalizing from observable variables" (Epstein and Knight, 2000, p. 637).

This focus on individual behavior led the paradigm shift in judicial politics. Pritchett and Schubert set the stage for the evolution of the attitudinal model as it was ultimately elucidated by Segal and Spaeth. Subsequently, Glendon Schubert "provided a detailed attitudinal model of Supreme Court decision making" in three major works (Segal, 2006, p. 80): *Quantitative Analysis of Judicial Behavior* (1959), *The Judicial Mind* (1965), and *The Judicial Mind Revisited* (1974). In his quantitative attitudinal study of the courts, Pritchett measured concepts such as

attitudes and opinions and studied judicial behavior of judges (Stumpf, 1988). Schubert believed that "case stimuli and values could be ideologically scaled" (Segal and Spaeth, 2002, p. 89). Schubert conceptualized the Supreme Court and tried to explain voting behavior using judicial votes and measuring attitudes (Segal and Spaeth, 2002, p. 89).

Segal and Spaeth created an influential model of judicial decision-making as they analyzed the voting behavior of Supreme Court judges. This model is referred to as the "attitudinal model." As a starting point, Segal and Spaeth note that "a model is a simplified representation of reality and provides a useful handle for understanding the real world" (Segal and Spaeth, 2002, p. 45). Also, a good model explains and predicts the behavior in question and does so parsimoniously; models are judged by the degree of usefulness in helping people understand certain behavior in question (Segal and Spaeth, 2002). What Segal and Spaeth wanted to accomplish with the attitudinal model was to explain and predict the voting behavior of Supreme Court justices. They argue that attitudes of the Supreme Court judges play an important role in explaining their voting behavior. Spaeth defined his central concept, an attitude, as "a relatively enduring interrelated set of beliefs about an object or situation" (Segal and Spaeth, 2002, p. 91). Justices' ideological preferences matter greatly in light of the facts of the case (Segal and Spaeth, 2002). In other words, there is a linkage between the attitude of the justices and their voting behavior. According to Segal and Spaeth, there are other factors that allow the justices to rely on their ideological preferences: "judicial independence, lack of aspiration for higher offices, finality of decisions, and docket control" (Segal and Spaeth, 2002, p. 92). In other words, the nature of decision-making on the Supreme Court is relevant to the assertion that justices will primarily vote their attitudes. Later, I will assess constraints on state

court justices that may minimize the attitudinal model's application in those settings (and thereby open the door for alternative portrayals).

The main contribution of the attitudinal model is that it reveals how judges make decisions (Canon, 1993). The attitudinal model is "remarkable in that it is testable, has been tested, and is empirically verifiable" (Benesh, 2003, 119). Some believe that the attitudinal model is the most important model in judicial politics because it inspired a great deal of scholarly debate and research. Also, the attitudinal model "permeates virtually all our work on judges and courts today by systematically and empirically shattering the myth of mechanical jurisprudence" (Lawrence, 1994). Other scholars have tested the attitudinal model. For example, Segal and Cover (1989) found a strong correlation between judges' attitudes and their voting behavior in their empirical analysis of civil liberties cases, and Segal (1995) found something similar in his analysis of economic cases of the Supreme Court as well. The key independent variable was the Segal-Cover score, which rates justices from 0 (most conservative) to 1 (most liberal) based on analysis of newspaper editorials about the justice before confirmation to the Supreme Court. The fact that this variable is derived from pre-confirmation assessments is critical because it allows the Segal-Cover score to be matched with post-confirmation voting behavior without any fear of circular reasoning (i.e., using past votes to explain future votes).

However, many remain critical of the attitudinal model, and assert that the attitudinal model cannot fully explain voting behavior. Clayton and Gillman believe "it is clear there are important questions left unanswered by narrowly focusing on how particular justices vote in discrete cases and Guttman-type scaling of judicial attitudes" (1999, p.1). The fundamental question is whether or not the model "adds to the explanation of and understanding of decision

making; the question is whether the attitudinal model is a model or just a means to predict the outcome of Court cases" (Benesh, 2004; cited in Maveety, 2003, p.125). Merely stating that justices use their attitudes does not explain why they use attitudes (Maveety, 2003, p.125). Baum (1998) argues that the attitudinal model is solely predictive and fails to explain behavior (p.4). Another problem of the attitudinal model is that it assumes that judges do not change their attitudes over time.

In addition, the attitudinal model fails to provide a complete understanding of the Supreme Court because there is empirical evidence that attitudes do not always influence policy outcomes. Despite the differences in ideology, justices sometimes arrive at unanimous decisions, and the attitudinal model neither explains nor predicts these unanimous cases (Maveety, 2003). Caldeira (1994) argues that the attitudinal model is too simple, and that the role of attitudes is overstated. Cross (1997) argues that attitudinalists wish to show that attitudes matter to judges, but do so "at the cost of valid, reliable, scientific research" (Benesh, 2003, p.123). In addition, "critics argue that using past votes to predict future votes is inherently circular" (Benesh, 2003, p.123). Baum (1994) states that past votes do not "truly tap personal policy preferences, and they only demonstrate some behavioral consistency that might be the result of any number of stimuli" (cited in Maveety, 2003, p. 125). Of course, these last two criticisms are mitigated by the use of Segal-Cover scores. And, overall, despite the criticism, the attitudinal model contributes to the field of judicial politics by encouraging scholars to consider the role of attitudes in judicial decision-making.

The attitudinal model demystifies the institution and helps the American public understand that the Court is an institution filled with individuals who make decisions using both

legal and extra-legal factors. The narrow focus of the attitudinal model with its ability to explain and predict judicial decisions, provides a more realistic assessment of the decision-making process of the Supreme Court than the legal model. Judges are the decision-makers in the Supreme Court, and it is logical to focus on them as a way of understanding the institution. It is realistic to think that judges are influenced by legal and extra-legal factors. Therefore, what the attitudinal model has done is to focus on individuals, and it provides a realistic picture of Supreme Court decision-making. To understand the Supreme Court, it is crucial to examine both legal and extra-legal factors, and to understand the individuals in the Supreme Court who make decisions using both legal and extra-legal factors. The following sections expound upon extra-legal factors that transcend attitudes.

Section 2.4: The Strategic Model

The strategic model is based on rational choice theory. The basic assumption of rational choice theory is that actors are goal-oriented and they choose from alternatives in order to maximize their utility (Riker, 1990, p.172). Epstein and Knight developed a strategic model of judicial decision-making by applying rational choice theory. In an attempt to understand judicial behavior, they argue that judges make choices based on rational thinking; "justices are strategic actors who realize that their ability to achieve their goals depends on a consideration of the preferences of others, of the choices they expect others to make, and of the institutional context in which they act" (Epstein and Knight, 1998, p. xiii). In short, there are three basic assertions in the strategic model. First, justices try to attain their goals. Second, justices are strategic. Third, institutions structure justices' interactions (Epstein and Knight, 1998, p.11).

In contrast to the attitudinal model the strategic model holds that judges are sophisticated voters. For instance, they decide what to decide and they think about the outcomes of their choices. Judges bargain, and there are numerous opportunities for them to bargain. For instance, they grant certiorari, vote at conference, write the opinions, get support, and decide to join, concur, or dissent with final votes. As a result, the influence of colleagues on the Court is relevant to the strategic approach.

Beyond that, the unique argument of the strategic model is that the institutional structure of the government radically shapes judges' ability to reach decisions. "The institution of the American separation of powers system serves as a constraint on justices acting on their personal preferences" (Epstein and Knight, 1998, p.150). The institutional context they are in allows judges to become strategic actors. By institutions, Epstein and Knight refer to "sets of rules that structure social interactions in particular ways." They include formal laws and informal norms and conventions (Epstein and Knight, 1998, p.17). "The institution of life tenure also influences justices' goals." They can afford to maximize policy instead of maximizing their chance of reelection (Epstein and Knight, 1998, p.17).

Although Epstein's strategic model is the most influential model that applies rational choice theory to the field of judicial politics, other scholars also use the strategic model. For example, Prichett (1942) argues that judges are politicians with policy goals. Marks (1988) formulated the separation of power model, and he claims that the institution of separation of power imposes constraints on the Court. Many scholars have looked for empirical evidence to study the interaction of different branches using the strategic model. Gely and Spiller (1990) and Eskridge and Frejohn (1992) found empirical evidence that supports their claim that justices

understand the policy preferences of Congress and respond accordingly. Eskridge (1991) argues that justices are likely to vote their sincere preferences if they assume that Congress is unlikely to override their actions. In terms of intra-Court influences, Rohde presents data "that show that justices ideologically closest to the opinion writer and the pivotal justice were favored in opinion assignment" (Saul, 2006).

Critics argue that the strategic model fails to provide complete understanding of the Supreme Court. The main criticism is that it is based on unrealistic assumptions. Segal and Spaeth say it is unrealistic to assume that justices have the perfect and complete information about the preferences of Congress and other actors. Others argue that judges do not need to worry about congressional action since Congress rarely overturns Supreme Court cases. Despite criticism of the strategic model, it is widely accepted. Bailey (2007) measures the preferences of all political actors in three institutions and quantitatively measures how strategic their behavior is over time. Bailey's contribution to the field is to "provide a method and data for producing preference estimates that are comparable across time and institutions" (Bailey, 2007, p. 447).

The strategic model helps both scholars and the American public understands the Court in terms of its political environment. It provides a more realistic assessment of the institution compared to the legal model and the attitudinal model. Without understanding the political environment of Supreme Court Judges, it is virtually impossible to understand the Court as an institution. The Supreme Court does not have enforcement power, and judges have to rely on other branches to enforce their decisions. For this reason, Supreme Court justices have incentives to pay attention to the preferences of individuals in other branches.

Section 2.5: New Institutionalism

New Institutionalism is a comprehensive approach to the study of judicial decision-making. It considers numerous factors in examining the judicial decision-making process. New Institutionalism "takes seriously the effects on judicial decision making of judicial norms and legal traditions and also attempts to situate the Court in larger political and social contexts" (Clayton and Gillman, 1999, p. 4). New Institutionalists are unique in that they "examine political influences over law and judicial behavior" (Corwin, 2006, p. 308). New Institutionalists study how institutional arrangements and relationships shape political behavior (Clayton and Gillman, 1999). This marks a departure from the previous approaches. The New Institutional approach differs from that of the behavioralists mainly because behavioralists focus on individual voting behavior and study judges' motives without considering the political environment in which judges operate. The New Institutionalism approach differs from strategic models of decision-making in that the former analyzes voting behavior of justices relative to political conditions in the other branches and has tended to focus more on the Court as a whole; the latter incorporates the voting behavior of justices relative to the influences of colleagues, and has tended to focus more on the behavior of justices as individuals (Sharma, 2009). It may be the case that future New Institutionalist literature will in fact trend more toward an analysis of individual justices (Sharma, 2009).

New Institutionalism is more broad and inclusive than other approaches to the study of judicial decision-making in that it encompasses a variety of extra-Court influences. The supporters of New Institutionalism believe that numerous factors such as public opinion and interest groups affect judicial decision-making. With this approach, social scientists explore the

role of the Supreme Court and “the full range of judicial politics” and understand “how the Court maintains and disrupts major political, social, and economic structures and processes.” This requires more complicated explanations than simply explaining how individual judges promote their preferences (Clayton and Gillman, 1999, p. 2). However, it is important to note that New Institutionalism does not completely deny other models of judicial decision-making (Sharma, 2009). The basic assumption of New Institutionalism is that judges are strategic, and it shares a common ground with the strategic model in this regard.

New Institutionalists contributed to the field of judicial politics by “understanding the institution of courts in the larger political system” (Kritcher, 2006, p. 387). Although it sounds similar to rational choice theory, New Institutionalism encompasses more than the rational choice theory (Epstein and Knight, 1998). New Institutionalism refers to “the analysis of judicial politics that stresses the interactive and independent nature of judicial decision-making” (Epstein and Knight, 2003, p. 232). Smith defines New Institutionalism as “the analysis of courts as part of broader political processes” (Rogers Smith, 1988, p. 89). Epstein and Knight state that New Institutionalism explores how “choices are structured by the institutional setting in which they are made” (Epstein and Knight, 1998, p. 26).

