Privacy and Precedent: Exploring the Factors Influencing the U.S. Supreme Court's Departures from Precedent

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Abstract

This thesis explores the factors that influence the US Supreme Court's decisions to overturn precedent. I argue that the Court is more likely to depart from precedent in cases relating to the right to privacy due to the dynamic nature of privacy rights and their inherent connection to rapidly evolving technology and societal values. As society grapples with digital surveillance, data collection, and personal freedoms, the question of how the Supreme Court navigates past precedents in the face of new realities becomes increasingly relevant. I find that privacy precedents are more likely to be altered than other subject matter. This research contributes to a deeper understanding of the common law system's adaptability in the face of contemporary challenges by examining the Court's decisions to overturn precedents based on subject matter.

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1 Introduction

> Those who would eliminate stare decisis in constitutional cases argue that the doctrine is simply one of convenience... But elimination of constitutional stare decisis would represent explicit endorsement of the idea that the Constitution is nothing more than what five Justices say it is. This would undermine the rule of law...
>
> It is evident that I consider stare decisis essential to the rule of law... After two centuries of vast change, the original intent of the founders is difficult to discern or is irrelevant. In fact, there may be no evidence of intent. The Framers of the Constitution were wise enough to write broadly, using language that must be construed in light of changing conditions that could not be foreseen. Yet the doctrine of stare decisis has remained a constant thread in preserving continuity and stability.[1]

A fundamental aspect of judicial decision-making in the Supreme Court is the application of the doctrine of stare decisis by the Justices. Under a common law system, the judicial decisions rendered by the highest Court must reflect a degree of predictability and consistency. However, with the advancement of social norms and technological innovations, past judgments can become outdated and require revision. This creates a conflict within the doctrine of stare decisis, as judges need to decide how to balance the need for consistency and predictability with the necessity to adapt to changing circumstances.

Stare decisis holds that courts should adhere to previously established legal rulings and decisions when deciding subsequent cases. This principle is a fundamental legal doctrine that seeks to promote efficiency, continuity, and legitimacy. Although the primary objective is to ensure stability and predictability in judicial decisions, the doctrine is flexible and adaptable to changing social norms. This is achieved through the Court's ability to overrule precedent in exceptional circumstances. Justices must balance the historical anchoring of past decisions with the pressing needs of the socio-technological context, recognizing the fundamental tension between adhering to precedent and addressing evolving societal needs.

[1] Jr. Powell Lewis F., "Stare Decisis And Judicial Restraint," *Wash. & Lee L. Rev.* 47 (1990): 288, https://scholarlycommons.law.wlu.edu/wlulr/vol47/iss2/2.

As Justice Douglas notes, "stare decisis, that is, established law, was really no sure guideline because what did... The judges who sat there in 1875 know about, say, electronic surveillance? They didn't know anything about it."[2] However, recent decisions have raised concerns about the proper role of precedents and whether prior rulings should be upheld or overturned.

Legal experts have identified three valid reasons for the Court to depart from established legal precedent without compromising the objectives of the doctrine of stare decisis.[3] These reasons are as follows: Firstly, if a precedent does not lead to significant difficulties, considering economic, social, and governmental hardships, then it can be overruled. Secondly, if a rule or doctrine established in a precedent becomes infeasible or unworkable, it can be justified to be overturned. Finally, if the circumstances and rationale upon which the precedent was founded have changed, the Court can legitimately overturn it. As Justice Cardozo eloquently stated: "When a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment."[4]

Scholars have conducted studies to identify the factors that affect Supreme Court Justices when overturning precedents. These factors include age, vote margins, ideology, and the legal basis of precedents. In particular, several studies indicate that the Court is more likely to depart from precedent in cases based on constitutional rather than statutory grounds.[5]

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[2] William O. Douglas, *Interview on CBS Report*, CBS News, Transcript, September 1972, 13.

[3] Ruggero J. Aldisert, "Precedent: What It Is and What It Isn't: When Do We Kiss It and When Do We Kill It" [in eng], *Pepperdine Law Review* 17, no. 3 (1989): 605–636, https://heinonline.org/HOL/P?h=hein.journals/pepplr17&i=623; Amy L. Padden, "Overruling Decisions in the Supreme Court: The Role of a Decision's Vote, Age, and the Subject Matter in the Application of Stare Decisis after Payne v. Tennessee Note" [in eng], *Georgetown Law Journal* 82, no. 4 (1993): 1689–1732, https://heinonline.org/HOL/P?h=hein.journals/glj82&i=1717.

[4] Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 1949), 49, ISBN: 978-0-300-00346-8 978-0-300-00033-7.

[5] Christopher P. Banks, "The Supreme Court and Precedent: An Analysis of Natural Courts and Reversal Trends" [in eng], *Judicature* 75, no. 5 (1992): 262–268, https://heinonline.org/HOL/P?h=hein.journals/judica75&i=264; S. Sidney Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court" [in eng], *Journal of Public Law* 8, no. 2 (1959): 414–436, https://heinonline.org/HOL/P?h=hein.journals/emlj8&i=418; Thomas R. Lee, "Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court" [in en], September 2008, https://papers.ssrn.com/abstract=1263610.

However, the impact of the subject matter of a case on the willingness of the Court to depart from precedent has not yet been explored. Among scholars who have investigated the influence of the subject matter of a case on precedent, they have focused on analyzing precedent depreciation through case citations[6] or have only considered cases related to economic regulation.[7] This thesis seeks to address this gap regarding the susceptibility of certain legal issues to deviations. The study aims to analyze the extent to which these deviations affect the stability and predictability of precedents and, ultimately, the rule of law.

I argue that the Court is more likely to depart from precedent in cases relating to the right to privacy due to the dynamic nature of privacy rights and their inherent connection to evolving technological and societal factors. The right to privacy is a constantly evolving and complex field closely tied to the rapid changes in technology and societal norms. As a result, legal precedents can quickly become outdated and require overturning to keep up with these changes. Although certain subject matters require more adherence to precedent than others, such as economic cases, the right to privacy may require a more flexible approach. The doctrine of stare decisis allows the Court to overturn precedent when compelling reasons justify it. Reliance interests are vital in cases related to economic activity; however, they may have a different weight in cases related to privacy due to evolving societal norms and technological advancements. The Court may depart from precedent if there is disagreement about its workability and practicality in lower courts or if changing circumstances render existing precedents unworkable.

This thesis seeks to answer the following questions. Firstly, what are the various factors that influence the Supreme Court's decision to overrule certain precedents over others?

[6] William M. Landes and Richard A. Posner, "Legal Precedent: A Theoretical and Empirical Analysis," Number: 2 Publisher: [University of Chicago Press, Booth School of Business, University of Chicago, University of Chicago Law School], *The Journal of Law & Economics* 19, no. 2 (1976): 249–307, ISSN: 00222186, 15375285, http://www.jstor.org/stable/725166.

[7] Lee Epstein, William M. Landes, and Adam Liptak, "The Decision to Depart (or Not) from Constitutional Precedent: An Empirical Study of the Roberts Court Symposium" [in eng], *New York University Law Review* 90, no. 4 (2015): 1115–1159, https://heinonline.org/HOL/P?h=hein.journals/nylr90&i=1133.

Secondly, how does the subject matter of a particular case affect the likelihood of the Supreme Court overturning one of its previous rulings? In particular, is there a greater tendency for the Court to depart from precedent in cases that deal with privacy rights? Furthermore, how does the constantly evolving nature of privacy rights affect the Court's application of the principle of stare decisis?

This research contributes to a deeper understanding of the adaptability of precedents in the contemporary context by examining the Court's decisions to overturn precedents based on subject matter. This thesis aims to enhance our comprehension of how the Court maintains a balance between ensuring legal predictability and demonstrating flexibility in response to evolving circumstances, through an analysis of the Court's approach to precedent on the right to privacy. Although several researchers have attempted to clarify the factors that influence the Court's decision to overturn precedent, only a handful of scholars have endeavored to understand how the subject matter of a case affects this decision.[8] Through a quantitative analysis using the Supreme Court database,[9] this research seeks to identify the patterns, trends, and correlations that explain the Court's approach to stare decisis. Ultimately, this study aims to improve our understanding of the adaptability of the common law system in the face of contemporary challenges.

The results, reported in Chapter 6, demonstrate that cases related to the right to privacy are indeed more likely to result in precedent alteration. These findings suggest that the Court recognizes the fast-paced evolution of privacy-related issues and responds with a flexible application of stare decisis. However, they also reveal the intricate connections between

[8] Michael J. Gerhardt, "Role of Precedent in Constitutional Decisionmaking and Theory" [in eng], *George Washington Law Review* 60, no. 1 (1991): 68–159, https://heinonline.org/HOL/P?h=hein.journals/gwlr60&i=76; Michael J. Gerhardt, *The Power of Precedent* [in eng], OCLC: 739046162 (Oxford: Oxford University Press, 2011), ISBN: 978-0-19-979579-6; Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis"; Padden, "Overruling Decisions in the Supreme Court."

[9] Harold J. Spaeth et al., *2023 Supreme Court Database, Version 2023 Release 1*, Release ID: SCDB_2023_01, Release Date: December 24, 2023, Includes Terms: 1946 - 2022, accessed December 2, 2023, http://Supremecourtdatabase.org.

ideological beliefs and legal interpretations. Therefore, my findings support my argument that privacy rights, due to their close relationship with rapidly evolving technology and societal values, influence the approach of the Court to stare decisis. The influence of the court is not one-sided; rather, it is influenced by various factors that reflect its role as both a conservative and progressive institution. It aims to maintain legal stability while adapting the law to fit constitutional principles and modern needs.

The rest of the chapters in this thesis seek to explore the impact of subject matter on the overruling of precedent. In Chapter 2, I dive into the existing literature on the doctrine of stare decisis, the reasons for overturning precedent, and prior empirical research on the topic. Furthermore, this chapter explores the evolution, establishment, and legal frameworks related to the right to privacy. Chapter 3 presents my argument for why the Court should be more inclined to reverse precedent in cases related to the right to privacy. Chapter 4 details my research design, including the dependent variable of whether the Court overruled its own precedent. This chapter also explains the independent variable, which is the subject matter of the issue presented in a case, as well as the control variables, which include the ideology of the Justices in the Court and the legal basis of interpretation (that is, whether the case was decided on constitutional or statutory grounds). Chapter 5 outlines the analysis used to examine my empirical results, which are presented in Chapters 6 and 7.

