Things Fall Apart: Decay of Precedent in State Supreme Courts
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What is the main questions raised in the paper (the issue)?

"Precedents are not immortal over time, they lose their capacity to influence action; eventually they cease to be of anything other than historical interest." As the authors write, "While a given judicial decision could, in theory, be relied on in other cases at any time into the indefinite future, as a practical matter, all decisions die." The authors argues, although the fact of precedential fading is accepted by everyone, the determinants of the process are not thoroughly studied. They raise questions like: How fast do precedents fade? Does fading occur at different rates in different courts, or at different points in time? Do precedents fade at different rates in different areas of law? Do judges discount past decisions at different rates depending on the characteristics of the judge? Does precedential fading follow a consistent pattern? If so, is the pattern linear, in that the same amount of fading occurs every year? Exponential, in that the amount of fading increases every year?"

Therefore, the authors attempt to enrich the study of law and government here by aiming at an analysis of empirical data on the above questions. They test the issue of precedential decay: (A) The Short Life-Span of a Precedent - using the standard survival analysis to describe to what extent a 2003 state supreme court precedent decay (or survive) over the years; (B) Decay at Different Speed? - testing whether judicial characteristics generate more durable.

Why should we care about it (the significance)?

The authors argue all previous studies of judicial citations recognize the force of precedent deteriorates over time, however, "few studies have focused on the features of these decay patterns." Instead, the significance of this study is to examine the data sets of state supreme court decisions, each of them compiled manually from the Westlaw legal data base. The authors use three data sets state supreme court decisions in the expectation that by taking different "slices" of American law to obtain a more representative picture than being looked at only one set of data.

What is the author's answer (the finding)?

The results in the paper are largely negative, although not less interesting for that reason: neither the demographic characteristics of judges, their status as elected or appointed, or their political affiliations has significance to the propensity of their opinions to be cited in future cases.

They find fairly significant differences in precedential aging rates across courts and also in different categories of case. However, in every case, regardless of the aging rate, they find that precedent in state supreme courts — as manifested at the regional and state-by-state level as well as in the aggregate, and for in-citations and out-citations — displays a remarkably consistent pattern: every cut of the data reveals a smooth pattern in which precedents decay at an exponential rate that approximates a geometric sequence.

How did the author get there (the strategy)?

The authors follow the strategy of Landes and Posner's seminal paper, which studied citations from three separate samples (two from the United States Courts of Appeals and one from the United States Supreme Court). Yet this paper extends the foregoing body of work in several respects. First, the great majority of prior studies have examined federal cases; and of the smaller group of studies that examine state cases, those studies utilize quite limited samples. Instead, this paper attempts to conduct "the most comprehensive examination of citation decay" in the state supreme courts, including three separate data sets and almost half a million citations. They examine state supreme court citations from perspectives drawn from three different data sets that they use these multiple data sets leading to their confirmation and reliability of the results, and also allowing them to study aspects of the topic not fully addressed in prior work.

Second, they focus on decay and aging in order to compare rates of decay and aging across different cuts in the data. More specifically, by using the two backward-looking data sets, they study "precedential aging" that also allow them to test specific hypotheses about the determinants of aging.

Moreover, with the one forward-looking data set, they study "precedential decay." Using 7483 cases rendered by state supreme courts in 2003 in survival models and recurrent events models, they describe the life and death of precedents. The data are set to allow them to test hypotheses, not previously examined in the literature, regarding the judge-level determinants of precedential decay. In particular, their 2003 data set includes extensive demographic and political information about the judges who participated in the decisions of that year – gender, ethnicity, age, year of appointment or election, remaining term of office, elected or appointed status, and political party affiliation.