Epstein and Knight argue that “the word institutions refer to things that structure social interactions in particular ways” (1998, p. 17). It is plausible to assume that justices modify their behavior since they face negative consequences when they uncompromisingly pursue their preferred policies without foreseeing potential reactions from members of other branches (Epstein and Knight, 1998, p. 82). For instance, justices could face noncompliance with their rulings, and Congress can engage in retaliatory actions. Also, Congress can change the Court’s

jurisdiction, keep judicial salaries constant, and impeach justices (Epstein and Knight, 1998, p. 82). Murphy argues that justices are willing to modulate their policy preferences to avoid extreme reaction from Congress and the President (Epstein and Knight, 2003, p. 204). Martin argues that justices should anticipate reactions to their decisions by the "political branches of government" if they want to achieve their preferred policies (Martin, 2006, p. 4). And, that explains why judicial scholars argue that attitudinal theory is incomplete in explaining and predicting judicial behavior. The hope is that New Institutionalists can answer certain questions that attitudinalists cannot.

Critics argue that New Institutionalism itself is incomplete. First, critics argue that it is difficult for justices to foresee the future actions of the Congress and the President (Sharma, 2009; Segal, 1999, p. 240; Maltzman et al., 1999, p. 50). Also, critics argue that "strategic behavior may not always be discernible in final votes, but may occur in certiorari votes or in bargaining for opinion control" (Maltzman et al., 1999, p. 50; Sharma, 2009).

Section 2.6: Those Who Paved the Way Toward New Institutionalism

New Institutionalists study the Court by looking at "what made the Court a political institution within the American scheme of governance" (Kritzer, 2006, p. 388- 390). New Institutionalism is a flexible and holistic approach that allows judicial scholars to examine numerous variables. New Institutionalism goes beyond the examination of the law and stretches all the way to the examination of all the possible factors in judicial decision-making.

There are many who have paved the way through their works in the field. Among them, Cushman's early works on the courts are crucial. Cushman wrote, "The Supreme Court does not

do its work in a vacuum; its decisions on important constitutional questions can be understood in their full significance only when viewed against the background of history, politics, economics, and personality surrounding them and out of which they grew (Cushman, 1925, iii). He was cognizant of the fact that judges are influenced by a variety of factors in their decision making.

Old institutionalists paved the way for the development of New Institutionalism. While earlier institutionalists "tended to focus on formal structures such as judicial doctrines or constitutional provisions, New Institutionalists may be more inclined to emphasize the role of informal norms, myths, and background patterns of social meaning, such as religion, class, race, and gender" (Smith, 1995; Gillman, 1999, p. 308). Old institutionalists recognized the difficulty of doing the scientific research, but new institutionalists analyzed judicial behavior empirically; there lies the key difference between the two types of institutionalists (Sharma, 2009, p. 70). Corwin, an old institutionalist, mentioned that it is extremely difficult to conduct empirical research on judicial behavior (Clayton, 2006, p. 307). Subsequently, Corwin argues that there is a connection between the old and new institutioanlists: "what unifies the new and old institutionalisms is a belief that political science ought to care deeply about the real political world of which it is part and that it must therefore remain a normative and a telic science" (Corwin, 2006, p. 309).

Mason also paved the way for the development of New Institutionalism by exploring "the connection between the Courts and the other institutions of the federal government" and that is why Davis suggests that Mason contributed to the foundation of the New Institutionalism (Davis, 2006, p. 319). McCloskey's contribution to the development of New Institutionalism is crucial, and Murphy "provided an outstanding summary of the sorts of

considerations that McCloskey believed to be central to the art of judicial governance" (McCloskey, 1964; McCloskey, 2006, p. 347). McCloskey believed that the "Court, like all institutions, had to be mindful of the political system's general expectations about what a legitimate exercise of power looks like, and this required the Court to find a role in the political system that was more or less in tune with popular opinion or the preferences of powerful constituencies" (McCloskey, 2006, p. 345). McCloskey and Levinson suggested that the "Court learned to be a political institution and to behave accordingly" (McCloskey and Levinson, 2000, p. 231), and they emphasized the point that judges have institutional limits and challenges in their political environment. This means that judges are strategic in their decision-making process as a result of certain constraints on their ability to individually affect policy outcomes. Specifically, they note that:

> Judges had begun to learn the arts of judicial governance: the necessity to avoid, if possible, head-on collisions with the dominant political forces of the moment; the undesirability of claiming too much too soon; the great advantage of taking the long view, especially when others take the short; the usefulness of identifying judicial claims to authority with the claims of the Constitution (McCloskey and Levinson, 2000, p.34).

Shapiro stated that McCloskey's approach to studying the Court was "fundamentally historical but also acutely sensitive to the situation of the decision-makers at the time they had to make their decision" (McCloskey 1972, p. viii, cited in McCloskey, 2006, p. 354).

In addition, Dahl (1957) paved the way for the development of New Institutionalism through his analysis of the Court as an institution that was connected to democratic processes. Analyzing the Court as an institution distinguished him from other behavioralists who examined individual votes of judges (Adamany and Meinhold, 2006, p. 363). Adamany and Meinhold claim that Dahl chose the Court itself as the unit of analysis because Dahl "believed that judicial

policies were shaped by the Court's interactions with other institutions" (2006, p. 364). Dahl suggested that the Court is part of the dominant national political coalition, and the Court's policies are "consistent with majority will as reflected in the dominant political alliance" (Adamany and Meinhold, 2003, p. 364). Dahl adds that the only time when the Court has a major influence in shaping policies is "when the coalition is unstable with respect to certain key policies…. The Court can intervene in such cases and may even succeed in establishing policy" (Dahl, 1957, p. 294).

Shapiro also paved the way for the New Institutionalists by examining the relationship between the Supreme Court and other actors (Kritcher, 2006). Kritcher argues that Shapiro's work "serves as a bridge between traditional institutional analysis of the judicial branch and the work of the New Institutinalists" (Shapiro, 2006, p. 387). His contribution is three-fold: understanding courts and court processes as institutions; understanding the institution of courts in the larger political system; understanding the institutional function of judicial norms (Shapiro, p. 387). Shapiro's institutional approach was different from that of his predecessors mainly because he saw courts as political institutions instead of legal institutions (Kritcher, 2006, p. 390). He viewed courts as institutions "intimately involved in creating, shaping, and interpreting policy," and "wanted to compare courts to other institutions in this broadly defined political process" (Kritcher, 2006, p. 390).

In summary, various models of judicial decision-making explain judicial behavior. New Institutionalism is the approach this dissertation is going to utilize, primarily because it is the most comprehensive approach. New Institutionalism frames my research questions appropriately. My intention in this dissertation is to examine the role of the state courts in the

American political system and to examine the judicial branch in relation to members of other branches. New Institutionalism is the most appropriate approach due to its comprehensiveness and inclusiveness. I find it important to examine the judicial branch in relation to members of other branches, and I will present my research design in a subsequent chapter.

Chapter 3. Research Design

In Chapter 3, I will present my theory of judicial decision-making in death penalty cases and explain how I defined and measured various concepts and compiled the dataset.

Section 3.1: Research Questions

To explore the relationship between state high court judges and the larger political context in which they operate, I pose the following specific research questions:

1. Do institutional factors matter in judicial decision-making?

●1a. Does Republican control of the legislative branch at the time of a decision result in more conservative voting behavior by state high court justices in death penalty cases? "Conservative" here means voting to uphold the decisions of the lower court and affirming death sentences, while "liberal" refers to voting to reverse death sentences from lower courts.

●1b. Does Republican control of the executive branch at the time a decision is reached, or at the time of appointment, result in more conservative voting behavior by state high court justices in death penalty cases?

●1c. Does divided party government moderate voting behavior by state high court justices in death penalty cases?

2. Do environmental factors matter in judicial decision-making?

●2a. Does a higher state murder rate result in more conservative voting behavior by state high court justices in death penalty cases?

●2b. Does a higher number of executions in the state result in more conservative voting behavior by state high court justices in death penalty cases?

●2c. Does a higher number of death row inmate result in more conservative voting behavior by state high court justices in death penalty cases?

3. **Do personal factors matter in judicial decision-making?**

●3a. Are minority judges more likely to support defendants in death penalty appeals?

●3b. Are female judges more likely to support defendants in death penalty appeals?

●3c. Are judges who have been on the bench longer more likely to support defendants in death penalty appeals?

Section 3.2: The Model

In this study, my dependent variable is *Outcome*. This variable takes a value of 0 if an individual justice votes to uphold a defendant's death sentence, and a value of 1 if the justice votes to reverse the death sentence. My independent variables fall into three categories: (1) institutional variables; and (2) environmental variables; (3) personal variables.

Section 3.2.i: Institutional Factors

This study examines the effect of institutional factors on the behavior of state judges. To determine the effects of institutional factors, I include several institutional variables in my statistical analyses. I include a variable called *RepGov* to capture the party of the appointing governor, largely because research indicates that the party identification of the appointing President influences the voting behavior of high court justices (see below). Herein, the party of the appointing governor is coded 1 for Republican governors and 0 otherwise. Many judicial scholars have found that presidents pick "judges who share their political preferences at the federal level, and those judicial preferences are then translated into votes" (Songer and Ginn,

2002, p. 301; Carp and Rowland, 1983; Gottschall, 1986; Songer, Sheehan and Haire, 2000). Supreme Court scholars have found that judicial votes reflect the preferences of the presidents who appoint them (Richardson and Vines, 1970; Goldman, 1975; Howard, 1981; Carp and Rowland, 1983; Gottschall, 1986; Songer and Davis, 1990; Haire, 1993; Rowland and Carp, 1996; Songer, Sheehan and Haire, 2000). This explains why Presidents tend to appoint federal judges of their own party (Goldman, 1981; 1991; 1997). In addition, in 90 percent of all cases, presidents have appointed judges who share the same party in federal courts (Songer and Ginn, 2002). For these reasons, in assuming that a similar trend will manifest itself among executives at the state level, I include *RepGov* in this model. I expect this variable to be positively associated with the probability of a vote to uphold a death sentence.

Another variable called *Govnr* is also included in the model. It indicates the party of the governor at the time of the judicial decision, and it is coded 1 for Republican governors and 0 otherwise. New institutionalist scholars have found that the political party in control at the time of a decision is an important factor in explaining judicial voting behavior (Marks, 1988; Spiller and Gely, 1992). In my model, I expect *Govnr* to be positively associated with the probability of a vote to uphold a death sentence.

I also consider the partisan composition of the state legislature at the time a case is decided. Specifically, I create a variable called *House*, which is coded 1 if Republicans control the state house, and 0 if Democrats control the state house. I also include a variable called *Senate*, which is coded the same way. I also create a variable called *UniRep*. This variable is coded 1 if Republicans control the entire state legislature as well as the executive office, and 0 otherwise. *UniDemo* is a similar variable, which is coded 1 if Democrats control the entire state

government and 0 otherwise. I include these variables because Richardson and Scheb (1993) and Sharma (2009) found that the behavior of Supreme Court justices who are appointed during divided government is more moderate than that of those who are appointed during unified government. Also, De Figueiredo and Tiller (1996) find that the likelihood of passing judicial expansion legislation is higher when one party controls both legislative and executive branch. Consistent with the previous research findings on divided government, I expect *UniRep* to be positively associated with the probability of a vote to uphold a death sentence. I expect *UniDemo* to be negatively associated with the probability of a vote to uphold a death sentence.

Section 3.2.ii: Environmental Factors

This study also considers the effects of several environmental factors. To explore the effects of the number of death row inmates in a state, I create a variable called *CurrentNum*, which counts a state's death row population in 2009. I also create a variable that accounts for the number of executions since 1976, called *numb1976.* The number of executions is collected in 2009 and it varies greatly from state to state. I include this variable in keeping with the work of Hall (1995), which finds that a state's murder rate is associated with its citizens' level of support for the death penalty. She adds that justices in states with higher murder rates are more likely to uphold death sentences. In states with high crime rates, it seems as though citizens demand that judges be punitive, especially in states where judges are elected by the people. Consequently, judges have incentives to reflect public preferences and become more punitive in their voting behavior in these settings. For example, Gordon and Huber (2002) found that trial court judges in Pennsylvania become more punitive as reelection approaches; this indicates that the

environment affects judges and their decision-making. Consistent with previous research findings, I expect both *CurrentNum* and *numb1976* to be positively associated with the probability of a vote to uphold a death sentence.