2 Literature Review

This study centers around two main areas of literature. The first delves into the principle of stare decisis, including its history, doctrine, justifications, reasons for overruling precedent, and current empirical literature. The second area of focus is the evolution of different frameworks related to the right to privacy. The study contextualizes them to evaluate their legal foundations.

2.1 Stare Decisis

The American judicial system is based on the principle of stare decisis, which means "to stand by decided cases; to uphold precedents; to maintain former adjudications."[10] This principle plays a crucial role in guiding judicial decision-making and helps define the duty of judges in each particular case. As Alexander Hamilton asserted in Federalist 78, judges "should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them." [11] However, the Court's decision to overturn past precedents reflects the idea that stare decisis represents a "prudential limitation" seeking to foster the rule of law rather than being an absolute rule on the Justices.[12]

The Supreme Court plays a crucial role in resolving constitutional disputes by producing rules of legal obligations. These rules, passed down through judicial opinions, are referred to as precedents. The primary function of a precedent is to provide reasons for judges to decide on similar cases in the future.[13] According to Black's Law Dictionary, a *precedent* is "an adjudged case or decision of a court of Justice, considered as furnishing an example or

[10] Bryan A. Garner and Henry Campbell Black, eds., *Black's Law Dictionary*, 1910.

[11] Alexander Hamilton, *The Federalist Papers* [in en], Google-Books-ID: LSXNEAAAQBAJ (BoD - Books on Demand, July 2023), ISBN: 979-10-418-0497-9.

[12] Zachary B. Pohlman, "Stare Decisis and the Supreme Court(s): What States Can Learn from Gamble Notes" [in eng], *Notre Dame Law Review* 95, no. 4 (2019): 1731–1762, https://heinonline.org/HOL/P?h=hein.journals/tndl95&i=1763.

[13] Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis," 250.

authority for an identical or similar case afterward arising or a similar question of law."[14] Precedents play a vital role in guiding individuals and organizations to make informed decisions by providing a set of rules and principles. These guidelines serve as a valuable source of information, allowing members of society to analyze and assess the potential outcomes of their actions and help them avoid mistakes that could lead to undesirable consequences.[15]

It is crucial to differentiate between the doctrine of stare decisis and legal precedents, as many people often confuse the two concepts. The former "describes a rule for the application of precedent."[16] The latter refers to the legal cases or holdings that judges should use as a basis for deciding cases involving similar facts or circumstances. In any event, the doctrine of stare decisis seeks to "promote certainty, uniformity, and stability of the law."[17] It is a well-established principle that stare decisis is an essential doctrine in the American legal system. As Justice Brandeis famously stated, "Stare decisis is usually the wise policy because, in most matters, it is more important that the applicable rule of law be settled than that it be settled right."[18] Adherence to stare decisis ensures that the law remains reliable, crucial for promoting the rule of law.

Stare decisis is a legal principle that takes two forms: vertical and horizontal stare decisis. Vertical stare decisis refers to the obligation of lower courts to follow the precedent set by superior courts. On the other hand, horizontal stare decisis is the obligation of a court to uphold its own precedent.[19] This study aims to focus on horizontal stare decisis and investigate the factors that affect the adherence of the Supreme Court to its precedent.

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[14] Garner and Black, *Black's Law Dictionary*.

[15] Ryan C. Black and James F. Spriggs II, "The Depreciation of Precedent on the U.S. Supreme Court" [in en], Issue: 1421413 (Rochester, NY), June 2009, https://doi.org/10.2139/ssrn.1421413, https://papers.ssrn.com/abstract=1421413.

[16] David M. O'Brien and Gordon Silverstein, *Constitutional law and politics* [in eng], Twelfth edition, OCLC: 1393485907 (New York, N.Y.: W. W. Norton & Company, 2023), 141, ISBN: 978-0-393-89351-9.

[17] Brewer's Diary v. Dolloff, 268, 636 (1970) [hereinafter Brewer's Diary].

[18] Burnet v. Coronado Oil & Gas Co., 285, 393, 406 (1932) [hereinafter Burnet].

[19] Amy Coney Barrett, "Precedent and Jurisprudential Disagreement Symposium: Constitutional Foundations" [in eng], *Texas Law Review* 91, no. 7 (2012): 1711–1738, https://heinonline.org/HOL/P?h=hein.journals/tlr91&i=1805.

Rationales for Stare Decisis

Stare decisis requires judges to adhere to previous rulings unless compelling reasons exist to overturn established precedents. Adherence to precedent serves many purposes, including efficiency, continuity, and legitimacy in the American legal system.

First, stare decisis promotes efficiency by mandating that the Justices abide by previous rulings unless compelling reasons exist to overturn established precedent.[20] This allows the Justices to focus their time and resources on the most pressing cases rather than re-examine every issue on a blank slate.[21] As Judge Cardozo asserted, "the labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not law one's own course of bricks on the secure foundation of the courses laid by others who have gone before him."[22] In other words, the work of judges would increase significantly if all previous decisions could be reopened in every novel case.

Second, adherence to precedent seeks to ensure continuity in the rule of law. The rule of law is essential for individuals to make informed decisions about their conduct, and adherence to precedent is critical for the Court to ensure legal consistency.[23] The principle of stare decisis instills confidence in a society that their judiciary's decisions are legally sound. According to Justice Scalia, the primary purpose of stare decisis is to "protect reliance interests and to foster stability in the law."[24] The stare decisis doctrine serves historical and institutional functions by promoting "predictability and continuity of constitutional law."[25]

Finally, the principle of stare decisis seeks to promote the appearance of justice and the legitimacy of the Court.[26] Whether the Court is viewed as a credible institution hinges on

[20] Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis."
[21] Lee, "Stare Decisis in Historical Perspective."
[22] Cardozo, *The Nature of the Judicial Process*.
[23] Saul Brenner and Harold J. Spaeth, *Stare Indecisis: The Alteration of Precedent on the Supreme Court, 1946-1992* [in en] (Cambridge University Press, April 1995), ISBN: 978-0-521-45188-8.
[24] Itel Containers International Corporation v. Huddleston, 507, 60 (1991) [hereinafter Itel Containers v. Huddleston].
[25] Gerhardt, "Role of Precedent in Constitutional Decisionmaking and Theory."
[26] Jack Knight and Lee Epstein, "The Norm of Stare Decisis," Number: 4 Publisher: [Midwest Political

whether the public perceives that its Justices are basing their decisions on legal interpretations rather than political values. By adhering to principle, the Justices rely on legal interpretation rather than external influences such as ideology or moral beliefs.[27] A compelling example of this theory can be seen by examining the time frame during which the American legal system adopted the doctrine of stare decisis. According to legal historians, the doctrine of stare decisis only became firmly established after the federal judiciary faced a legitimacy crisis in the mid-nineteenth century.[28] Notably, the Court's ruling in *Dred Scott* (1857) significantly tarnished public confidence in the federal judiciary for twenty years.[29]

Justifications for Overturning Precedent

In order to maintain the rule of law, the Court considers several factors when deciding whether to overturn a legal precedent. The Congressional Research Service has identified some of these factors, which include the quality of reasoning, workability, inconsistency with related decisions, changed understandings of relevant facts, and reliance.[30] Each justice may have his own approach to overturning precedents but must use a rationale that aligns with "the traditionally accepted goals of stare decisis."[31] The most common reasons given by the Justices for overturning a precedent include (1) the reliance interests of those affected by the precedent, (2) the workability of the precedent, (3) changes in the social, political, philosophical, and economic environment and (4) the strength of the reasoning behind the

Science Association, Wiley], *American Journal of Political Science* 40, no. 4 (1996): 1018–1035, ISSN: 00925853, 15405907, https://doi.org/10.2307/2111740, http://www.jstor.org/stable/2111740.

[27] Padden, "Overruling Decisions in the Supreme Court."

[28] See Frederick G. Jr. Kempin, "Precedent and Stare Decisis: The Critical Years, 1800 to 1850" [in eng], *American Journal of Legal History* 3, no. 1 (1959): 50, https://heinonline.org/HOL/P?h=hein.journals/amhist3&i=36; Thomas G. Hansford and James F. Spriggs, "Explaining the Interpretation of Precedent," in *The Politics of Precedent on the U.S. Supreme Court* (Princeton University Press, 2006), 16–42, ISBN: NULL, http://www.jstor.org/stable/j.ctv36zrs3.6.

[29] O'Brien and Silverstein, *Constitutional law and politics*, 42.

[30] Brandon J Murrill, *The Supreme Court's Overruling of Constitutional Precedent* [in en], technical report R45319-Version 4 (Congressional Research Service, 2018), https://crsreports.congress.gov.

[31] Padden, "Overruling Decisions in the Supreme Court," 1725.

precedent.[32]

To begin with reliance interests, the Justices of the Court have to carefully consider the decision to uphold a precedent, regardless of its flaws.[33] This is because overturning a precedent could cause hardships for the parties involved. Therefore, the Court must carefully consider the reliance interests at play, such as economic, social, and governmental interests. Justice Scalia suggests that the Court should be more open to overturning newer precedents, as the reliance interests around them have yet to be fully established in society.[34] By considering these reliance interests, the Justices can make an informed decision about whether it is worth disrupting the institutional investment in the previous approach by overruling it.[35]

Furthermore, the Court has stated that it retains the power to depart from a precedent if it considers it "unworkable." Interestingly, the Justices have a consensus that a precedent is unworkable when "lower courts cannot apply it in a coherent and consistent manner."[36] In the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court identified several factors that it considers when deciding whether to overturn a precedent. These factors include (1) whether the prior decision was unworkable, (2) whether subsequent changes in the law render the precedent inapplicable, (3) whether the rule has caused the "kind of reliance that would lend a special hardship to the consequences of overruling," and (4) whether changes underlying the facts of the prior decision to render the rule no longer appropriate.[37] However, the unworkability doctrine has been criticized for its inconsistent application, lack of clear definition, and questionable support.[38] These concerns highlight the

[32] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1136.
[33] Planned Parenthood v. Casey, 505, 833 (1992) [hereinafter Planned Parenthood v. Casey].
[34] Michael Gentithes, "Janus-Faced Judging: How the Supreme Court is Radically Weakening Stare Decisis," Number: 1, *William & Mary Law Review* 62, no. 1 (October 2020): 131, ISSN: 0043-5589 (PRINT), 2374-8524 (ONLINE), https://scholarship.law.wm.edu/wmlr/vol62/iss1/3.
[35] Barrett, "Precedent and Jurisprudential Disagreement Symposium," 1722.
[36] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1138.
[37] Planned Parenthood v. Casey.
[38] Lauren Vicki Stark, "The Unworkable Unworkability" [in eng], *New York University Law Review* 80, no. 5 (2005): 1684, https://heinonline.org/HOL/P?h=hein.journals/nylr80&i=1679.

need for a reassessment of this justification.