Section 3.2.iii: Personal Variables: Race, Gender, and Length of Time

Personal variables include *race, gender,* and *length of time on bench.* The variable *race* is coded 1 if a judge is Caucasian, and 0 otherwise. The variable *gender* is coded 1 if the judge is male, and 0 if the judge is female. *Length of time on bench* is a continuous variable indicative of how many years a judge has served on the bench. Most of the judges come to the courts of last resort from lower courts in their state, but I simply counted the number of years after the judge joins the court of last resort.

Section 3.2.iii.a: Race

Why do I consider the effects of these variables? I will begin with race. Some scholars argue that the race of the justice is an important factor in explaining judicial voting behavior. Cook (1973), for example, speculates that the race of the judge may be influential, especially in cases involving minority defendants. Steffensmeier and Britt (2001) found that black judges were more likely than white judges to sentence both black offenders and white offenders to prison. Similarly, Gottschall (1983) found that black judges voted more frequently in support of criminal defendants in both prisoners' rights cases and criminal defendants' rights cases, although there was no major difference in their voting behavior in race and sex discrimination cases. Because the race of the judge influences his/her voting behavior, many scholars argue that an increase in the number of black judges may result in more equitable treatment of black and

white defendants and may have a positive influence in the criminal justice system (Crockett, 1984; Welch, Combs, and Gruhl, 1988; Mann, 1993).

In contrast, some scholars argue that the race of the judge does not influence judicial voting behavior. Walker and Barrow (1985), for example, found no racial differences in the voting behavior of federal district court judges in criminal cases. Similarly, Segal (2000) and Uhlman (1978) conclude that race does not influence sentencing behavior. In all, the findings on the effects of race are mixed. Some scholars conclude that race matters while others find that it does not. I include *race* in my statistical models to explore the effects of race on judicial decision-making.

Section 3.2.iii.b: Gender

I turn next to gender. Some scholars argue that gender plays an important role in judicial decision-making. Several studies suggest that female judges exhibit certain characteristics in decision-making. Boyd (2006), for example, studied personal injury and civil rights cases and found that female justices in the U.S. District Court settle cases more frequently than male justices. Massie et al. (2002) found that female justices in the federal appellate court vote more conservatively in criminal cases, but more liberally in civil rights and liberties cases. In addition, Steffensmeier and Herbert (1999) found that female state judges are more likely to incarcerate a defendant and tend to give longer sentences than male judges in criminal cases. Also, McCall (2005) suggested that female state high court justices tend to decide police brutality cases more liberally than male justices. Crowe (1999) even examined race discrimination cases in U.S.

District courts and found that female judges were more likely than male judges to support plaintiffs in sex discrimination cases.

However, some scholars argue that gender has no impact on judicial decision-making (Segal, 2000; Martin, 1993; Gryski et al., 1986, Allen and Wall, 1987). Segal (2000) found no statistically significant gender effect, and concluded that President Clinton's district court appointees did not provide policy representation to female constituents. Although Clinton made an effort to appoint more female justices to the federal judiciary, symbolic representation (merely have a characteristic represented) did not lead to active representation (votes to favor a certain demographic). Several other studies found no support for the notion that gender affects judicial decision-making (Songer, Davis, and Haire, 1994; Cameron and Cummings, 2003; Manning, 2004; Kulik, Perry, and Pepper, 2003; Martinek, 2003; Ashenfelter, Eisenberg, and Schwab, 1995; Songer et al., 1994; Davis, 1993; O'Connor and Segal, 1990; Kritzer and Uhlman, 1977; Songer and Crew-Meyer, 2000; Martin and Pyle, 2000; Garrison, 1995; Sisk, Heise, and Morriss, 1998; Westergren, 2004). In crafting this variable, I coded 1 for male judges and 0 otherwise. I include the variable *gender* in my statistical models to explore the role of gender in judicial decision-making.

Section 3.2.iii.c: Time on the Bench

Judicial scholars have coined the term "freshmen effect" to explain the behavior of newly appointed Supreme Court justices (Scheb and Ailshie, 1985). Brenner (1983) studied voting behavior of Supreme Court justices from 1946 to 1977 and compared voting behavior of new justices and experienced justices. He hypothesized that freshmen justices have a moderate

voting behavior, but his data did not support the hypothesis. However, Hagle (1993) finds evidence of freshmen effect in his research. He argues that voting behavior of justices is unique when they are new to the Supreme Court. New justices exhibit “an initial bewilderment or disorientation” in their early years (Hagle, 1993, p. 1142). Also, new justices are far less likely to write an opinion of the Court than the experienced justices, and they tend to vote as a moderate (Hagle, 1993, p. 1142). In addition, Snyder (1957) argues that new justices come to the Court and tend to form a moderate voting block in their early years.

According to the freshman effect hypothesis, new Supreme Court justices are less likely than experienced justices to produce dissenting opinions. More specific to my research, Hall (1995) found that term length is associated with support for the death penalty, and justices with shorter terms are more likely to uphold death sentences (1995). It is plausible to assume that the length of time on the bench affects justices’ voting behavior. For instance, justices may feel somewhat intimidated in their first year on the bench, and they tend to go along with the majority and uphold the sentence of death instead of reversing death sentences and writing dissenting opinions separately (Hall, 1995). Justices may develop a sense of security in their position and feel less constrained by various other factors as time progresses. Hurwitz and Stefko (2004) note such an increase in independent behavior with each term served on the Supreme Court. However, Steffensmeier and Britt (2001) examine the sentencing behavior of Pennsylvania state judges and indicate that time on the bench is not statistically significant in their voting behavior. I include the variable *length of time on bench* in my statistical models to explore the effects of “the freshman effect” at the state court level. It is coded numerically. For instance, it is coded 1 for 1 year and 20 for 20 years to reflect the number of years served on the bench for each judge.

Section 3.3: Hypotheses

My hypotheses are borne out of my specific research questions mentioned earlier in the introduction. They are categorized into three subsections, and there are institutional factors, environmental factors, and personal factors. I test a number of hypotheses in my dissertation, and they are as follows:

Section 3.3.i: Institutional Factors

H1: Judges who are selected during times of Republican control of the executive branch are more likely to uphold the sentence of death than judges who are selected during times of Democratic control of the executive branch. In short, control of the executive office by a Republican governor at the time of the judicial selection is positively associated with the probability of a vote to uphold a death sentence.

H2: Judges are more likely to uphold the sentence of death when a Republican is in control of the executive branch at the time of a decision than when a Democrat is in control of the executive branch. In short, Republican control of the executive branch is positively associated with the probability of a vote to uphold a death sentence.

H3: Judges are more likely to uphold the sentence of death when the lower chamber of the state legislature is controlled by the Republican Party. In short, control of the lower chamber of the legislature by the Republican Party is positively associated with the probability of a vote to uphold a death sentence.

H4: Judges are more likely to uphold the sentence of death when the upper chamber of the state legislature is controlled by the Republican Party. In short, the control of the upper house of the

legislature by the Republican party is positively associated with the probability of a vote to uphold a death sentence.

H5: Judges are more likely to uphold the sentence of death when they are faced with unified Republican control of state government. In short, unified Republican control of state government is positively associated with the probability of a vote to uphold a death sentence.

H6: Judges are more likely to reverse the sentence of death when they are faced with unified Democratic control of state government. In short, unified Democratic control of state government is positively associated with the probability of a vote to reverse a death sentence.

Section 3.3.ii: Environmental Factors

H7: Judges in states with higher numbers of death row inmates are more likely to uphold the sentence of death. In short, the number of death row inmates in a state is positively associated with the probability of a vote to uphold a death sentence.

H8: Judges in states with higher number of executions (since 1976) are more likely to uphold the sentence of death. In short, the number of executions in a state is positively associated with the probability of a vote to uphold a death sentence.

Section 3.3.iii: Personal Factors

H9: Male judges are more likely than female judges to uphold the sentence of death. In short, being male is positively associated with the probability of a vote to uphold a death sentence.

H10: Caucasian judges are more likely than non-Caucasian judges to uphold the sentence of death. In short, being Caucasian is positively associated with the probability of a vote to uphold a death sentence.

H11: Judges who have served longer on the bench are more likely to uphold the sentence of death. In short, there is a positive relationship between length of time on the bench and the probability of a vote to uphold a death sentence.

In testing these hypotheses, I examine three sets of factors purported to affect judicial decision-making: institutional, environmental, and personal factors. Through this research, I will be able to find out which factors have statistically significant effects on judicial decision-making in death penalty appeals. I am most interested in seeing the effects of the institutional variables on judicial decision-making. Ultimately, testing these hypotheses will enhance our understanding of how institutional factors influence the judicial decision-making process at the state level.

Section 3.4: Data and Methods

The main research question of this dissertation is as follows: Do institutional factors influence the voting behavior of state high court judges in death penalty cases? I address this question using data from 30 state high courts that operate in states that employ the death penalty. My dissertation will seek to explain the voting behavior of judges in state courts of last resort in death penalty appeals cases. To do this, I have constructed a dataset that encompasses all death penalty appeals cases in 30 states during the period of 2000-2006. The dependent variable in my quantitative analyses will be the vote rendered by each judge in each case, which can take on two

values: a vote to uphold the sentence of death, or a vote to reverse or vacate the sentence of death. I collected data on death penalty cases using legal search engines, including Lexis Nexis and Westlaw. I will test notions gleaned from the New Institutionalist approach to explain judicial decision-making, as well as some gleaned from other perspectives. The unit of analysis is the vote of a justice on a given case.

I have compiled death penalty cases from all states between 2000 and 2006, and my dataset allows me to determine what factors are associated with judicial decisions to either uphold or reverse death sentences in state courts of last resort. I relied heavily on Westlaw and Lexis/Nexis, and they are the primary legal search engines in collecting death penalty case data in my dissertation. Using Westlaw and Lexis/Nexis, I typed "capital punishment and death penalty" in the search engine box and gathered data from all the cases from courts of last resort in 30 states. Defendants convicted of first-degree murder get to appeal to the highest court in each state, and the court of last resort is usually the state supreme court. When cases reach the state court of last resort, state judges get to decide whether to uphold or reverse the sentence of death from the lower court. Judges either decide to uphold or reverse the sentence of death, and I record it 1 for affirmed decisions and 0 for reversed decisions. Only 20 percent of the time, the entire court reversed the sentence of death from the lower courts, and upholding the sentence of death seems to be the norm according to my data. Between 2000 and 2006, most states had very few cases, and the majority of my death penalty cases came from states in the South.

It is well documented that the death penalty is highly concentrated in seven states: Texas, Virginia, Oklahoma, Florida, Georgia, South Carolina, and Ohio, and my dataset reflects this fact. All defendants who appealed their death sentences are included in the dataset between 2000

and 2006, and judicial decisions from the courts of last resorts are analyzed in this dissertation. The theoretical underpinning of this research is the new institutionalism, which posits that judges' decisions are shaped not only by judicial attitudes and strategic considerations, but also by a variety of institutional and environmental factors. I collect data to test my hypotheses that the institutional and environmental factors previously enumerated will have a significant impact on the voting behavior of state high court judges in death penalty appeals.

Section 3.5: Three Sets of Factors

Drawing on the judicial literature, my independent variables reflect institutional factors, environmental factors, and personal factors that affect judicial decisions. Institutional factors in my dataset include the party identification of the governor at the time the judge was appointed or elected, the party identification of the governor at the time the case was decided, and the party composition of the state House and Senate at the time the case was decided. The data on institutional factors come from the U.S. Census Bureau. The composition of state legislatures by political party affiliation is recorded year by year, and the presence of divided/unified government is coded based on the number of Republicans/Democrats in a given year.

Among the environmental factors considered in my dataset are the state murder rate, the number of executions since 1976, and the number of inmates on death row at the time of the decision. The data on environmental factors are available from the Bureau of Justice Statistics through the U.S. Department of Justice and FBI crime data. I also relied on a non-profit research institution called the Death Penalty Information Center in gathering state-by-state information on the number of death row inmates and number of executions.

Personal factors in my dataset include the gender and race of the judge, which the literature suggests are related to differences in judicial behavior. I will also use ideology scores developed by Brace et al. (2000), but only for a subset of cases for which those scores are available. The data on personal factors are available from various state supreme court websites. I collected information on judges based on their biographical information and was able to find their race, gender, and the number of years on the bench. Seventy percent of the instances, state high court judges are male while 30 percent of the instances, judges are female. Anglo judges are 85 percent while 15 judges are non-Anglo. The number of years on the bench varies from 1 to 44 years in this dataset.

Section 3.6: Criticism of Dataset

There is some missing information in my dataset. Law librarians in all states were instrumental in helping me gather information on judges' personal factors, but there is some missing information in this dataset. Some states do not have biographical information on older judges in their library, and their biographical information was not traceable. I have missing information on aged justices for this reason, but it is only a small percentage of the dataset.

Section 3.7: Methodology

In this dissertation I utilize frequency distributions, analysis of variance (ANOVA), correlation analysis, and binary logistic regression. First, this dissertation employs the use of frequency distributions in order to describe all the variables in the dataset. Second, I use bivariate correlations to examine the strength of the relationships between variables. Third, I

employ ANOVA analyses to compare means. Finally, for my main quantitative models I employ logistic regression analysis.

Section 3.8: Conclusion

My dissertation will seek to explain the voting behavior of judges in state courts of last resort in death penalty appeals cases. To do this, I have constructed a dataset that encompasses all death penalty appeals cases in 30 states during the period 2000-2006. The dependent variable in my quantitative analyses will be the vote rendered by each judge in each case, which can take on two values: a vote to uphold the sentence of death, or a vote to reverse or vacate the sentence of death. Drawing from the judicial literature, my independent variables will reflect personal factors, institutional factors, and environmental factors. Personal factors include gender, race, and ideology of the judge. Institutional factors include the party identification of the governor at the time the judge was appointed or elected, the party identification of the governor at the time the case was decided, and the party composition of the state House and Senate at the time the case was decided. Environmental factors include the state murder rate, the number of executions since 1976, and the number of inmates on death row at the time of the decision. The theoretical underpinning of this research is the new institutionalism, which posits that judges' decisions are shaped not only by judicial attitudes and strategic considerations, but by a variety of institutional and environmental factors. I hypothesize that the institutional and environmental factors previously enumerated will have a significant impact on the voting behavior of state high court judges in death penalty appeals. To test my hypotheses, I will use logistic regression to construct models incorporating all of the previously mentioned variables.

Chapter 4. Analysis

Section 4.1: Introduction

This chapter includes statistical analyses and answers my research question. I test various hypotheses using frequency tables, ANOVA tests, correlation tests, and multivariate regression analysis in order to understand how certain factors influence judicial decision-making at the state level.

Section 4.2: Dependent Variable

The dependent variable is a judicial vote on a death penalty appeals case, and it is either to uphold or reverse the sentence of death. Table 4.1 illustrates the percent of instances where judges upheld or reversed the sentence of death. Judges reversed the sentence of death in 21 percent of all instances, while they upheld the sentence of death in 79 percent of all instances. This suggests that upholding the death sentence is the norm when judges decide death penalty cases, but there is enough variation to justify examining this as a dependent variable.

Table 4.1 Vote Outcome

	N	%
Vote to Uphold	3790	79
Vote to Vacate	1017	21
Total	4873	100

Section 4.3: Independent Variables (Institutional Variables)

As a starting point, it seems logical that the party of the appointing governor would be relevant to this matter. One would expect that conservative appointees would favor the death penalty and liberal appointees would not. In a general sense, then, this variable embraces the basic tenets of the attitudinal model by using the party of the appointing governor as a proxy for a justice's policy preferences. Table 4.2 illustrates the breakdown of the party identification of the sitting governor at the time of judicial selection. Whether judges are appointed or elected, I measured the party identification of the sitting governors in each state at the time of judicial selection. It is almost evenly split between Republicans and Democrats; Republican governors controlled the executive office 45 percent of the instances while the Democratic governors controlled the office 55 percent of the instances between 2000 and 2006.

Table 4.2 Party Identification of the Sitting Governor at the Time of Selection (RepGov)

	N	%
Republicans	2174	45
Democrats	2619	55
Total	4873	100

Table 4.3 also illustrates the breakdown of the party identification of the members in the lower chamber of state legislatures at the time when a judicial decision is reached. It is evenly split between the two parties, and this even split allows for valid analysis. Republicans controlled the chamber 49 percent while Democrats controlled it 51 percent of the instances.

Table 4.3 House Composition (2000-2006)

	N	%
Majority Republican	2351	49
Majority Democrat	2450	51
Total	4873	100

Table 4.4 is the breakdown of the party identification of the members in the upper chamber of state legislatures at the time when a judicial decision is reached. It is evenly split between the two parties; Republicans had a majority in 53 percent of the instances while Democrats controlled in 47 percent of the instances.

Table 4.4 Senate Composition (2000-2006)

	N	%
Majority Republican	2561	53
Majority Democrat	2263	47
Total	4873	100

Table 4.5 illustrates the breakdown of the party identification of the governor at the time of judicial decision. Whether judges are appointed or elected, I measured the party identification of the sitting governors in each state at the time of judicial decision. Unlike the other governor variable, which captures the party ideology of the sitting governor at the time of a judge's appointment to a court, this variable (Gov) measures the party of the governor when the state high judge made a ruling on death penalty cases. In terms of frequencies, Republican governors

are dominant in this variable, unlike in the governor variable (RepGov) where there is a pretty even split between the two parties.

Table 4.5 Governor (Gov)

	N	%
Republicans	3266	67
Democrats	1607	33
Total	4873	100

Section 4.4: Independent Variables (Environmental Variables)

Beyond these institutional considerations, it is also necessary to consider some important environmental variables that affect judicial decision-making. For example, Table 4.6 illustrates the number of death row inmates in each state. The numbers are current as of October, 2006, and California (20%), Texas (12%), and Florida (12%) have the highest number of death row inmates in their state. The numbers are concentrated in certain states, and this indicates the reality of death penalty use between 2000 and 2006 in 30 states. The other 20 states do not have any death row inmates, and those states are not included in Table 4.6.

Table 4.6 Death Row Population as of October, 2006.

States	Numbers	Percent of Total
AL	192	5.82
AZ	124	3.75
AR	37	1.12
CA	657	19.92
CO	2	0.06
CT	8	0.24
DE	18	0.54
FL	398	12.06
GA	107	3.24
ID	20	0.60
IL	11	0.33
IN	24	0.72
KS	9	0.27
KY	39	1.18
LA	88	2.66
MD	8	0.24
MS	66	2.00
MO	50	1.51
MT	2	0.06
NE	9	0.27
NV	79	2.39
NJ	11	0.33
NM	2	0.06
NY	1	0.03
NC	184	5.57
OH	192	5.82
OK	89	2.69
OR	33	1.00
PA	228	6.91
SC	66	2.00
SD	4	0.12
TN	108	3.27
TX	392	11.88
UT	9	0.27

VA	20	0.60
WA	9	0.27
WY	2	0.06
Total	3298	100

Source: Bureau of Justice, 2006. Numbers are current as of October, 2006.

Table 4.7 shows the number of executions in each state since 1976 as of 2006. This also illustrates how the numbers are concentrated in certain states, and those states include Texas (36%), Virginia (10%), and Oklahoma (8%). Therefore, these 3 states collectively account for 60% of all executions in the country. The reason for examining this figure is to see if states with a higher number of executions are those in which judges are upholding sentences of death at a higher level. Conversely, a state could just have a higher level of executions without any influence from the behavior of appellate judges.

Table 4.7 Number of Executions since 1976

State	Number	Percent of Total
TX	376	35.91
VA	97	9.26
OK	83	7.93
MO	66	6.30
FL	61	5.83
NC	43	4.11
GA	39	3.72
SC	36	3.44
AL	34	3.25
AR	27	2.58
LA	27	2.58
OH	23	2.20
AZ	22	2.10
IN	17	1.62
DE	14	1.34
CA	13	1.24
IL	12	1.15
NV	12	1.15
MS	7	.67
UT	6	.57
MD	5	.48
WA	4	.38
MT	3	.29
NE	3	.29
PA	3	.29
US Govt	3	.29
KY	2	.19
OR	2	.19
TN	2	.19
CO	1	.10
CT	1	.10
ID	1	.10
NM	1	.10
WY	1	.10
Total	1	100

Source: http://www.deathpenaltyinfo.org/FactSheet.pdf (Numbers are current as of October, 2006.)

Section 4.5: Independent Variables (Personal Factors)

It is also relevant to control for the personal traits of judges, including race and gender. A full 86 percent of the instances in my study are Caucasians, and the rest are non-Caucasian judges. Table 4.8 shows the breakdown of judges based on gender. Specifically, Table 4.8 illustrates that 30 percent of the instances are female judges while 68 percent are male judges.

Table 4.8 Race and Gender

Race	N	%
Anglo	4097	86
Other	678	14
Total	4873	100
Gender		
Male	3334	68
Female	1445	30
Total	4873	98

Section 4.6: Test of Hypotheses

Section 4.6.i: Institutional Variables

In this section, I use ANOVA tables to present a preliminary assessment of the value that individual variables may hold for explaining variation in my dependent variable. Each independent variable is analyzed on its own, with a specific hypothesis offered regarding its influence. If there is some evidence that the variable is relevant, I then include it in a parsimonious regression model offered in the following section.

To begin, a series of independent variables and hypotheses is derived from the institutional and non-institutional variables discussed earlier. In keeping with the New Institutionalist model, I first examine an appointing governor's influence on a judicial decision regardless of whether a judge is his/her appointee. I test this hypothesis using ANOVA analysis.

H1: Judges who are selected during times of Republican control of the executive branch are more likely to uphold the sentence of death than judges who are selected during times of Democratic control of the executive branch.

Table 4.9 ANOVA: Vote on DP by Party of Governor at Time of Selection

Party ID of the Sitting Governor			Mean	N		Std. Deviation	
Democrat			.74	2591		.439	
Republican			.85	2148		.354	
Total			.79	4739		.407	
			Sum of Squares	Df	Mean Square	F	Sig.
Vote on Death Penalty Cases * Party ID of the Sitting Governor at the Time of Appt or Election	Between Groups	(Combined)	15.103	1	15.103	93.076	.000
	Within Groups		768.663	4737	.162		
	Total		783.766	4738			

Based on this information, I reject the null that there is no difference between the Republican control and the Democrat control of the executive branch at the time of judicial selection. It is statistically significant at the .000 level. As a result, H1 is tested in the regression model 1, Table 4.20 in Section 4.7 below, because there is statistical significance regarding this factor. In short, the party of the appointing governor is clearly relevant to the ideology manifested by a judge once he or she begins serving on the Court. As we expect, it seems as though Republican appointees are going to be more likely to uphold a sentence of death. This seems logical in light of the conservative ideology of the Republican Party. Next, I turn to analysis of the influence of the sitting governor at the time that a judicial decision is made; specifically, the following hypothesis is addressed:

H2: Judges are more likely to uphold the sentence of death when a Republican is in control of the executive branch than when a Democrat is in control of the executive branch.

Table 4.10 ANOVA: Vote on DP by Party of Governor at Time of Decision

<table>
<tr><td colspan="3">Party ID of the Sitting Governor</td><td>Mean</td><td colspan="2">N</td><td colspan="2">Std. Deviation</td></tr>
<tr><td colspan="3">Democrat</td><td>.75</td><td colspan="2">1583</td><td colspan="2">.434</td></tr>
<tr><td colspan="3">Republican</td><td>.81</td><td colspan="2">3224</td><td colspan="2">.394</td></tr>
<tr><td colspan="3">Total</td><td>.79</td><td colspan="2">4807</td><td colspan="2">.408</td></tr>
<tr><td></td><td></td><td></td><td>Sum of Squares</td><td>Df</td><td>Mean Square</td><td>F</td><td>Sig.</td></tr>
<tr><td rowspan="3">Vote on Death Penalty Cases * Control of the State Executive Branch</td><td>Between Groups</td><td>(Combined)</td><td>3.869</td><td>1</td><td>3.869</td><td>23.296</td><td>.000</td></tr>
<tr><td colspan="2">Within Groups</td><td>797.968</td><td>4805</td><td>.166</td><td></td><td></td></tr>
<tr><td colspan="2">Total</td><td>801.837</td><td>4806</td><td></td><td></td><td></td></tr>
</table>

Based on this information, I reject the null that there is no difference between Republican control and Democratic control of the executive branch at the time when a decision to uphold or overturn a death sentence is made. Overall, the basic New Institutionalist perspective that actors in the other branches of government can influence the behavior of judges at the time a decision is made—perhaps out of judicial concern for things like noncompliance in implementation—seems to be validated in this table. This result is statistically significant at the .000 level, and the variable is going to be tested in the parsimonious model for this reason. Unlike ANOVA, the multivariate regression analysis can control for other factors that might influence variation in judicial voting behavior. For this reason, any variable that exhibits statistical significance in ANOVA tables will be included in my multivariate analysis at the end of the chapter.