Overturning a precedent is sometimes a consequence of the passage of time. The social, economic, or political environment in which a precedent was established may change significantly over time. This can happen due to changes in ethical, moral, or philosophical ideas or due to the emergence of new forms of human relations brought about by technological progress, commerce, and transportation. As a result, the original decision may no longer be applicable or relevant to current circumstances. This can render the decision outdated or irrelevant, making it more susceptible to being overturned. Aldisert, a United States Circuit judge of the United States Court of Appeals for the Third Circuit, emphasized the importance of keeping the law dynamic to meet the changing needs of society. He stated

> In the popular idiom, they are always "up for grabs" to meet changes in our social, political, philosophical, and economic climates. When invention is active, when industry, commerce, and transportation bring about new forms of human relations, and when community relations change because of the extension of ethical and moral ideas, the law is dynamically able to keep pace with the variety and subtlety of social change.[39]

In his view, the law should also be able to keep up with the changing community relations that occur due to the extension of ethical and moral ideas. In this way, the law can remain relevant and effective in meeting the evolving needs of society.

Finally, the Supreme Court considers the quality of the reasoning behind a decision when determining whether to overturn a precedent. In the case of *Janus v. American Federation of State, County, and Municipal Employees, Council 31* (2018), the Court faced criticism for weakening the doctrine of stare decisis.[40] The Justices decided that the poor reasoning in the

[39] Aldisert, "Precedent: What It Is and What It Isn't: When Do We Kiss It and When Do We Kill It," 625.

[40] Janus v. American Federation of State, 585, 516 (2018) [hereinafter Janus v. AFSCME].

case was a sufficient reason to overturn precedent instead of evoking stare decisis analysis.[41] This decision is significant because it reflects a weakening adherence to the principle of stare decisis. If the Justices view a decision as reflecting poor reasoning, they may overturn precedent, even if they disagree with the decision.

2.2 Existing Studies

Several scholars have conducted empirical studies to understand why the Supreme Court deviates from established precedents. This phenomenon is of utmost importance, as it has significant implications for the Court's reputation of impartiality and integrity. The findings of these studies have illuminated the reasons behind such departures, providing valuable insight into the workings of the Court. However, most of the literature on stare decisis focuses primarily on its impact on judicial behavior, vertical stare decisis, and descriptive analysis.[42] Furthermore, scholars have repeatedly pointed out in various studies that there is a shortage of empirical evidence in this field, emphasizing the need for more research.

Most of the literature concerning stare decisis has focused on the role of this doctrine in judicial decision-making. Rather than focusing on the factors that influence the Court's adherence to or deviation from precedent, scholars have studied how stare decisis affects judicial behavior. For instance, Segal and Spaeth conducted a study to determine the extent to which Justices follow precedents they disagree with, through a systematic content analysis of the votes and opinions of the dissenting Justices. Their results revealed that "Justices are not influenced by landmark precedents with which they disagree."[43] Other studies have also provided empirical evidence for the proposition that stare decisis is a norm that influences

[41] Gentithes, "Janus-Faced Judging," 83.

[42] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent"; Hansford and Spriggs, "Explaining the Interpretation of Precedent."

[43] Jeffrey A. Segal and Harold J. Spaeth, "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices," Publisher: [Midwest Political Science Association, Wiley], *American Journal of Political Science* 40, no. 4 (1996): 971, ISSN: 00925853, 15405907, https://doi.org/10.2307/2111738, http://www.jstor.org/stable/2111738.

judicial decisions.[44]

While previous studies have shed light on the impact of stare decisis on the judicial decision-making process, this thesis seeks to identify the factors that influence the Court's decision to overrule precedent. Previous empirical studies on overruled precedents have suggested that the age of a precedent, the vote margins of the decision,[45] the ideological predispositions of the Justices,[46] and the legal basis of the decision all impact the likelihood of a case being overturned. However, legal scholars still need to analyze more evidence in this field, emphasizing the need for further research.

Recognizing that precedents lose value as time passes, scholars have conducted numerous studies to determine whether the age of precedent has affected the Court's decision to overturn precedent. According to Justice Scalia, recent precedents should be overturned more easily than long-standing and well-established ones. However, empirical studies have produced conflicting evidence on this issue. For example, a study on the Supreme Court's decisions between 1971 and 1993 concluded that empirical evidence supported the claim that recent cases were less likely to be overturned.[47] Moreover, another study that investigated the Supreme Court's decisions from its founding until 1957 found minimal evidence to support Scalia's claim. Finding no significant difference between the frequency of precedents under ten years and those between 10 and 20 years, Ulmer suggests that "newer precedents might be favored by a majority of the Justices on the Court, most of whom can be expected to vote for the same outcome in a subsequent case as they did in the original one."[48]

On the contrary, Black and Spriggs empirically tested the effect of the age of a precedent

[44] Knight and Epstein, "The Norm of Stare Decisis," 1018.

[45] Banks, "The Supreme Court and Precedent"; Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court."

[46] Banks, "The Supreme Court and Precedent"; S. Sidney Ulmer, "The Analysis of Behavior Patterns on the United States Supreme Court," Publisher: [University of Chicago Press, Southern Political Science Association], *The Journal of Politics* 22, no. 4 (1960): 629–653, ISSN: 0022-3816, https://doi.org/10.2307/2126926, https://www.jstor.org/stable/2126926; Brenner and Spaeth, *Stare Indecisis*.

[47] Padden, "Overruling Decisions in the Supreme Court," 1718–19.

[48] Brenner and Spaeth, *Stare Indecisis*, 10–11.

on depreciation. Using a cross-sectional time series analysis of Supreme Court citations, they tested the relationship between the age of precedent and the probability of a case being cited. Black and Spriggs concluded that a precedent's age was the most influential factor in the likelihood of a case being cited.[49] Therefore, while the age of a precedent may play a role in the Court's decision to overturn it, the evidence is not conclusive.

Another area of interest for legal research seeks to address the debate on the impact of the margin of votes on the longevity of a precedent. Scholars have tried to find empirical proof to support Chief Justice Rehnquist's assertion that cases "decided by the narrowest of margins, over spirited dissents" were more susceptible to be overturned than those decided unanimously.[50] Chief Justice Rehnquist fueled this debate when he asserted that cases decided by a narrow margin and over strong dissents are more likely to be overturned than those decided unanimously. One such study, conducted by LeRoy, analyzed whether the margin of votes, the number of concurring and dissenting votes, and the number of concurring and dissenting opinions affect the duration of a precedent.[51] The findings demonstrated that voting characteristics in cases affect a precedent's longevity, leading LeRoy to conclude that Justices should rethink their consensus norms. Another study by Brenner and Spaeth examined the Supreme Court's overruled and overruling cases from 1946 to 1992. The study sought to determine whether the size of the coalition of decisions and opinions in the overruled cases tended to be less than unanimous. Brenner and Spaeth's study confirmed their hypothesis: decision and opinion coalitions tend to be closer to a minimum winning size than a unanimous size.[52] In other words, when a case is decided by a bare majority or plurality of Justices, it is generally more likely to be overturned. These studies support the

[49] Black and Spriggs II, "The Depreciation of Precedent on the U.S. Supreme Court," 4.

[50] Payne v. Tennessee, 501, 808 (1991) [hereinafter Payne].

[51] Michael LeRoy, "Death of a Precedent: Should Justices Rethink Their Consensus Norms?," Number: 2, *Hofstra Law Review* 43, no. 2 (January 2014), ISSN: 00914029, https://scholarlycommons.law.hofstra.edu/hlr/vol43/iss2/3.

[52] Brenner and Spaeth, *Stare Indecisis*, 45–8.

assertion of Chief Justice Rehnquist that cases decided by a bare majority or plurality of Justices are generally more likely to be departed from.

Equally important, many studies have been conducted to determine whether the ideological perspectives of Supreme Court Justices affect the Court's tendency to overrule established precedents. The question of whether the personal beliefs of the Justices influence their decisions in such cases is of great interest in legal academia. It has been the subject of rigorous analysis. Empirical evidence supports the theory that "ideological considerations play a key role in the Justices' choice to overrule precedent."[53] This theory has been supported by various studies, which indicate that the ideological perspectives of the Justices are closely correlated with their decisions to overturn cases. Brenner and Spaeth's research revealed a significant correlation between the ideological views of the Justices and their choices to overturn cases.[54] Specifically, their study found that in 97% of overturned cases, the Justices' votes aligned with their ideological positions. Moreover, additional studies have suggested that the influence of Justices' ideology on voting behavior tends to be stronger in non-unanimous cases.[55] Overall, empirical studies suggest that the Justices' ideological views have a significant impact on the Court's decision to overrule precedents.

In addition, the influence of legal basis has gained importance for scholars looking to understand the factors that influence the decision of the U.S. Supreme Court to overrule precedents. Previous studies have shown that the Court is more likely to deviate from precedent in cases based on constitutional grounds rather than statutory grounds.[56] One reason for the difference in how Congress and the Justices approach legal decision-making

[53] Hansford and Spriggs, "Explaining the Interpretation of Precedent," 91.

[54] Brenner and Spaeth, *Stare Indecisis*, 106.

[55] Lee Epstein, William M. Landes, and Richard A. Posner, "The Supreme Court," in *The Behavior of Federal Judges* (Harvard University Press, 2013), 103–4, ISBN: 978-0-674-04989-5, http://www.jstor.org/stable/j.ctt2jbs80.9.