I now turn to my assessment of the potential influence that state legislatures have in the imposition of the death penalty. This seems logical in light of the fact that New Institutionalist considerations have been very inclusive, and incorporate the preferences of multiple actors in the policy-making setting. The following hypothesis is considered:

H3: Judges are more likely to uphold the sentence of death when the lower chamber of the state legislature is controlled by the Republican Party.

Table 4.11 ANOVA House

<table>
<tr><td colspan="3">Control of the State House</td><td>Mean</td><td colspan="2">N</td><td colspan="2">Std. Deviation</td></tr>
<tr><td colspan="3">Democrat</td><td>.79</td><td colspan="2">2400</td><td colspan="2">.406</td></tr>
<tr><td colspan="3">Republican</td><td>.79</td><td colspan="2">2335</td><td colspan="2">.408</td></tr>
<tr><td colspan="3">Total</td><td>.79</td><td colspan="2">4735</td><td colspan="2">.407</td></tr>
<tr><td></td><td></td><td></td><td>Sum of Squares</td><td>df</td><td>Mean Square</td><td>F</td><td>Sig.</td></tr>
<tr><td rowspan="3">Vote on Death Penalty Cases * Control of the State House</td><td>Between Groups</td><td>(Combined)</td><td>.009</td><td>1</td><td>.009</td><td>.055</td><td>.814</td></tr>
<tr><td colspan="2">Within Groups</td><td>782.418</td><td>4733</td><td>.165</td><td></td><td></td></tr>
<tr><td colspan="2">Total</td><td>782.427</td><td>4734</td><td></td><td></td><td></td></tr>
</table>

Table 4.11 shows that there is no statistical significance in regard to a relationship between control of the state legislature and judicial decision-making on the death penalty. Therefore, control of the lower chamber of the legislature (House) by the Republican Party is not positively associated with the probability of a vote to uphold a death sentence. It may be the case that executives, who have the power to pardon, are a more germane consideration for judges who are making death penalty decisions. In this regard, New Institutionalist perspectives may vary based on particular issues, and based on the nature of the court in question. In this

particular issue category at the state level, no relationship is found. This is why I exclude this variable from the parsimonious model later in the multivariate regression analysis.

Beyond the state house, I also assess the effect of party control of the state senate by assessing the following hypothesis:

H4: Judges are more likely to uphold the sentence of death when the upper chamber of the state legislature is controlled by the Republican Party.

Table 4.12 ANOVA Senate

Control of the State Senate			Mean	N		Std. Deviation	
Democrat			.80	2213		.399	
Republican			.78	2545		.415	
Total			.79	4758		.408	
			Sum of Squares	df	Mean Square	F	Sig.
Vote on Death Penalty Cases * Control of the State Senate	Between Groups	(Combined)	.615	1	.615	3.693	.055
	Within Groups		791.528	4756	.166		
	Total		792.143	4757			

There is some statistical significance, and therefore I reject the null hypothesis that the average value of the vote on death penalty cases is the same for Republicans and Democrats. Although the lower chamber offers no statistically significant findings, I must account for the possible interaction of the two, particularly when one party controls both the legislative and executive branch. This is done through an analysis of the following hypothesis:

H5: Judges are more likely to uphold the sentence of death when they are faced with unified Republican control of state government.

Table 4.13 ANOVA Unified Republican Government

<table>
<tr><td colspan="3">Unified Republican Government</td><td>Mean</td><td colspan="2">N</td><td colspan="2">Std. Deviation</td></tr>
<tr><td colspan="3">Unified Democratic Government</td><td>.77</td><td colspan="2">2876</td><td colspan="2">.419</td></tr>
<tr><td colspan="3">Unified Republican Government</td><td>.81</td><td colspan="2">1931</td><td colspan="2">.392</td></tr>
<tr><td colspan="3">Total</td><td>.79</td><td colspan="2">4807</td><td colspan="2">.408</td></tr>
<tr><td></td><td></td><td></td><td>Sum of Squares</td><td>Df</td><td>Mean Square</td><td>F</td><td>Sig.</td></tr>
<tr><td rowspan="3">Vote on Death Penalty Cases * Unified Government Republican Control</td><td>Between Groups</td><td>(Combined)</td><td>1.641</td><td>1</td><td>1.641</td><td>9.851</td><td>.002</td></tr>
<tr><td colspan="2">Within Groups</td><td>800.196</td><td>4805</td><td>.167</td><td></td><td></td></tr>
<tr><td colspan="2">Total</td><td>801.837</td><td>4806</td><td></td><td></td><td></td></tr>
</table>

The null hypothesis is that the mean is the same for all groups, and the mean refers to the average value of the dependent variable. Since this is statistically significant at the 0.002 level, I reject the null hypothesis. The average value of the dependent variable is not the same for the Republican controlled government and the rest. In short, unified Republican control of state government is positively associated with the probability of a vote to uphold a death sentence. Again, this idea is consistent with New Institutionalism, as there is a relationship between political actors and justice votes. However, I do not include this variable in the parsimonious model because of an endogeneity problem. Specifically, there is a correlation between this variable and my governor variable. I must also submit that the presence of unified Republican control might serve as a proxy for highlighting an overwhelming political climate that embraces conservative principles. Ultimately, because individual assessments of legislative bodies indicate no isolated effect on judicial behavior, and because gubernatorial variable do indicate

such an isolated impact on judicial behavior, I opt to use the gubernatorial variable in the regression model. This decision is reinforced in the rejection of the following hypothesis.

H6: Judges are more likely to reverse the sentence of death when they are faced with unified Democratic control of state government.

Table 4.14 ANOVA Unified Democratic Government

<table>
<tr><td colspan="3">Unified Demo Govt</td><td>Mean</td><td colspan="2">N</td><td colspan="2">Std. Deviation</td></tr>
<tr><td colspan="3">Unified Democratic Government</td><td>.78</td><td colspan="2">3789</td><td colspan="2">.412</td></tr>
<tr><td colspan="3">Unified Republican Government</td><td>.81</td><td colspan="2">1018</td><td colspan="2">.395</td></tr>
<tr><td colspan="3">Total</td><td>.79</td><td colspan="2">4807</td><td colspan="2">.408</td></tr>
<tr><td></td><td></td><td></td><td>Sum of Squares</td><td>Df</td><td>Mean Square</td><td>F</td><td>Sig.</td></tr>
<tr><td rowspan="3">Vote on Death Penalty Cases * Unified Government Democratic Control</td><td>Between Groups</td><td>(Combined)</td><td>.421</td><td>1</td><td>.421</td><td>2.523</td><td>.112</td></tr>
<tr><td colspan="2">Within Groups</td><td>801.416</td><td>4805</td><td>.167</td><td></td><td></td></tr>
<tr><td colspan="2">Total</td><td>801.837</td><td>4806</td><td></td><td></td><td></td></tr>
</table>

As the ANOVA table demonstrates, I fail to reject the null, and I conclude that unified Democratic control of state government is not positively associated with the probability of a vote to reverse a death sentence. I am excluding the variable from the parsimonious model.

Section 4.6. ii: Environmental Variables

Section 4.6. ii.a: Bivariate Analysis: test of H7 and H8

In Tables 15 and 16, I included environmental factors to test Hypothesis #7 and Hypothesis #8.

H7: Judges in states with higher numbers of death row inmates are less likely to reverse the sentence of death. In short, the number of death row inmates in a state is positively associated with the probability of a vote to uphold a death sentence.

H8: Judges in states with higher number of executions (since 1976) are less likely to reverse the sentence of death. In short, the number of executions in a state is positively associated with the probability of a vote to uphold a death sentence.

The key environmental variable, current number of death row inmates since 1976 (CurrentNum) shows strong correlation with the vote outcome at the 0.000 level. The variable, CurrentNum is a number of death row inmates as of 2006. I reject the null hypothesis and conclude that judges in states with higher numbers of death row inmates are more likely to uphold the sentence of death. In short, the number of death row inmates in a state is positively correlated with the probability of a vote to uphold a death sentence. Consistently, the number of executions since 1976 (Num1976) is significant at the 0.000 level. I reject the null and conclude that judges in states with higher number of executions since 1976 are more likely to uphold the sentence of death. I assess that this is because political culture influences judicial decision-

making, and I recognize the existence of political culture manifested throughout actors in the legal system, such as prosecutors, trial judges, and appellate judges.

Table 4.15 Correlation: Vote by Number of Executions

		Number of Executions Since 1976
Vote on Death Penalty Cases	Pearson Correlation	.131
	Sig. (2-tailed)	.000
	N	4807

Table 4.16 Correlation: Vote by Current Death Row Population

		Current Death Row Population (2009)
Vote on Death Penalty Cases	Pearson Correlation	.174
	Sig. (2-tailed)	.000
	N	4807

Section 4.6. iii: Personal Variables

I turn now to the traits of the justices making the decisions.

H9: Male judges are more likely than female judges to uphold the sentence of death. In short, being male is positively associated with the probability of a vote to uphold a death sentence.

Table 4.17 Vote and Gender ANOVA

Gender of Judges	Mean	N	Std. Deviation
Female	.80	1423	.400
Male	.79	3302	.410
Total	.79	4725	.407

			Sum of Squares	df	Mean Square	F	Sig.
Vote on Death Penalty Cases * Race of Judges	Between Groups	(Combined)	.219	1	.219	1.320	.251
	Within Groups		783.514	4723	.166		
	Total		783.732	4724			

In terms of gender characteristics, 1,139 female judges voted to uphold the sentence of death while 2,594 male judges voted to uphold the death penalty. Gender did not matter in the vote outcome, and there is no correlation between the two variables. Female judges voted to uphold a sentence of death in 80 percent of cases while they voted to vacate the sentence of death 20 percent of the cases. Male judges voted to uphold the sentence of death in 79 percent of cases while they voted to vacate the sentence 21 percent of cases. As a result, no gender-related influences on voting behavior are apparent. In terms of racial characteristics, the following is examined:

H10: Caucasian judges are more likely than non-Caucasian judges to uphold the sentence of death. In short, being Caucasian is positively associated with the probability of a vote to uphold a death sentence.

The statistics are pretty similar for Caucasian judges and non-Caucasian judges. Caucasian judges voted to uphold the sentence of death in 79.5 percent of cases, and Caucasian judges voted to vacate death sentences 21 percent of cases. Non-Caucasian judges voted to uphold the sentence of death 76.2 percent of cases while they voted to reverse the sentence in 23.8 percent. Overall, race is significant as a factor in my analysis, but it is not as significant as the key institutional variables in my analysis. Race was significant at .052 level. While many previous studies of the death penalty have focused on the race of the defendant, my work seems to indicate that the race of judges involved in the process may also be relevant.

Table 4.18 Vote on Death Penalty Cases

<table>
<tr><td colspan="3">Race of Judges</td><td>Mean</td><td colspan="2">N</td><td colspan="2">Std. Deviation</td></tr>
<tr><td colspan="3">Other</td><td>.76</td><td colspan="2">673</td><td colspan="2">.426</td></tr>
<tr><td colspan="3">Anglo</td><td>.80</td><td colspan="2">4048</td><td colspan="2">.404</td></tr>
<tr><td colspan="3">Total</td><td>.79</td><td colspan="2">4721</td><td colspan="2">.407</td></tr>
<tr><td></td><td></td><td></td><td>Sum of Squares</td><td>df</td><td>Mean Square</td><td>F</td><td>Sig.</td></tr>
<tr><td rowspan="3">Vote on Death Penalty Cases * Race of Judges</td><td>Between Groups</td><td>(Combined)</td><td>.626</td><td>1</td><td>.626</td><td>3.784</td><td>.052</td></tr>
<tr><td colspan="2">Within Groups</td><td>781.188</td><td>4719</td><td>.166</td><td></td><td></td></tr>
<tr><td colspan="2">Total</td><td>781.815</td><td>4720</td><td></td><td></td><td></td></tr>
</table>

At this point, a justice's tenure is examined to see if longer serving judges are more likely to uphold a sentence of death. This idea is incorporated through an assessment of the following hypothesis:

H11: Judges who have served longer on the bench are more likely to reverse the sentence of death. In short, there is a positive relationship between length of time on the bench and the probability of a vote to uphold a death sentence

Table 4.19 Correlations b/w Vote and Years

		Number of Years on the Bench
Vote on Death Penalty Cases	Pearson Correlation	-.024
	Sig. (2-tailed)	.095
	N	4686

Overall, results show that there is no correlation between voting behavior and the length of time on the bench as shown in Table 4.19. While other studies that examine Supreme Court justices have seen differences in voting behavior associated with terms served, I see no such effect in terms of state appellate court voting on the death penalty.

Section 4.7: Discussion of Regression Models

The collective information from my ANOVA table is consolidated into the regression analysis below. I have elected to include the variables that indicated relevance for explaining variation in the dependent variable. This allows for a more parsimonious assessment and minimizes the risk of colinearity. The equation for the regression model is as follows:

Y (Vote to Uphold Death Penalty) = x1 (RepGov-at selection) + x2 (Race) + x3 (Number of Executions) +x4 (Number of Death Row Inmates) + x5 (Gov- Decision)

Table 4.20 Regression Model 1: Binomial Logistic Regression

Variable	**B**	**S.E.**	**Wald**	**df**	**Sig.**	**Exp(B)**
RepGov (Selection)	0.437	0.080	29.645	1	0.000	1.549
Caucasian	0.253	0.108	5.458	1	0.019	1.287
Number of Executions since1976	0.002	0.000	30.571	1	0.000	1.002
Current Number of Death Row Inmates	0.002	0.000	75.996	1	0.000	1.002
Gov (Decision)	0.052	0.080	0.424	1	0.515	1.054
Constant	0.316	0.122	6.731	1	0.009	1.371

Nagelkerke R-squared	0.080
Model Chi-Square	243.835
Significance	0.000

In the parsimonious model (4.20), I examine the role of institutional, environmental, and personal factors in the judicial decision-making process, and it allows me to test several hypotheses. Statistical significance indicates that this regression model is highly predictive of whether judges uphold or reverse the sentence of death. Specifically, the key institutional variable, Republican governor at the time of selection (RepGov) has a coefficient of 0.437, and it is statistically significant at the .000 level. Therefore, I reject the null for Hypothesis #1 and submit that, *ceteris paribus*, judges who are selected while the Republican governors are in control of the executive office are more likely to uphold the sentence of death. On average, judges who are selected while Republican governors are in control of the executive office are more likely to uphold the sentence of death. The finding that appeared in the ANOVA table, then, remains relevant even after controlling for other plausible alternative sources of variation.

Environmental factors turn out to be statistically significant as well. Both variables, the number of executions since 1976 (Num1976) and the current number of death row inmates (CurrentNum), have a coefficient of 0.002 and are statistically significant at 0.000 level. Therefore, I reject the null for Hypothesis #7 and conclude that judges in states with higher numbers of death row inmates are more likely to uphold the sentence of death. In short, the number of death row inmates in a state is positively associated with the probability of a vote to uphold a death sentence. Consequently, I reject the null for Hypothesis #8 and conclude that judges in states with higher number of executions (since 1976) are more likely to uphold the sentence of death. In short, the number of previous executions in a state is positively associated with the probability of a vote to uphold a death sentence. It may be the case that judges in a state that has a history of placing inmate on death row will fit into the political culture by continuing this trend. In a general sense, this notion extends the range of New Institutionalism by invoking the notion that public opinion and political climate—beyond formal political actors—can impact judicial behavior. This seems to be a principle that is more likely to manifest itself at the state level, where the protection of life tenure is absent. On a basic level, this finding suggests that environmental factors influence the death penalty decision in state high courts.

One of the institutional variables, Governor (Gov), has a coefficient of 0.052 and is not statistically significant. I accept the null that judges are not more likely to uphold the sentence of death while the Republican governors are in control of the executive office at the time of decision. It appears that judges make decisions without any influence from sitting governors. New institutionalism does not seem to be relevant here. The empirical analysis shows that the party of the governor at the time of the judicial selection is the only institutional factor that

influences the judicial outcome. The analysis demonstrates a strong linkage between the judicial vote and the party identification of the executive who placed the judge on the court, but there is no such linkage between judges and subsequent executives. The reality of the pardon process seems to be an irrelevant consideration in driving judicial decisions.

In addition to these results, I offer two more regression models that test the impact of the method of judicial selection on voting. In other words, I attempt to locate whether party of the appointer remains relevant even in states where judges are not appointed exclusively by the governor. I also examine whether any institutional variables become significant when the nature of confirmation is controlled. Table 4.21 analyzes the voting behavior of judges who are selected through gubernatorial appointment or merit selection.

Table 4.21 Binomial Logistic Regression: Model 2
(Judges Selected by Merit Plan and Gubernatorial Appointment Only)

Variable	B	S.E.	Wald	df	Sig.	Exp(B)
RepGov (Selection)	0.646	0.133	23.572	1	0.000	1.909
Caucasian	-0.027	0.134	0.042	1	0.838	0.973
Number of Executions since 1976	0.000	0.002	0.001	1	0.972	1.000
Current Number of Death Row Inmates	0.002	0.000	87.282	1	0.000	1.002
Gov (Decision)	0.196	0.138	2.015	1	0.515	1.054
Constant	0.034	0.190	0.031	1	0.859	1.034

Nagelkerke R-squared	.111
Model Chi-Square	169.380
Significance	.000

This model only refers to those judges selected via gubernatorial appointment and merit selection. I include merit selection because it involves a component of gubernotorial influence. The key variable, *Republican governor at the time of judicial selection* (RepGov), yields a

coefficient of .646, and is statistically significant at the 0.000 level. On average, judges who are selected while Republican governors are in control of the executive office are more likely to uphold the sentence of death if judges are selected either through gubernatorial appointment or merit selection. This seems logical in that these systems enable a governor to more easily see a like-minded actor ascend to a state court of last appeal. However, another institutional variable, *Gov*, yields a coefficient of 0.196, and it is not statistically significant. This indicates that the current composition of the executive branch does not matter as much as the composition at the time of judicial selection. It seems reasonable to assume that judges who are appointed by Republican governors will vote conservatively, but it is more difficult to establish the influence of a sitting Republican president. In terms of the non-institutional variables, only one of the environmental variables, *current number of death row inmates* (CurrentNum) is statistically significant, and yields a coefficient of 0.002 in this model. Once again, even when the nature of selection method is controlled for, the state's culture toward the execution of inmates seems to be relevant for explaining variation in votes to uphold sentences of death.

I now present a model that addresses the behavior of judges who are elected or legislatively appointed. The general supposition related to this idea is that these justices will be more responsive to institutional conditions which reflect the will of the majority.

Table 4.22 Binomial Logistic Regression: Model 3 (Judges Selected by Election and Legislative Appointment only)

Variable	B	S.E.	Wald	Df	Sig.	Exp(B)
RepGov (Selection)	0.120	0.119	1.009	1	0.315	1.127
Caucasian	0.730	0.187	15.168	1	0.000	2.075
Number of Executions since1976	0.003	0.001	18.786	1	0.000	1.003
Current Number of Death Row Inmates	0.000	0.001	0.183	1	0.669	1.000
Gov (Decision)	0.132	0.111	1.432	1	0.231	1.141
Constant	0.200	0.196	1.042	1	0.307	1.222

Nagelkerke R-squared	.085
Model Chi-Square	133.218
Significance	.000

This model indicates that racial criterion and the number of death row inmates are significant. However, no institutional variables are relevant here. The following section explains the differences between this model and the other selection-based model.

Section 4.8: Comparison of the Two Models

The models demonstrate that judges exhibit different voting behaviors based on their method of selection. *Republican governor at the time of judicial selection* (RepGov) is a statistically significant variable in Table 4.21, while the same variable is not statistically significant in Table 4.22. The only difference between the two models is the method of selection of the judges. The former model analyzes the voting behavior of judges who are selected through the method of gubernatorial appointment and merit selection, and the latter deals with the judges who are elected. Clearly, it shows that the method of selection does matter in the analysis of judicial votes in death penalty decisions, and judges who are selected through gubernatorial appointment and merit selection are more likely to uphold the sentence of death when they are appointed by Republican governors. It is logical to predict that governors select

judges who share similar ideologies, so this finding seems appropriate. After all, it is harder for a governor to see a like-minded individual ascend to a state court of last appeal when the governor is dependent on the citizenry or a legislature to elect a judge—as opposed to the governor appointing a judge. Consequently, judges seem to reflect a governor's preferences when they vote—provided they are appointed by that governor. Although the literature on the method of selection does not suggest that the method is important, there is some evidence in my research to suggest that the method of selection plays a role in a justice's decision to uphold a sentence of death from a lower court.

Section 4.9: Conclusion

The empirical analysis above shows that there are a few key variables that influence judicial decision-making relative to death penalty cases. The key variable here is the institutional variable, *Republican governor at the time of judicial selection* (RepGov). I find it remarkable that sitting governors do not influence judicial votes because of the possibility for executive stays of execution. Further, I separate judges into two categories: those who are appointed and those who are elected. My results suggest that judges who are appointed by Republican governors have a tendency to vote more conservatively in death penalty cases than judges who are appointed by Democratic governors. However, this finding does not hold true for judges who are elected or appointed by legislators. This means that the method of selection definitely matters in explaining judicial behavior of state high judges.

Overall, though, the lack of a connection between the sitting governor at the time of a decision and judges on last courts of appeal does allow me to reexamine the notion of judicial

independence. Ultimately, I can conclude that judges exercise judicial independence once they are on the bench, as there is no evidence of a relationship between their votes and the ideologies of political actors in the other branches. However, the way that judges are selected definitely influences their voting behavior, since governors have strong influence on who reaches the bench in states where judges are appointed by that governor. In examining personal variables, I found that race matters to a degree, in the sense that weak evidence suggests that minority justices are more likely to vote against a sentence of death—and this seems more likely when the judges are elected by the citizenry or through the state legislature.

Environmental factors, both the number of death row inmates and the number of executions, seem to matter in explaining death penalty cases. Again, this may be the result of the fact that an overall political culture and a societal acceptance of the death penalty's persistence seems to be captured in these variables. After all, the number of executions in a state goes beyond the judicial decisions to uphold sentences—although that certainly is a relevant consideration. (When judges uphold sentences at a higher rate, the number of death row inmates will increase). Therefore, my contention is that states with a high number of death row inmates and executions are likely to be those that embrace the process in various aspects of society—from prosecution offices, to jury boxes, to the minds of those who appoint (or elect) judges. My environmental variables, then, are indicative of broader trends in a state's political climate. Still, such considerations are a part of New Institutionalist perspectives, as this theory is not limited to formal political actors. An ancillary relevance of my work, then, involves extending traditional perspectives of New Institutionalism to incorporate societal influences on judicial behavior. Of course, I must admit that these societal influences ultimately translate into political changes—

which in turn translate into changes in court composition. In summary, though, the beauty of New Institutionalism as a theory is that it allows for all of these varied implications to be taken into account—while other theories of court decision-making are more limited because of their failure to incorporate these myriad influences on judicial behavior.

Chapter 5. Conclusion

Section 5.1: Objective of this Dissertation

My dissertation seeks to explain the voting behavior of judges in state high courts of last resort in death penalty appeals cases. My goal is to examine the role of various factors in the judicial decision-making process by studying death penalty appeals cases from states across the nation. Drawing on the judicial literature, I consider three general categories of influence on judicial behavior: institutional factors, environmental factors, and personal factors. The dissertation ultimately seeks to explain and predict the judicial voting behavior of state high court judges and to reexamine the role of state high courts in American democracy. Little research explores the voting behavior of state high courts judges, and this dissertation fills the gap in the literature by contributing new empirical research findings to the field of American politics.