[56] Banks, "The Supreme Court and Precedent"; Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent"; Padden, "Overruling Decisions in the Supreme Court"; Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court."

is that while Congress has the power to amend statutes and override judicial decisions, the Justices prioritize consistency and adherence to precedents. However, in cases involving the Federal Constitution, where correction through legislative action is practically impossible, the Court is more willing to overrule earlier decisions.[57] In the words of Justice Brandeis, "In cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions."[58] Thus, owing to the lack of opportunities to amend constitutional decisions through the political process, the Justices are generally less deferential to stare decisis when deciding constitutional cases.

The analysis conducted by Epstein, Landes, and Liptak provides further insight into the factors that influence the Court's decision to overrule constitutional precedents.[59] The scholars used a regression analysis to examine the Court's tendency to overrule precedents, as well as the reasons for doing so. They identified three main independent variables to explain the departure from precedent: constitutional precedent, special justifications, and institutional concerns. Epstein's study indicates that constitutional precedent is not necessarily more likely to be overturned than statutory cases. This differs from previous research, which suggested that constitutional interpretation-based decisions were overturned twice as often as those based on statutory interpretation. Specifically, Banks analyzed the decisions of the Supreme Court from its inception until 1991, finding that decisions based on constitutional interpretation were overturned twice as often as those based on statutory interpretation.[60] However, it is essential to note that Epstein's study exclusively analyzed the Roberts' Court from 2005-2013. Thus, it is probable that the limited support for the theory that constitutional precedents are more likely to be overturned is due to the limited scope of Epstein's study.

Finally, scholars have conducted studies exploring the relationship between changes in

[57] O'Brien and Silverstein, *Constitutional law and politics*, 137.
[58] Burnet at 285.
[59] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1117.
[60] Banks, "The Supreme Court and Precedent."

the composition of the Court and the altering of precedents. These studies sought to reject criticisms suggesting that the attitudes of the Justices currently serving are related to altering precedents. Two prominent studies have found a significant relationship between changes in composition and the frequency of altering precedents. The first study, conducted by Ulmer, analyzed the frequency of Supreme Court appointments and the frequency of altering precedents from 1862 to 1941. The results of this study revealed a significant relationship. The study concluded that "a rapidly changing Court composition has an unsettling effect which is likely to increase for a time the alterations being made in the law through judicial making."[61] The second study, conducted by Banks, aimed to discredit the criticisms that the Rehnquist Court was undermining the doctrine of stare decisis. Banks analyzed the Supreme Court's treatment of precedent between 1801 and 1991. This study supported the "proposition that precedents are likely to fall during a transitional process in which changing majorities reassess old law in an attempt to give new life to constitutional jurisprudence."[62]

2.3 The Right to Privacy

This section presents a comprehensive overview of the right to privacy. The structure of this body of literature follows Professor Gormley's categorization of privacy rights into four primary legal perspectives: (1) the original privacy concept developed by Warren and Brandeis, (2) Fourth Amendment privacy, (3) First Amendment privacy, and (4) Fundamental-decision privacy. Although legal scholars have offered varying explanations of the notion of privacy in American jurisprudence, a thorough exploration of privacy jurisprudence underscores the crucial role of privacy in the rule of law.

[61] Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court," 433–434.

[62] Banks, "The Supreme Court and Precedent," 265.

Tort Privacy - Warren and Brandeis

In what is considered the "most influential law review article of all time," Warren and Brandeis established the right to privacy.[63] They meticulously analyzed English common law precedents and presented compelling logical arguments to establish the foundational basis for the right to privacy.[64] As society evolves politically, socially, and economically, it becomes necessary for the law to respond to societal demands by enshrining new rights;

> The intensity and complexity of life, attendant upon advancing civilizations, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprises and invention have, through invasions of privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily harm.[65]

Warren and Brandeis believed that the existing law did not adequately protect an individual's privacy, which was threatened by the recent invention of the Kodak camera and the increasing invasions of privacy by the press. Through an analysis of common law for copyright and intellectual property, they concluded that protections against the publication of an individual's thoughts, sentiments, and emotions were necessary. As society has progressed, people have become more vulnerable to privacy violations, necessitating the law to recognize what Judge Cooley referred to as the right of the individual "to be let alone."[66]

Throughout history, the law has evolved to protect individuals and their property in response to social, political, and economic changes. With the emergence of invasive scientific technologies, Warren and Brandeis argued that the existing legal doctrine of contract law

[63] Harry Jr. Kalven, "Privacy in Tort Law–Were Warren and Brandeis Wrong Privacy" [in eng], *Law and Contemporary Problems* 31, no. 2 (1966): 326, https://heinonline.org/HOL/P?h=hein.journals/lcp31&i=332.

[64] Irwin R. Kramer, "The Birth of Privacy Law: A Century since Warren and Brandeis" [in eng], *Catholic University Law Review* 39, no. 3 (1989): 703–724, https://heinonline.org/HOL/P?h=hein.journals/cathu39&i=715.

[65] Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," Publisher: The Harvard Law Review Association, *Harvard Law Review* 4, no. 5 (1890): 196, ISSN: 0017811X, https://doi.org/10.2307/1321160, http://www.jstor.org/stable/1321160.

[66] Thomas M. Cooley, "The Uncertainty of the Law Note" [in eng], *American Law Review* 22, no. 3 (1888): 196, https://heinonline.org/HOL/P?h=hein.journals/amlr22&i=351.

was insufficient to prevent privacy violations because it lacked the necessary recourse against third parties.[67] Instead, they proposed that the principle of privacy protection in English common law could be used as the basis for recognizing the right to privacy by the courts and for offering a cause of action for damages.

Following the publication of Warren and Brandeis' article, the earliest cases primarily focused on whether the right to privacy existed at all, without considering what the recognition of such a right would entail.[68] Consequently, the Court identified four types of privacy interests within the context of tort law: "(1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public discourse of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public light; and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness."[69] Ultimately, Warren and Brandeis' argument paved the way for the Court's recognition of the right to privacy within the framework of tort and common law and the establishment of legal remedies for damages.

Fourth Amendment Privacy

Although the right to privacy is not explicitly stated in the Constitution, the Supreme Court has determined that privacy is an underlying principle of the Fourth Amendment.[70] With advances in science and technology, intrusions of privacy have become increasingly prevalent, leading to a new interpretative approach to the Fourth Amendment.[71] The first time the Fourth Amendment's protection against unreasonable searches and seizures was linked to

[67] Ben Bratman, "Brandeis and Warren's the Right to Privacy and the Birth of the Right to Privacy" [in eng], *Tennessee Law Review* 69, no. 3 (2001): 623–652, https://heinonline.org/HOL/P?h=hein.journals/tenn69&i=633.

[68] William L. Prosser, "Privacy," Publisher: California Law Review, Inc. *California Law Review* 48, no. 3 (1960): 388, ISSN: 00081221, https://doi.org/10.2307/3478805, http://www.jstor.org/stable/3478805.

[69] Prosser, 389.

[70] Brad Setterberg, "Privacy Changes, Precedent Doesn't: Why Board of Education v. Earls Was Judged by the Wrong Standard Note" [in eng], *Houston Law Review* 40, no. 4 (2003): 1183–1218, https://heinonline.org/HOL/P?h=hein.journals/hulr40&i=1195.

[71] David M. O'Brien and Gordon Silverstein, *Constitutional Law and Politics: Volume 2: Civil Rights and Civil Liberties* [in English], Eleventh edition (New York: W. W. Norton & Company, June 2020), 943, ISBN: 978-0-393-69674-5.

the idea of privacy was in the case of *Boyd v. United States* (1886). The Court ruled that it was unconstitutional under the Fourth and Fifth Amendments to force a defendant to give up their private papers and books. In the majority opinion, Justice Bradley argued that both amendments related "to the personal security of the citizen."[72] The Boyd Court not only called for a "liberal construction of Fourth Amendment-protected privacy," but also established "constitutionally protected privacy interests in terms of common-law property rights."[73]

Following the publication of the Warren and Brandeis article on the right to privacy, the advancement of Fourth Amendment privacy appeared to remain stagnant. This was evident in the Court's ruling in *Olmstead v. United States* (1928), where the Justices ruled that wiretapping did not violate the Fourth Amendment because it did not involve a physical intrusion of the defendant's property.[74] This decision was based on the trespass doctrine, which limited Fourth Amendment protection to instances where there was a physical intrusion of a defendant's "constitutionally protected areas."[75] However, Brandeis' dissenting opinion, which advocated for the "right to be let alone," has been regarded as a key foundation for the right to privacy. By drawing on the arguments presented in his infamous law review article, Brandeis linked the Fourth Amendment to the concept of privacy;

> The protection guaranteed by the Fourth and Fifth Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness... They conferred, as against the Government, the right to be let alone–the most comprehensive of rights and the right most valued by civilized men.[76]

The right to privacy is widely considered one of the most valuable rights of individuals

[72] Boyd v. United States, 116, 616, 618 (1886) [hereinafter Boyd].
[73] O'Brien and Silverstein, *Constitutional Law and Politics*, 944.
[74] Olmstead v. United States, 277, 438 (1928) [hereinafter Olmstead].
[75] Thomas Kearns, "Technology and the Right to Privacy: The Convergence of Surveillance and Information Privacy Concerns," *William & Mary Bill of Rights Journal* 7, no. 3 (April 1999): 7, ISSN: 1065-8254 (print); 1943-135X (online), https://scholarship.law.wm.edu/wmborj/vol7/iss3/10.
[76] Olmstead at 478.

in modern society. This right was induced by technological advances of the early twentieth century. In response to the threat posed by wire communications, Brandeis proposed to include the concept of privacy in the Fourth Amendment.[77] However, it was not until the 1960s that the American people became aware of the risks that new technologies posed to privacy rights.[78]

In the landmark case of *Katz v. United States* (1967), the law recognized the Fourth Amendment's protection of the right to privacy, which expanded beyond the protection of physical objects.[79] The majority opinion, written by Justice Steward, embraced the concept of privacy explicitly under the Fourth Amendment.[80] It held that the Fourth Amendment protected "people, not places."[81] Nonetheless, Justice Harlan's concurrence remains the most notable opinion in Katz, as he emphasized the importance of a "reasonable expectation of privacy."[82] This principle was reinforced in *Terry v. Ohio* (1968), where the Court held that "wherever an individual may harbor a reasonable 'expectation of privacy,'... he is entitled to be free from unreasonable governmental interference."[83] The right to privacy continues to be a highly debated issue in modern society, as technological advancements pose new challenges to the protection of individuals' privacy rights.