As I explained in Ch.2, four major theories explain judicial behavior: the legal model, the attitudinal model, strategic model, and the new institutionalism model. The theoretical underpinning of this research is new institutionalism, which posits that judges' decisions are shaped not only by judicial attitudes and strategic considerations, but also by a variety of institutional and environmental factors. Ultimately, logistic regression analysis shows that the institutional and environmental factors have a significant impact on the voting behavior of state high court judges in death penalty appeals cases, and this is consistent with New Institutionalism. In summary, my research findings demonstrate that New Institutionalism is a viable theory that helps political scientists understand and predict judicial behavior. After all, the political parties of appointing governors are relevant for explaining judicial behavior. Furthermore, this finding

also reinforces the basic principles of checks and balances that were so valued by the Founders. For those that deride the behavior of judges as somehow being undemocratic, my work seems to allay these fears. A reiteration of key findings through the lens of separation of powers and democratic theory will allow me to bring my work to its conclusion.

Section 5.2: Summary of Findings Regarding the Death Penalty Decisions

Section 5.2.i: Institutional Factors of Sitting Governors and Appointing Governors

My research indicates that institutional factors do matter in judicial decision-making, and this idea has application for the decision-making process of state high courts. Based on the empirical analysis, I not only recognize the substantial impact that Republican governors have on state high judges through their appointment powers, I also identify evidence of judicial independence after the selection process has taken place. Perhaps Republican governors appoint judges who share their ideologies and preferences, and the influence of Republican governors in judicial decision-making is systematic in that sense.

This is consistent with Dahl's observation at the federal level. Dahl mentioned that policy views of the judicial branch are never for long out of line with the policy views dominant among the law-making majorities of the United States (1957). Based on my research, his statement also holds at the state level. My data reveal that judges who are appointed by Republican governors seem to exhibit conservative voting behavior in deciding death penalty appeals cases, but their voting behavior does not change based on the current composition of the state government at the time of judicial decision-making. This is evidence of judicial independence in that the judiciary is insulated from the executive and legislative power once it

begins its decision-making processes. Therefore, once judges become judges through various methods of selection, they seem to be insulated from the influence of other branches.

In summary, once judges become state high judges, my data show that they enjoy freedom and independence in the decision-making process regardless of the current composition of the state government. For this reason, I conclude that governors exert profound influence in shaping the direction of the judiciary through their appointment powers, but not subsequently. However, Democratic governors do not have the same power over judicial results, and I could only explain and predict the voting behavior of judges who are appointed by Republican governors when it comes to having an affirmative impact on the validation of death penalty sentences. Given the strong ties between the Republican Party and conservative views on criminal activity, it seems as though the imposition of the death penalty may be a more relevant factor within the political culture pervading key non-governmental organizations related to that party.

Section 5.2.ii: Environmental Factors

Beyond these institutional considerations, I also consider environmental factors including the number of executions since 1976 and the number of inmates on death row at the time of the decision. I recognize the evidence of the influence of environmental factors in the decision-making by recording the number of death penalty appeals cases, the number of executions, and the number of inmates who have been given the death penalty; however, it is hard to measure the true impact of those variables using quantitative research. The high number of executions and the inmates all increase the likelihood of judges' decision to uphold the sentence of death.

Nevertheless, the imposition of the death penalty by a judge will likewise increase the number of inmates on death row. Additional qualitative research can answer more questions as to which direction is more relevant in defining this relationship. Of course, the broader message here is that some states simply sentence defendants to death more frequently than others, while other states tend to opt for life in prison. This leads me to believe that it seems to matter where one commits murder, because this may be the single most relevant determinant in explaining the severity of the punishment and the fate of the defendant. For example, a murder defendant in Texas is more likely to get the death penalty affirmed in the state high court than a similarly-situated defendant in Kansas. Kansas institutionalized the death penalty by law, but there seems to be a de facto moratorium on the death penalty today. As a result, there are few inmates on death row. In addition, it follows that judges will be less likely to uphold sentences of death in such a state where the use of the procedure is widely frowned upon.

Section 5.2.iii: Personal Factors

In addition, I find it troubling that extralegal factors matter in judicial decision-making. According to my analysis, race does matter in decision-making—although it is not as significant as the key institutional variables in my analysis. My data indicate that judicial decisions are impacted by judges' race, and it does not seem fair to maintain a system that allows these personal factors to influence the decision-making process in death penalty appeals cases. Baldus et al. argue, "Every court that has addressed the issues has condemned the idea of race influencing the administration of the death penalty" (Baldus et al., 1998, p. 356). The Supreme Court discussed such matters in *Furman v. Georgia* (1972), where the disparity of the death

penalty's application across different races played a role in a moratorium on the process. In my research, I extend the scope of the Supreme Court's concerns by observing that a judges' race influences the decision-making process as it pertains to the death penalty. Baldus et al. made a similar empirical observation when they found out that race of the defendants influence the administration of the death penalty; "for a nation with a historical commitment to equal justice under the law, the story is a disappointment" (Baldus, et al., 1998, p. 356). My research offers a unique empirical assessment related to the race of those that sentence defendants to die. Future research may wish to examine the interaction of these two criteria. While this has been done in regard to the defendant-victim dynamic, the judge-defendant-victim dynamic has not yet been assessed.

Ultimately, judges administer justice, and we put trust in their ability to read the law and judge fairly. For example, survey results indicate that the public perceives the judicial process with respect, and myth, to some degree. According to Scheb and Lyons, "The myth of legality holds that cases are decided by the application of legal rules formulated and applied through a politically and philosophically neutral process of legal reasoning" (Scheb and Lyons, 2000, p. 930). Gibson, Caldeira, and Baird (1998) also argue that "judges help perpetuate the myth of legality among their attentive publics by framing their decisions in legalistic terms" (cited in Scheb and Lyons, 2000, p. 933). Also, Scheb and Lyons add that that "the myth of legality is a viable component of American political culture that assists citizens in making sense of the Supreme Court's decision-making process" (Scheb and Lyons, 2000, p. 929). In some sense, this legitimizes judicial decision-making. Overall, "the fictive idea of principled legality" (Brisbin, 1996) is a crucial source of the Court's institutional legitimacy (Fiscus, 1991). There is

no doubt that legitimacy is important, and citizens must have a level of trust in government officials within a democracy, especially judges whose roles are tied to connotations of fairness.

But there is something to be said when we know that there are problems in the system and no actions are taken. If personal factors do influence judges and their decision-making processes, then no one would deny that justice is tainted in our society. Perhaps we can start demanding that our judges discard their personal feelings in their decision-making process, and this may alert them to think twice about their decision and its implication in our society. While this may seem a bit idealistic, the presence of, and publication of, data that indicate the potential for racial bias from judges might make said actors more acutely aware of their personal biases. When any science, including political science, can arrive at a point where its findings impact human behavior, then it has been successful in its objectives. Ultimately, I recognize that race matters in the decision-making process, and I hope my research findings can raise awareness among the public and judges.

Section 5.3: Summary of Findings

The aforementioned analysis indicates that the institutional and environmental factors do help to explain the voting behavior of state high court judges. Ultimately, this dissertation tests New Institutionalism theories at the state level, and it focuses on the relationship between members of different branches of governments. The models show weak support for New Institutionalism in judicial decision-making at the state level.

Overall, I conclude that judges exercise judicial independence once they are on the bench, and there is empirical evidence for this. My dissertation reveals that there is one institutional variable that matters greatly, and that is the presence of the Republican governor at

the time of judicial selection. The way they are selected definitely influences their judicial behavior since governors have a strong influence over who gets to be judges in states where judges are appointed by the governors. The influence of Republican governors is two-fold, and I distinguish the role of Republican governors at the time of judicial selection from the role of Republican governors at the time of decision. According to this analysis, the presence of Republican governors at the time of selection influenced judicial voting, but the presence of Republican judges at the time of judicial decision-making did not matter. In summary, my research indicates that the presence of Republican governors at the time of judicial selection particularly matters in the death penalty decision-making process, and their role is substantial in shaping judicial decisions.

The most notable finding in this dissertation is that there is empirical evidence that judges practice judicial independence in regard to being insulated from the influence of the actors in other branches of government. However, a more comprehensive examination of judicial independence must also account for influences arising from society itself. That is where my environmental variables become relevant. And, both environmental factors—the number of death row inmates and the number of executions since 1976—matter in explaining death penalty cases, and this calls for more research. In the state court literature, the consensus is that environmental factors play a critical role in decision-making (Hall, 1992), and my research is consistent with this finding. Specifically, my research illustrates that justices are constrained or influenced by their political environment, in terms of its general acceptance of, or aversion to, the death penalty. In addition, the institutional rules—in regard to method of judicial selection—are also relevant; although, no causal mechanism is imputed here, as a judge is not going to

actively say “I am an elected judge, therefore, I will vote this way.” Rather, they have their own policy preferences. However, those policy preferences are more likely to support the death penalty when a Republican governor has selected “them” to ascend to a state court of last appeal. Of course, in making these selections, governors may not want to rely on gender as a proxy for ideology, but that governor might gain some relevant information regarding views on the death penalty from examining racial characteristics. Perhaps certain environmental concerns related to racial demographics influence subsequent judicial behavior. Given the expansive reach of New Institutionalist principles, it seems likely that considering the social background of a justice is acceptable. Future research under the heading of New Institutionalism may wish to address this matter.

Section 5.4: The Results and the Notion of Judicial Independence

What is more intriguing in this dissertation is that judges do not seem to be constrained by the power of the other two branches of government in their decision-making. This indicates that state high court judges enjoy judicial independence, and they are not as accountable as they can be to public preferences as they manifest in political actors. My research indicates that the presence of Republican governors at the time of judicial selection particularly matters in the death penalty decision-making process, and their role is substantial in shaping judicial decisions. Unfortunately, there is no measure of public opinion on the death penalty at the state level, and I can’t comment on the responsiveness of judges to those specific matters.

The ideal of judicial independence has long been addressed by scholars of American Politics. Perhaps this is because “A belief in judicial independence exists in the United States alongside an equally strong belief in democratic accountability” (Gur-Arie and Wheeler, 2002,

133). On the one hand, judges get to enjoy freedom from external pressures, and some believe that this is crucial in a democratic government, noting "judicial independence is perhaps most important in enabling judges to protect individual rights even in the face of popular opposition" (Gur-Arie and Wheeler, 2002, 133). On the other hand, there is the notion of accountability, and it seems to conflict with judicial independence. "The idea that judges should be democratically accountable meant the public, directly or representationally, has a legitimate say in how the courts should perform" (Gur-Arie and Wheeler, 2002, 133).

In a speech in 2003 at the Arab Judicial Forum in Bahrain, Justice O'Connor mentioned that it is crucial to maintain judicial independence (Toobin, 2007, 250):

> Judicial independence allows judges to make decisions that may be contrary to the interests of other branches of government. Presidents, ministers, and legislators at times rush to find convenient solutions to the exigencies of the day. An independent judiciary is uniquely positioned to reflect on the impact of those solutions on rights and liberty, and must act to ensure that those values are not subverted.

Herein, I examined the influence of the executive and the legislative branch on judicial voting behavior of state high judges and found that they are insulated from the pressures of other branches in their decision-making process. Judges do not seem to modify their voting behavior in relation to these actors, and I also find that the method of selection influences the voting behavior of judges. My assumption is that judges who are appointed by Republican governors are predisposed to certain ideological positions, and Republican governors have a way of leaving their legacies beyond their terms through the appointment process (Goldman, 2009). One can find this troubling in that members of the executive branch get to influence the judicial decision-making process and shape judicial outcomes. However, from the opposing perspective, it is conceivable that the system of checks and balances is operational at the state level, in the sense

that governors have substantial impact on judicial decision-making. And, our Constitution does offer the appointment power to executives, with the “advice and consent” of the legislative branch. Perhaps my results indicate the need for such “advice and consent” at the state level.

Of course, to continue to illustrate the tension surrounding this idea, one can also find relief in the evidence of judicial independence at the state level, and this is a consolation to many who are concerned with the notion of justice and fairness in the judiciary. Judicial independence is indispensable in a democratic society, and my dissertation demonstrates that the American judiciary still upholds the democratic ideal of judicial independence. Based on this research, it is conceivable to conclude that the state high judges function according to the democratic ideals embedded in the Constitution.

Perhaps there is a need to reconcile the two democratic values at this point._Sharma (2009) argues that two democratic ideals create tensions. On the one hand, there is a value of checks and balances. On the other hand, there is judicial independence. Sharma states that independent judiciary is an overstatement, and many scholars might be able to attest to that with their research on Supreme Court decision-making. In contrast, my research cannot attest to his argument, and the key difference is that my work involves judicial behavior at the state level. This dissertation involves state court decisions, and there are differences between state high courts decision-making and the Supreme Court decision-making.

More specifically, the nature of the two courts is different in that they have different institutional rules and different jurisdictions. For instance, U.S. Supreme Court judges are appointed by the President and confirmed by the Senate while state high court judges are selected through the method of appointment, merit selection, election, and legislative

appointment. Supreme Court justices are more insulated from other branches of government than are state high court judges. Supreme Court justices have life tenure, get to grant the writ of certiorari, use the rule of four, have a jurisdiction of all 50 states, and the Court is the ultimate court of last resort. State high court judges do not have any of the privileges listed above, and their authority is not as enormous and powerful as that of Supreme Court Justices. In fact, state high court judges struggle with huge workload, and they are the *de facto* court of last resort since many cases end in state high courts. Of course, all of this suggests that judges at the state level should be susceptible to the influences of other actors. Even so, I find no evidence of such influences. Perhaps that makes my work more relevant to supporting principles of judicial independence than scholarship that has previously addressed this issue at the level of the Supreme Court of the United States.

Sharma's concern echoes the voice of Shane, who argues that judicial relations have a lot to do with judicial independence. He states, "the quality of state judicial relations with governors and state legislators will have an impact on the pursuit and protection of judicial independence" (Shane, 1998, p. 53). My dissertation demonstrates that judges do maintain judicial independence regardless of the composition of other branches. Once judges become state high judges, they are able to judge without any interference from legislative and executive power. The only potential constraints I find on judicial independence, then, emanate from the broader political climate in a state, as measured through my inmate and execution variables.

Section 5.5: Normative Implications

Initially, I wrote my dissertation to unveil the mysterious decision-making process of state high court judges in order to understand the judicial decision-making process at the state level. My ultimate goal was to find the role of other branches of government on the judicial branch, to assess the level of judicial independence, and to comment on the quality of democracy based on the empirical analysis of judicial votes of state judges. At this point, I find it necessary to comment on implications of this research; otherwise, this dissertation is a mere collection of numbers. In addition, it is imperative for me to comment on the role of other branches of government on judicial decision-making to assess the level of judicial independence and to comment on the quality of democracy based on the empirical analysis of judicial votes of state judges.

First, I presented research findings to illustrate that members of other branches influence judicial decision-making earlier in the dissertation. I mentioned in chapter 4 that judges who are appointed by Republican governors exhibit conservative voting behavior in death penalty cases. But I was not able to observe the same pattern for judges who are appointed by Democrat governors and judges who are elected. I also presented evidence of judicial independence by analyzing the voting behavior of judges who are on the bench while the sitting governor is a Republican. I demonstrated in this dissertation that judges who are appointed by Republican governors vote conservatively, and the party of the appointing governors matters in explaining the vote outcome.

Robert Dahl (1957) made a critical argument at the federal level, and he argues that judges are not only appointed by the leader of the executive branch, but also confirmed by the

members of the legislative branch. Dahl (1957, p. 285) pointed out that the "policy views dominant on the Court are never long out of line with the policy views dominant among the law-making majorities of the United States" in his renowned article, *Decision-making in Democracy.* At the federal level, he argued that the ruling regime, including the President and the senators, controls the judiciary by respectively appointing and confirming justices. At the state level, empirical evidence in this dissertation shows that Dahl's warning against the creation of the ruling regime may be needed at the state level as well.

There is a lesson to be learned here since the party of the appointing governor influences the way state high court judges vote in death penalty cases. Perhaps voters should think twice about the value of their votes when they go to the poll to elect the governor, as they may not realize that their vote for governors and the members of state house of representatives have a lot to do with the administration of justice in their state. Another lesson is that the method of selection of state judges does make a difference in the administration of justice. Perhaps Dahl's observation is only applicable in states where judges are selected through appointment and merit selection. Or, perhaps the connection that Dahl hypothesizes between political officials and justices will occur at more of a time lag in those states where judges are elected—as those same voters are likely to engender broader regime shifts, as well. In any event, it appears that the method of selection matters in that appointed judges vote differently than elected judges. Based on these findings, one can speculate that appointed judges are less independent in that they reflect preferences of the governors who appointed them. States with election as their method of selection definitely give judges more independence than those states where judges are appointed. That is mainly because the method of election eliminates the possibility of gubernatorial

influence and increase accountability. This is rather ironic in that one would expect elected judges to be more likely to see their independence compromised. Elected judges are expected to be more accountable to the public because voters get to choose to elect them or not. But the result of this dissertation indicates that elected judges show more freedom in their voting behavior in death penalty cases than appointed judges.

Secondly, I found evidence of judicial independence at the state level by examining voting behavior of state high court judges in my dissertation. The party ideology of the sitting governors did not influence their voting behavior once on a court, and this indicates that judges practice judicial independence once they are on the bench. The Founding Fathers granted judges judicial independence, and my research indicates that state high judges practice judicial independence once they are on the bench. In *Federalist #78*, Hamilton emphasized the importance of judicial independence in American government. Also, many scholars call attention to the importance of judicial independence in American government. For instance, Shane argues "The quality of state judicial relations with governors and state legislators will have an impact on the pursuit and protection of judicial independence" (Shane, 1998, p. 53). This means that the members of other branches influence judicial decision-making at the state level, and governors and legislatures have the power to jeopardize the protection of judicial independence. Courts neither have the power of purse nor sword, and the notion of judicial independence is the only unique power Founding Fathers granted.

Lastly, it is necessary to comment on the quality of democracy based on my analysis. Research findings indicate that state high judges practice judicial independence once they are on the bench. But some methods of selection such as appointment and merit selection gives

enormous amount of power to governors, and they get to shape judicial outcome in death penalty cases. It appears that the executive branch controls the judiciary by employing the method of gubernatorial appointment and merit selection. The government is designed to maintain the system of checks and balances, but it seems that the executive branch controls the judiciary tremendously by employing the method of gubernatorial appointment and merit selection in their state. Again, I arrive at the same argument, and that is Dahl's warning against the creation of the ruling regime must be respected at the state level, especially in states where judges are selected through appointment or merit selection. The system is democratic, but the protection of judicial independence would make the system more democratic in my view. That in itself is a journey that requires time and critical assessment of our system, and the notion of judicial independence is indispensible in the journey as we create a more democratic system.

Section 5.6: Limitations and Future Research

Although the findings of the research suggest that institutional factors play a major role in death penalty appeals cases, further research is necessary to determine whether the trend is evidenced in other times periods. My research only analyzes death penalty appeals cases between 2000 and 2006, and additional empirical analysis will be necessary to determine if the findings continue overtime by extending the database. Also, it is necessary to incorporate interviews and cases studies in order to study the significance of environmental factors and personal factors. For instance, doing case studies and surveys might be a potential solution to tap into the state culture and environmental factors to offer insights into their influence on the decision-making process. There is no doubt that each state court has its own culture or way of handling death penalty appeals. However, it is beyond my ability to measure and analyze that

quantitatively in this dissertation, and I leave this daunting task up to future researchers to recognize and study each court qualitatively.

Additionally, future researchers have great advantages in studying the role of personal factors in high courts. Growing number of minority judges and female judges are filling seats in state high courts each year, and this may lead future scholars to analyze the role of race and gender in the death penalty decision-making process with more clarity. Also, studying the influence of race is important, but it would make more sense to incorporate the race of other political actors in the process: defendants, prosecutors, juries, and attorneys.

Also, another limitation of my research is that I only examine the final vote of judicial decisions. By studying the final votes of state high court judges, I overlook other stages of the decision-making process. Hammond et al. argues that "decision-making by the Supreme Court involves several stages" (Hammond et al., 2005, p. 2). Sharma argues that he focused on the final vote in his research, and that is "largely because it is the most readily quantified manifestation of judicial behavior" (Sharma, 2009, p. 244). Even so, the decision to select a case in the first place is an important aspect of judicial behavior, and deserves additional work in this context.

Furthermore, I would suggest that future research utilize the role of public opinion at the state level. Currently, there is no systematic record of public opinion in regard to the death penalty, but I find it important to observe the role of public opinion in the judicial decision making process. That can measure the empirical influence of public opinion, and I think it will provide researchers more insight into the inquiry of the judicial decision making process.

Specifically, it would help to illuminate the role of the environmental factors that I examined herein.

There are several other limitations in this research. One limitation is the measure of the ideology scores of state supreme court judges; judges have the same PAJID (party-adjusted judges ideology scores) for the entire 5 years between 2000 and 2005, and many judges in the same court share the scores. That limits my ability to assess the basic principles of the attitudinal model more thoroughly in this dissertation. Also, this disseration only addresses death penalty cases, and it would be ideal to add other salient issues other than the death penalty. It would also be ideal to add intra-Court variables such as dissent rates or norms of the bench in each court. That would allow me to account for more intra-Court, or "strategic" approach, principles. If all of this could be accomplished, a comprehensive account of state judicial decision-making, one that represents the basic principles of the three major theories of judicial behavior, could be achieved.

Lastly, it would be interesting to examine the influence of the party composition at the federal level, and to see if the party composition of the federal level has an impact on the voting behavior of the state high court judges. Testing the influence of the partisan composition of the federal level will test the strength of the New Institutionalist model to the fullest, as the potential for constitutionally-based appeals through the federal system would be addressed. Ultimately, my research does not account for the possibility that judges on state courts of appeal are influenced by potential overrides from judges serving on the federal courts that might ultimately hear constitutional challenges. Overall, adding all of these individual, institutional, and environmental factors will increase our understanding of the voting behavior at the state level.

Nevertheless, my research is a step to the right direction to the development of the new theories in the study of state supreme courts in American politics.

Section 5.7: Discussion of Unresolved Questions

There are many unresolved questions in my dissertation. For instance, it was unclear why the legislative branch does not have statistical significance in explaining judicial voting behavior. One can speculate that the legislative branch has less control over state high judges, but it would be fascinating for future scholars to present some kind of empirical testing of the role of the legislative branch on judicial decision-making at all levels of government. Also, it would be interesting to add other criminal cases other than those addressing the death penalty cases. Obviously, death penalty is not a litmus test on whether someone is conservative or liberal, and it certainly does not represent all the criminal cases. Ultimately, while state legislatures are less relevant than the governors that have the power of appointment, there are some states where legislatures are the body with the power to appoint judges. However, it seems as though the fact political ideology is diffused over multiple actors in a legislative body is relevant to the null finding on my legislative variables; in this regard, the presence of multiple veto points that are capable of scuttling the passage of legislation is also relevant to the discussion.

Section 5.8: Future of State Court Decision-Making Scholarship

Judicial scholars argue that the judicial politics field requires more rigorous work to build models and theories. Judicial scholars have "yet to achieve a very complete understanding of the role of institutions and context on judicial behavior and processes in terms of theory" (Hall,

1997, p. 14). Unlike other fields in political science, the judicial politics field lacks a rich record of datasets, and researchers are building their own datasets gradually as a result (Hall, 1997). Hall (1997) argues that "without a systematic data base, many findings in the state judicial politics remain anecdotal and descriptive, and more general theories of judicial processes and behavior will continue to be elusive" (Hall, 1997, p. 15). I choose to be hopeful and wish that future judicial scholars will contribute to the field of judicial politics through stimulating research especially on state courts.

Therefore, the future of state court scholarship depends on the work of those who believe in building and testing models and theories of state judicial decision-making. This field is worth examining because of its relevance for the theories of checks and balances, independent behavior, and separation of powers that are illuminated herein. If certain additional variables mentioned in this section are added, a discussion of federalism could also be relevant. Overall, I feel confident that many judicial scholars will choose to apply the aforementioned theories of judicial behavior to state courts. With my research notwithstanding, there is a lot to be accomplished, especially at the level of state courts.

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