First Amendment Privacy

The First Amendment is a fundamental principle that guarantees the right to free speech and the freedom to associate with others. These two concepts are closely related to the right to privacy, which is the ability of individuals to keep their personal information and activities

[77] Ken Gormley, "One Hundred Years of Privacy" [in eng], *Wisconsin Law Review* 1992, no. 5 (1992): 1335–1442, https://heinonline.org/HOL/P?h=hein.journals/wlr1992&i=1347.
[78] Gormley, 1364.
[79] Setterberg, "Privacy Changes, Precedent Doesn't: Why Board of Education v. Earls Was Judged by the Wrong Standard Note," 1197.
[80] Gormley, "One Hundred Years of Privacy," 1366.
[81] Katz v. United States, 389, 347, 351 (1967) [hereinafter Katz].
[82] Katz at 360-61.
[83] Terry v. Ohio, 392, 1, 9 (1968) [hereinafter Terry].

private. To fully exercise their First Amendment rights, individuals must be able to not only "study, learn, and be exposed to ideas as they choose."[84] This means that they must have access to information and ideas without any interference or censorship. Additionally, they must be able to keep their associations private. This includes the right to associate with others who share their beliefs and values without fear of retaliation or persecution. First Amendment privacy is a "quasi-constitutional privacy that exists when one individual's free speech collides with another individual's freedom of thought and solitude."[85] It is designed to balance the right to free speech.

Although Warren and Brandeis' tort privacy sought to establish a new right, First Amendment privacy aims to balance the right to free speech. In *Gilbert v. Minnesota* (1920), Justice Brandeis made his first attempt to constitutionalize the privacy of the First Amendment.[86] In his dissenting opinion, Brandeis criticized the failure of the majority to accept the argument that regulation of antiwar speech invades the right to privacy. Ultimately, Brandeis's dissent contended that the First Amendment protected "the privacy and freedom of the home."[87] Understandably, Brandeis' dissent reflects an attempt "to introduce a notion of privacy which was connected in some fashion to the Constitution (unlike his original tort privacy)."[88]

Scholars argue that the right to privacy includes a zone of autonomy that is immune from regulation.[89] This zone goes beyond what is protected by the First Amendment. The Court has formally acknowledged the claim that the First Amendment protects the right to privacy since the 1960s.[90] In *Stanley v. Georgia* (1969), the Court reaffirmed this extension

[84] Jay M. Feinman, *Law 101: everything you need to know about American law* [in eng], 5th edition (New York: Oxford University Press, 2018), 82, ISBN: 978-0-19-086632-7 978-0-19-086633-4 978-0-19-086634-1.
[85] Gormley, "One Hundred Years of Privacy," 1340.
[86] Gilbert v. Minnesota, 488, 985 (1987) [hereinafter Gilbert].
[87] O'Brien and Silverstein, *Constitutional Law and Politics*, 1129.
[88] Gormley, "One Hundred Years of Privacy," 1377.
[89] Louis Henkin, "Privacy and Autonomy" [in eng], *Columbia Law Review* 74, no. 8 (1974): 1410–1433, https://heinonline.org/HOL/P?h=hein.journals/clr74&i=1432.
[90] O'Brien and Silverstein, *Constitutional Law and Politics*, 1129.

of the First Amendment to protect privacy rights when holding that individuals had the right to possess obscene materials in their homes.[91] Citing Justice Brandeis' famous dissent in Olmstead, Justice Marshall asserted that the defendant had a fundamental right to privacy.

Moreover, the right of association, which the First Amendment guarantees, also extends to privacy interests.[92] In *NAACP v. Alabama* (1958), the Court extended this right to associational privacy to religious, economic, and social associations.[93] The concept of First Amendment privacy, similar to tort privacy and Fourth Amendment privacy, has been established through the application of common law principles.[94] This development has been driven by changes in society, and the law has increasingly utilized the theories and principles of privacy to recognize free speech privacy. Over time, the legal system has come to recognize the importance of privacy in the context of free speech and has developed a framework that balances competing interests while safeguarding fundamental rights.

Fundamental Decision Privacy

It was not until *Griswold v. Connecticut* (1965) that the U.S. Supreme Court the right to privacy as a constitutional right, derived from the "penumbra" of the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments.[95] In this case, the Griswold Court overturned the convictions under Connecticut state laws that forbade the use of contraceptives by married persons, by holding that a marital relationship was inherent in the zone of privacy under Justice Douglas' theory.[96] Initially, Justice Douglas had not asserted his theory that the right to privacy was a fundamental right in the first draft of his opinion. Rather, he had relied

[91] Stanley v. Georgia, 394, 557 (1969) [hereinafter Stanley].

[92] Roberts v. United States Jaycees, 468, 609 (1984) [hereinafter Roberts v. Jaycees].

[93] O'Brien and Silverstein, *Constitutional Law and Politics*; NAACP v. Alabama ex rel. Patterson, 357, 449, 1229 (1958) [hereinafter NAACP].

[94] Gormley, "One Hundred Years of Privacy," 1385–86.

[95] Bratman, "Brandeis and Warren's the Right to Privacy and the Birth of the Right to Privacy," 625.

[96] Tom Gerety, "Redefining Privacy" [in eng], *Harvard Civil Rights-Civil Liberties Law Review* 12, no. 2 (1977): 270, https://heinonline.org/HOL/P?h=hein.journals/hcrcl12&i=241.

on precedent "recognizing a First Amendment right of associational privacy."[97] However, in his final draft, Douglas asserted his theory of the right of privacy on the penumbras of the aforementioned amendments, which was only joined by a plurality.[98] Nevertheless, the Griswold Court opened up a new front of privacy right protection by asserting that the notion of liberty protected under due process extends to privacy interests. By invalidating the Connecticut statute because it "violated a constitutional right of marital privacy," the Court constitutionalized the right to privacy.[99]

Based on the prevailing theory defining privacy as "an inherent and important aspect of liberty protected by due process of law," the Court has expanded the right to privacy to apply to cases regarding marriage and family, reproductive freedom, and the right to die.[100] As a result of Griswold's expansion and constitutionalization of the right to privacy, courts were increasingly called upon to review requests pertaining to a broader range of interests relating to personal autonomy.[101] Notably, in *Roe v. Wade* (1973), the Court extended the right to privacy in the context of reproduction. The Roe Court held that a Texas statute forbidding abortions, except to save the life of the mother, violated the fundamental right to privacy "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action."[102] Justice Blackmun sought to assert what contexts included what he had called the zone of privacy in Griswold;

> The Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, *Stanley v. Georgia*; in the Fourth and Fifth Amendments *Terry v. Ohio, Katz v. United States* ... in the penumbras of the Bill of Rights, *Griswold v. Connecticut*; in the Ninth Amendment, id.;

[97] O'Brien and Silverstein, *Constitutional Law and Politics*, 349.
[98] Grisworld v. Connecticut, 381, 479 (1965) [hereinafter Griswold].
[99] Henkin, "Privacy and Autonomy," 1421.
[100] Glenn C. Smith and Patricia Fusco, *Constitutional Law For Dummies*, –For dummies, OCLC: ocn744284614 (Hoboken, N.J: John Wiley & Sons, 2012), 265, ISBN: 978-1-118-02378-5.
[101] O'Brien and Silverstein, *Constitutional Law and Politics*, 1286.
[102] Roe v. Wade, 410, 113, 153 (1973) [hereinafter Roe v. Wade].

> or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see *Meyer v. Nebraska*... They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia*; procreation, *Skinner v. Oklahoma*; contraception, *Eisenstadt v. Baird*; family relationships, *Prince v. Massachusetts*; and child-rearing and education.[103]

In *Roe v. Wade*, the Court used previous rulings on the First Amendment and Fourth Amendment privacy with those relating to liberty under the Fourteenth Amendment to establish the right to privacy "premised upon fundamental choice."[104] This decision was later reaffirmed in *Planned Parenthood v. Casey* where Justices O'Connor, Kennedy, and Souter defined the principles involved in prior privacy decisions to conclude that issues "involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment."[105] The Justices in the majority opinion utilized the principle of personal autonomy grounded in prior decisions to conclude that such principles of liberty supported the right to abortion established in Roe.[106]

The landmark cases of *Roe v. Wade* and *Casey v. Planned Parenthood* recognized the fundamental right to privacy with regard to abortion. However, in 2022, *Dobbs v. Jackson Women's Health Center* revoked these advances by declaring that the Constitution did not grant the right to abortion. The Court's majority decision went further, striking down the doctrines of privacy and stare decisis as well.[107] During arguments, the Solicitor General warned the Court that overruling these cases would threaten the Court's precedents holding that the Due Process Clause of the Fourteenth Amendment protected other privacy rights. The majority claimed that their ruling only applied to the constitutional right to an abortion

[103] Roe v. Wade at 152.
[104] Gormley, "One Hundred Years of Privacy," 1395–1404.
[105] Planned Parenthood v. Casey at 983.
[106] Feinman, *Law 101*, 93.
[107] Carol Sanger, "The Rise and Fall of a Reproductive Right: Dobbs v. Jackson Women's Health Organization," Publisher: American Bar Association, *Family Law Quarterly* 56, nos. 2/3 (March 2023): 120, ISSN: 0014729X.

and not to other decisions under the protection of liberty of the Fourteenth amendment.[108]

Before the Dobbs ruling, the Supreme Court had unified privacy strands into a coherent framework that recognized the right to familial privacy as a necessary aspect of personal liberty.[109] This recognition played a crucial role in shaping the country's legal system since 1923. Scholars are now concerned that the Dobbs Court ruling against the right to abortion could put other privacy rights in danger. They argue that the Court's reasoning that the right to an abortion was not explicitly in the Constitution could have broader implications, particularly with respect to Fourth Amendment privacy. As Kaufman asserts, "If the current Court holds the right to privacy in disdain, then Katz's reasonable expectation of privacy test is likely to be imperiled along with it."[110] Therefore, scholars are closely monitoring the potential impact of the Dobbs ruling on privacy rights and the broader constitutional framework. It remains imperative to observe whether the weakening of one fundamental privacy right poses a threat to the long-standing recognition of privacy in various domains within the American legal system.

[108] Dobbs v. Jackson Women's Health Organization, 597, 215 (2022) [hereinafter Dobbs].

[109] Rona Kaufman, "Privacy: Pre- and Post-Dobbs New Supreme Court Cases: Duquesne Law Faculty Explains" [in eng], *Duquesne Law Review* 61, no. 1 (2023): 72, https://heinonline.org/HOL/P?h=hein.journals/duqu61&i=68.

[110] Sam Kamin, "Katz and Dobbs: Imagining the Fourth Amendment without a Right to Privacy" [in eng], *Texas Law Review Online* 101 (2022): 94, https://heinonline.org/HOL/P?h=hein.journals/seealtex101&i=80.

3 Theory and Argument

In recent times, the significance of judicial decisions to reverse previous legal rulings has increased, leading to criticism of the Court for being involved in shaping judicial policies.[111] Academics have extensively discussed the elements that impact the Court's choice to overturn precedent. While some scholars propose that ideological beliefs, the legal foundation of precedent, and the Court's makeup are influential factors, I argue that the subject matter of the case plays a crucial role in the Supreme Court's approach to stare decisis.

In particular, cases related to privacy rights have a unique and evolving nature that demands a nuanced judicial response. While adhering to precedent is essential for legal predictability and stability, the unpredictable development of technology calls for a flexible application of stare decisis. The Supreme Court must be consciously aware of the challenges posed by new technologies and changing societal norms and must, therefore, adopt a dynamic approach to privacy precedents.

This study aims to demonstrate how the dynamic nature of privacy rights, along with the continuous development of technology and societal standards, increase the vulnerability of privacy precedents to arguments based on reliance interests, unworkability, and changing circumstances. In other words, subject matter, as an intrinsic form of public policy, influences the Court's decision to alter precedent. The study shows that privacy issues are likely the most dynamic in judicial decision-making.

3.1 Research Question and Hypothesis

In this study, I present a hypothesis that aims to understand the relationship between the subject matter of a case and the Court's decision to overturn precedent. I hypothesize that the Court is more likely to overturn established precedents when cases involve the right to

[111] Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court," 416.

privacy compared to other policy issues. The dynamic nature of technology, evolving societal values, and changing landscape of privacy concerns lead to privacy issues being the most dynamic in the realm of judicial decision-making and, thus, the most likely to influence the Court's decision to alter precedent.

> **H1**: The Court's likelihood of overturning cases is higher when the decisions are related to privacy rights than other constitutional issues.

3.2 Argument/Theory

This section will explore the relationship between privacy rights and the established justifications for precedent alteration. As technology and societal norms continue to evolve, privacy remains a precarious concept. This is because the foundations upon which the right to privacy is based constantly shift, making it more vulnerable to overturn. Accordingly, I will demonstrate how these factors render privacy precedents particularly vulnerable to the established justifications for overturning precedents, such as the unworkability doctrine and the balance of hardships principle.

First, the dynamic nature of technology and constantly evolving societal attitudes toward privacy create a scenario where the reliance interest in privacy cases may be diminished compared to other areas of law. When deciding whether to overturn precedent, the Court is known to be more willing to overrule precedent "if the hardships it would impose upon those who have relied upon the precedent appear not so great as the hardships that would inure to those who would remain saddled with a bad precedent."[112] Legal scholars and judges have proposed various theories about which domain should prioritize strict adherence to precedent. This is crucial as both the public and lawmakers depend on established precedents to inform

[112] Roger J. Traynor, "La Rude Vita, La Dolce Giustizia; Or Hard Cases Can Make Good Law," *The University of Chicago Law Review* 29, no. 2 (1962): 231, https://doi.org/10.2307/1598490, https://doi.org/10.2307/1598490.

their decisions.[113] One of the most widely accepted suggestions is that the Court should prioritize following existing precedents when adjudicating cases related to economic regulation, particularly those involving property and contract law.[114] Scholars have acknowledged the significance of cases with high reliance interests but have yet to explore the scenarios in which reliance interests are minimal.

However, there is a growing agreement among people that they value securing their rights and privacy protections more than preserving outdated laws that do not adequately safeguard them against intrusions. As technology advances, new privacy threats emerge, which makes it crucial for the Court to balance evolving technological developments with societal attitudes toward privacy. The Court also needs to consider the interests of those who have relied on existing laws. Ultimately, when minimal-reliance interests are at play, it presents a compelling scenario for the Court to consider overturning precedent.

Second, the rapid pace of technological advancements can render existing privacy rights precedents more vulnerable to the unworkability doctrine. In our modern age, where privacy law constantly expands, technological innovations are vital in defining personal privacy boundaries. Sometimes, addressing new challenges of evolving technology may require more than just relying on precedents that worked in the past. In fact, the need for privacy protections prompted Brandeis and Warren to advocate for recognizing this fundamental right. They asserted, "Recent inventions and business methods call attention to the next step which must be taken for the protection of the person."[115] As surveillance techniques, data collection methods, and forms of communication become more advanced, the Court must determine whether current precedents can adequately safeguard privacy rights against the threats posed by these emerging technologies.

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[113] Citizens United v. Federal Election Commission, 558, 310, 105-6 (2010) [hereinafter Citizens United].

[114] 10 Black and Spriggs II, "The Depreciation of Precedent on the U.S. Supreme Court"; Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1142.

[115] Warren and Brandeis, "The Right to Privacy," 95.

The concept of overturning previous legal decisions based on the unworkability doctrine is rooted in the need to address the practical realities of contemporary life. The Court acknowledges the necessity of adaptability in revising decisions when faced with economic, social, or governmental challenges. Furthermore, existing privacy laws must consider the effects of technological and societal changes. In essence, it is sometimes crucial to reexamine past decisions and modify them to meet the changing realities of the present. Therefore, the Court must remain open to change and adaptable, especially when existing legal precedents no longer serve their intended purpose. In the case of privacy laws, the emergence of new technologies and societal transformations have posed new challenges that the courts must address in a way that aligns with the changing needs of society.

Finally, privacy rights are inherently subject to the changing circumstances justification for departing from precedent. As society confronts the implications of digital advancements on personal privacy, the Court is called upon to interpret and reinterpret the boundaries of these rights in light of new contexts unimaginable to the framers of earlier precedents. This dynamic nature of privacy law presents a unique challenge, as legal precedents crafted in response to the privacy concerns of previous eras may need to be revised to address contemporary issues. The evolution of technology and changes in social norms have contributed to this complexity, creating a dynamic environment that demands a proactive approach to addressing individuals' emerging privacy concerns.

The unprecedented speed with which technology evolves introduces novel challenges to protecting individual privacy. The legal precedents crafted in response to the privacy concerns of a bygone era are often challenged by the rapid advancement of technology, necessitating an approach that is forward-thinking and responsive to the needs of society. As Judge Cardozo asserted:

> That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve

> another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society, and no considerable property rights have become vested in reliance upon the old rule. It is thus great writers upon the common law have discovered the source and method of its growth, and in its growth found its health and life. It is not and it should not be stationary.[116]

This underscores the importance of adopting a proactive and flexible approach to legal decision-making that accounts for privacy law's complex and evolving nature. The Court, entrusted with the responsibility of interpreting and applying the law, must be willing to adapt its precedents to reflect society's changing needs and the challenges posed by technological advancements.

In this view, as societal attitudes towards privacy evolve, what was once deemed acceptable may no longer align with contemporary standards. As public consciousness adapts, existing legal precedents reflecting earlier societal values may face practical challenges in adapting to the needs of the present. The development of the Court's approach to wiretapping, spanning from *Olmstead v. United States* (1928) to *Katz v. United States* (1967), highlights the influence of changing societal values and emerging technology on legal precedent. The Court failed to recognize the importance of Fourth Amendment privacy rights despite Justice Brandeis's strong dissent in *Olmstead*, questioning the use of wiretapping technology. However, societal values had shifted by the time of the *Katz* decision, and the Court finally recognized that the Fourth Amendment protected "people, not places."[117] As one scholar notes, "Brandeis may have recognized the need for a 'right to be let alone' in 1928 to guard against electronic eavesdropping and other forms of technological intrusion, but such concerns were not widely shared until the mid-1960s when Katz's telephone booth was bugged."[118]

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[116] Cardozo, *The Nature of the Judicial Process*, 49.
[117] Katz at 351.
[118] Gormley, "One Hundred Years of Privacy," 1366.

3.3 Alternative Explanations

My theory argues that the subject matter—directly engaging with evolving societal values, technological advancements, and inherent legal complexities—exerts unique pressure on the Court to reconsider established legal frameworks. It suggests explicitly that privacy rights, given their immediate relevance to contemporary challenges, are particularly prone to lead the Court to reevaluate and potentially depart from established precedents. While the significance of the subject matter in shaping judicial decision-making is highlighted, this thesis also acknowledges other factors, including judicial ideology, legal basis, and changes in Court composition, as variables that frame the Court's engagement with the subject matter. However, in contrast to traditional approaches that might elevate the significance of these factors, this theory regards them as background elements that modulate, rather than dictate, the influence of subject matter on precedent alteration. This nuanced understanding offers a balanced perspective that recognizes the multifaceted nature of legal decision-making. It suggests that although the subject matter, particularly privacy rights, exerts unique pressure on the judiciary, the broader context in which these decisions are made cannot be overlooked.

Accordingly, it is plausible that such factors, rather than the precedent's subject matter, are responsible for the outcomes of my study. One potential factor is judicial ideology. Scholars have given considerable attention to the impact of ideology and policy preferences on judicial decisions, particularly when it comes to the overturning of precedent. Numerous studies have sought to determine how much the Justices' ideological leanings on the Supreme Court influence their decision to depart from or adhere to precedent. Scholars have conducted empirical studies to understand the relationship between the ideological composition of the Court and its decision to overturn precedent. Brenner and Spaeth conducted a study to examine the influence of ideology on Justices while overturning precedents. They analyzed the data from 46 terms of the Vinson, Warren, Burger, and Rehnquist Courts. By using both attitudinal and legal models, they discovered that the Justices' personal policy preferences

explained 97% of the votes in cases that were overruled or overturned.[119] Additionally, in their analysis of overruled cases between 1946 and 1992, Hansford and Spriggs determined that "ideological considerations play a key role in the Justices' choice to overrule a case."[120] While acknowledging the influence of ideological consideration in shaping the Court's decisions to overturn precedent, this study recognizes the need to control for ideological factors in order to isolate the influence of the subject matter.

A second possible explanation for the Court's decision to overturn precedent that has received much attention is the legal interpretational basis, precisely the distinction between constitutional and statutory interpretation. Justices have emphasized that the Court should adhere more closely to stare decisis in cases involving statutory interpretation than constitutional interpretation. The reasoning behind this argument is that if a decision is mistakenly interpreted, the political branches of government can amend the statute in question. In contrast, if a constitutional issue is wrongly decided, only the Court can correct the issue by overruling precedent.

Several studies have explored whether the interpretational basis of precedent influenced the Court's decision to overturn cases. Brenner and Spaeth discovered that out of the cases overruled, 67% were decided on constitutional grounds, whereas only 20% of such decisions were based on statutory interpretation.[121] Although many studies have reached the same conclusion, some scholars have criticized the use of the legal interpretational basis as an explanatory variable. Epstein, Landes, and Liptak (2015) argued that while the distinction between constitutional and statutory interpretation is essential, it does not fully capture the complexity of the Court's decision-making process. Through a multivariate analysis, these scholars aimed to determine "whether precedent is more flexible in constitutional cases, holding constant other factors that may affect the Court's decision to depart from prior

[119] Brenner and Spaeth, *Stare Indecisis*, 108–9.
[120] Hansford and Spriggs, "Explaining the Interpretation of Precedent," 91.
[121] Brenner and Spaeth, *Stare Indecisis*, 47.

decisions."[122] In their analysis of the Roberts Court, they discovered that the difference between cases decided on constitutional and statutory grounds was not statistically significant. The debate surrounding this alternative explanation underscores the need for a more nuanced interpretation, which is why, in this study, I will use the legal basis of precedent as a control variable.

Lastly, the changing composition of the Justices on the Supreme Court is another factor that may influence the probability of overturning precedent. To investigate this, scholars have explored the relationship between the Court's composition and adherence to stare decisis. One such scholar, Banks, analyzed the Court's composition and the reversal of precedent. Banks sought to refute claims that the doctrine of stare decisis was being weakened by the Rehnquist Court. He argued that these criticisms were unfounded, as "historically precedents have been reversed during periods in which changing majorities reassess old law in an attempt to give new life to constitutional jurisprudence."[123] Banks found that this pattern has remained consistent throughout the history of the Supreme Court. His claim was supported by an empirical study analyzing Supreme Court data from 1801 through 1991, which provided valuable insights into how the Court's changing composition could affect decisions to overrule precedent. Despite this evidence, Banks argues that although "personnel changes on the Court have directly affected the reversal trend in the short term, their ultimate impact on the development of the rule of law is, arguably, negligible over time."[124] Nonetheless, it is essential to account for changes in the Court's composition to determine whether the subject matter of the precedents influences decisions to overrule precedent.

[122] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1128.
[123] Banks, "The Supreme Court and Precedent," 262.
[124] Banks, 263.

Summary of Argument and Hypothesis

In summary, I argue that the Supreme Court's application of stare decisis is significantly influenced by subject matter, specifically privacy rights. I argue that the Court's commitment to previous rulings should be seen as a flexible process that responds to the demands of the present and future challenges rather than strictly adhering to the past. While it is essential to follow precedent to maintain legal predictability and stability, the unique nature of privacy rights requires a more nuanced approach from the judiciary. As privacy rights are constantly evolving and influenced by technological advancements and societal changes, they are particularly susceptible to justifications for overturning precedent.

In this analysis, I acknowledge that alternative factors, such as ideology, legal interpretational basis, and changes in the Court's composition, also impact the Court's decision-making process. However, I emphasize the importance of subject matter as an explanatory variable that should be carefully considered when deciding whether to overturn precedent. In conclusion, this chapter highlights the crucial role of subject matter, specifically privacy rights, in the Supreme Court's use of stare decisis.

4 Research Design

This thesis investigates the correlation between the subject matter of a legal case and the likelihood of overturning a precedent by examining the trajectory of privacy rights within the Supreme Court's body of decisions. I hypothesize that through an empirical analysis of privacy-related cases, we will observe an increased willingness by the Court to modify precedent, which supports the theory that subject matter plays a critical role in driving legal evolution. The study will employ a quantitative research design utilizing the dataset from the Supreme Court database.[125]

4.1 Data Collection

This study relies on the extensive database of the Supreme Court, which comprises a complete record of all the cases that the U.S. Supreme Court has decided. To conduct my research, I utilized the 2023 Case-Centered data version of the database, which is organized by Issue/Legal Provision. This database, developed by Professor Spaeth, a political science expert, covers the Court's rulings from the Vinson Court in 1946 to the 2022 term under Chief Justice Roberts. Spaeth's database is an essential resource for political scientists who conduct empirical studies on the Supreme Court. To learn more about the Supreme Court Database utilized in this research, please refer to Appendix A.1 and A.2.

To ensure the precision and reliability of my findings, it is essential to acknowledge the limitations of the database used in this study. One notable limitation is the temporal scope of the data set, which does not allow analysis of all Supreme Court decisions from its inception in 1791 to the present day. Although the time frame used in this study provides ample information for analysis, legacy cases (pre-1946) were omitted. These cases were not included due to the incomplete rendering of the legal provisions for these older cases. This challenge

[125] Spaeth et al., *2023 Supreme Court Database, Version 2023 Release 1*.

arose from the assumption that the structure of legacy cases would follow those decided post-1946, an assumption that later proved to be erroneous.[126] Therefore, their inclusion would have complicated the analysis and may have led to erroneous findings.

Moreover, it is essential to mention that the Spaeth Supreme Court database does not account for the ideological orientation of the individual Justices. This could be a significant challenge, as ideology is widely regarded as a crucial variable shaping the judiciary's decision-making process. The absence of this crucial information could make it difficult for this study to account for the nuanced factors that influence the Court's decision to overturn precedent.

To address this challenge and enhance the analysis, this study has merged the data from Spaeth's Supreme Court Database with the Martin and Quinn database.[127] This merger incorporates Martin-Quinn scores, which are a dynamic measure of judicial ideology based on the voting records of U.S. Supreme Court Justice (see Appendix A.3 for raw data). This allows for a nuanced analysis that accounts for the Court's ideological spectrum over time and offers a more refined control for judicial ideology. A median ideology control variable has also been introduced to further address the limitation of not directly measuring the ideology of individual Justices. This control variable accounts for the general tendency of liberal or conservative courts to treat precedents. However, it is essential to note that a direct measurement of the Justices' ideology would have been significantly beneficial in determining whether a decision characterized as liberal was more likely to be overturned under a predominantly conservative court and vice versa.

Finally, some scholars have expressed concerns about the variables *issue* and *issue area* within the Supreme Court database. Specifically, it has been argued that the *issue* variable

[126] Harold J. Spaeth et al., *Supreme Court Database Codebook, Version 2023 Release 1*, Accessed: [2023-12-02] (2023), http://supremecourtdatabase.org/documentation.php.

[127] Andrew D. Martin and Kevin M. Quinn, "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999," *Political Analysis* 10, no. 2 (2002): 134–153, accessed January 16, 2024, https://doi.org/10.1093/pan/10.2.134, https://www.cambridge.org/core/product/identifier/S1047198700009931/type/journal_article.

may not pertain to the legal issue of the case but rather to the subject matter of the case from a public policy standpoint. However, this constraint does not have any bearing on the scope of my study, as I concentrate solely on the subject matter of the case within the public policy context.[128] Another concern raised is that the thirteen categories in which Spaeth places the subject matter of the case are too broad.[129] Despite this, I made some changes to individual issues while utilizing Spaeth's subject matter categories to address concerns of overgeneralization. Additionally, utilizing the database version organized by issue, I can account for decisions that contain more than one issue or legal provision. By acknowledging these limitations, I ensure the reliability and validity of my findings.

4.2 Dependent Variable

The dependent variable examined in this study refers to whether the Court overruled one or more of its own precedents. I used the Supreme Court Database variable to measure *Formal Alteration* of the precedent based on Spaeth's coding criteria.[130] The criteria used to determine whether a case was formally altered include: (1) if the majority opinion explicitly states that the decision is "overruled"; (2) if the dissenting opinion clearly states that the precedent has been formally altered; and (3) if the majority opinion states that an earlier decision was overruled. Table 1 provides a summary of the dependent variable (see also Appendix A.4).

Note that this variable excludes cases that "distinguish" a precedent. This approach offers several advantages. First, this approach enables clear and objective criteria for my analysis by focusing only on cases where the Court formally overrules precedent. On the contrary,

[128] Carolyn Shapiro, "Coding Complexity: Bringing Law to the Empirical Analysis of the Supreme Court," *UC Law Journal* 60, no. 3 (January 2009): 477, ISSN: 0017-8322, https://repository.uclawsf.edu/hastings_law_journal/vol60/iss3/1.

[129] Shapiro, "Coding Complexity"; Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent"; Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis."

[130] Spaeth et al., *Supreme Court Database Codebook, Version 2023 Release 1*.

cases that distinguish precedents often involve subjective degrees of differentiation, which can create ambiguity. Second, since my research question aims to understand the factors that influence the Court's decision to overrule precedent, only including cases where the Court explicitly rejects precedent provides a more valid measure. Finally, formal overruling is a significant legal event that has broader implications for the development of the law. It represents a departure from established legal principles and has a more profound impact on the legal landscape compared to mere distinctions. By focusing on formal overruling, we can examine cases with greater legal consequences.

Table 1: Summary Statistics for Dependent Variable

Variable	**Measure**	**Percentage**
Formal Alteration of Precedent	Precedent altered(=1) Precedent unaltered(=0)	2.37%=altered (n=323)

*N=13,780

4.3 Independent Variable

The independent variable of primary interest in this study is the subject matter of the case. Although the database contains a variable that separates the specific issues into broader categories, these have been criticized by scholars for either being over or under-inclusive. Given that scholars have advised future researchers to refine the variable *Issue Area*, I slightly edited the breakdown of the subject matter of the decisions.[131]

The variable *Issue* categorizes the subject matter of a case from a public policy standpoint, which "depends on the Justices' own statements as to what a case concerns."[132] Although some concerns have been raised about the accuracy of categorizing cases based on their policy issues, the codes used in the Supreme Court database have undergone rigorous analysis.

[131] Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis"; Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent."
[132] Brenner and Spaeth, *Stare Indecisis*.

Studies have validated the reliability of the coding scheme used by Spaeth, which enables the identification of cases based on their subject matter with precision. This coding scheme has been used in several studies, such as Landes and Posner (1976) and Epstein (2013), to investigate the connection between legal issues and judicial decision-making.[133] Therefore, using this database in this study is justified and provides reliable results. Table 2 presents the subject-matter breakdown of the decisions in my dataset. The breakdown of the subject matters in this study can be found in Appendix A.5, which presents the detailed categorization of cases based on their policy issues.

To conduct the logistic regression analysis, the independent variable, subject matter, was dichotomized to distinguish cases involving privacy issues from those considering other issues. Specifically, cases where privacy rights were considered by the Court were coded as 1, while cases without privacy issues were coded as 0. This allows for a straightforward interpretation of the regression results, with the coefficient for the subject matter indicating indicating the impact of privacy issues on the likelihood of overturning precedent. The analysis and interpretation of these results are discussed in detail in the subsequent chapter (see Chapter 5).

[133] Epstein, Landes, and Posner, "The Supreme Court"; Landes and Posner, "Legal Precedent: A Theoretical and Empirical Analysis."

Table 2: Subject Matter Breakdown

Subject Matter	**Measure**	**Percentage**
Criminal Procedure	Rights of persons accused of a crime	17.58%
Civil Rights	Cases that pertain to classifications based on race, age, indigence, voting, residence, military, or handicapped status, sex, or alienage	16.48%
First Amendment	Guarantees contained therein	7.83%
Due Process	Non-criminal due procedural guarantees and the takings clause	4.43%
Privacy	Tort privacy, Fourth Amendment privacy, First Amendment privacy, and fundamental decisions privacy	4.54%
Attorneys	Attorneys' fees, commercial speech, removal from and admission to bar, and disciplinary matters	1.02%
Unions	Labor union activity	6.68%
Economic Activity	Commercial regulation, intellectual property, and governmental regulations of corruption	16.78%
Judicial Power	Exercise of the judiciary's power and authority	14.78%
Federalism	Conflicts between the federal and state governments and issues concerning federal-state court relationships	5.47%
Interstate Relations	Conflicts between states, boundary disputes, and non-property disputes	0.87%
Federal Taxation	Encompasses issues relating to the Internal Revenue Code and statutes	2.92%
Miscellaneous	Includes: legislative veto, separation of powers, and matters not included in any other category	0.56%
Private Law	Disputes between private persons	0.05%

4.4 Control Variables

The control variables I considered in this study include (1) the ideological leanings of the Justices on the Court, (2) the basis of legal interpretation, (3) the Court's changing

composition, and (4) the Term of the Court. The presence of these variables in my statistical models allows me to control for the alternative explanations proposed by previous research. See Appendix A.6 for a summary table of the control variables used in this study.

This study aims to provide a comprehensive analysis of Supreme Court decisions. The study acknowledges and adjusts for complex, multifaceted influences by integrating control variables into the statistical models. This methodological approach enhances the robustness of the findings and ensures a deeper understanding of the factors that drive the Court's engagement with precedent.

4.4.1 Ideology

The ideological leanings of Supreme Court Justices have been a focal point of research, particularly in exploring their impact on decisions to overturn precedent. For instance, Hansford and Spriggs' findings suggest that Justices are more inclined to overturn precedents inconsistent with their ideological perspectives.[134] To accurately incorporate ideology into my analysis, I utilized the Martin and Quinn dataset, which provides scores for the Justices on the Supreme Court from October 1937 through the October 2021 term (see Appendix A.3 for raw data and codebook).[135] I followed Martin and Quinn's recommendation by utilizing the posterior mean location (*med*) for the median justice. By integrating the Court dataset from Martin and Quinn, I can control for the court's overall ideological leanings during each term. This approach accurately assesses how ideological shifts may influence the court's propensity to depart from established precedents.

[134] Hansford and Spriggs, "Explaining the Interpretation of Precedent."

[135] Martin and Quinn, "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999."

4.4.2 Legal Basis

The legal basis on which decisions are made can have a significant impact on the likelihood that the Supreme Court overturns a precedent. Existing scholarship suggests a distinction in the Court's approach to constitutional versus statutory precedents, with the Court being more likely to reconsider constitutional decisions than statutory ones. This study analyzes the classification of cases based on their legal foundations using the *Law Type* variable. To determine whether the Court is, in fact, less likely to adhere to constitutional precedents, the variable is coded as 1 for constitutional precedents and 0 for all others, including cases where the Court considered statutes or court rules. This categorization helps distinguish decisions based on constitutional interpretation from those based on statutory interpretation, leading to a more precise analysis of the Court's decision-making process.

4.4.3 Changing Composition

The impact of the changing composition of the Supreme Court on its legal direction has been well documented.[136] Throughout history, periods of transition marked by changes in the court roster have been associated with changes in judicial philosophy and decision-making patterns. To account for this dynamic, I have developed a variable that indicates the presence of a change in the composition of Justices for each term under review. By identifying these transition periods, the study aims to determine the effect of changes in composition on the court's inclination to review and potentially overturn past rulings.

4.4.4 Term

The term of the Court serves as a control variable in this study, representing each term's sequential order over time. This variable increases by 1 with each new term, providing a rough

[136] Banks, "The Supreme Court and Precedent"; Ulmer, "An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court."

estimate of linear trends in court procedures, judicial restraint, precedent, and other related factors that may affect the likelihood of changing a precedent.[137] While it is a simplistic measure to track the passage of time, its purpose is to identify general patterns that may influence the likelihood of precedent alteration.

Table 3: Summary of Control Variables

Variable	**Measure**	**N**	**Summary**	**Range**
Ideology	Median Ideology (Absolute Value)	13,706	0.38=mean (0.56=std. dev.)	-1.133-1.098
Legal Basis	Constitutional=1	12,148	37.70%(=1) (n=4,580)	0-1
Change in Composition	Yes=1	13,780	33.03%(=1) (n=4,547)	0-1
Term of the Court	Year of Decision	13,780	1978.167=mean	1946-2022

[137] L. Epstein and A.D. Martin, *An Introduction to Empirical Legal Research* (OUP Oxford, 2014), 279, ISBN: 978-0-19-966905-9, https://books.google.com/books?id=fPo5BAAAQBAJ.

5 Analysis

This study uses a regression analysis to determine whether the Court is more likely to overturn precedent (the dependent variable) in cases concerning the right to privacy (the independent variable) when controlling for other variables that may explain the Court's decision to depart from precedent. I seek to uncover the patterns and relationships within the Supreme Court database through a combination of descriptive statistics, bivariate analysis, and multiple variable analysis. This data analysis will consist of two main components.

5.1 Statistical Analysis

The initial phase of the analysis will involve a descriptive examination that provides an introductory insight into the Court's approach to precedent based on the subject matter. This involves calculating the percentage of cases in which the Court either adhered to or overruled precedent for each policy issue. Building upon the descriptive analysis, I will use a bivariate analysis to examine the relationship between my independent variable, the subject matter of the precedent, and my dependent variable, whether the precedent was altered or not. With the dichotomized dependent, coded as 1 if a precedent was altered and 0 if a precedent was unaltered, I ran a chi-squared hypothesis test to determine whether or not the observed differences were statistically significant.

In order to address my hypothesis, I dichotomized the independent variable of primary interest (subject matter) to account for privacy cases. If the policy issue in a case concerned the right to privacy, it was coded as 1, and if not, it was coded as 0. I then run a chi-square test to assess whether the proportions of privacy cases were statistically significant.

Then I completed a logistic regression analysis. Logistic regression analysis is a widely used method in empirical legal research as it helps predict the likelihood of an event occurring. In this study, it was used to determine whether cases related to the right to privacy are

more likely to be overturned compared to decisions related to other subjects. The dependent variable was dichotomized and the model was used to calculate the predicted probabilities of privacy cases being overturned.

To explore this relationship, several logistic regression models were employed, including the primary independent variable of interest, whether a case involved privacy rights. The analysis will use three models: (1) unadjusted model, (2) privacy variable with individual controls, and (3) full model with all control variables. The unadjusted model, which only incorporates the primary variable of interest, provides an essential baseline for understanding the impact of privacy cases on the dependent variable. Subsequent models introduce individual control variables alongside the *Privacy* independent variable. Finally, the full model encompasses all relevant control variables in addition to the independent variable. This final model allows for the simultaneous examination of the collective impact of multiple variables on the likelihood that the Court alters precedent. The logistic regression will be structured as follows:

$$\text{Unadjusted Model:} \quad \ln\left(\frac{p(y=1)}{1-p(y=1)}\right) = \beta_0 + \beta_{\text{Privacy.}} \tag{1}$$

$$\text{Partial Model:} \quad \ln\left(\frac{p(y=1)}{1-p(y=1)}\right) = \beta_0 + \beta_{\text{Privacy.}} + \beta_{\text{Control.}} \tag{2}$$

$$\begin{aligned}\text{Full Model:} \quad \ln\left(\frac{p(y=1)}{1-p(y=1)}\right) =& \beta_0 + \beta_{\text{Privacy.}} \\ &+ \beta_{\text{Ideology.}} + \beta_{\text{LegalBasis.}} \\ &+ \beta_{\text{Change.}} + \beta_{\text{Term.}}\end{aligned} \tag{3}$$

5.2 Chief Justices' Eras

Recognizing the potential impact of the different Chief Justices on the Court's decision-making, I will then segment the data based on the different Chief Justices' eras from 1946 to 2022. This segment is calculated from the variable chief from the Supreme Court database, with numerical values representing the different tenures (1= Vinson Court; 2= Warren Court; 3= Burger Court; 4= Rehnquist Court; 5= Roberts Court). This approach allows for the exploration of potential variations in the impact of privacy cases across various leadership periods. Each logistic regression model conducted within the tenure of each Chief Justice was constructed in a manner similar to the models previously outlined. This analysis enables us to assess the durability of observed patterns and identify any shifts in the Court's behavior across different Chief Justices' tenures.

Table 4: Summary Chief Justices

Chief Justice	**Term**	**Median Ideology**	**Total Changes in Composition**
Vinson (N=1,442)	1946-1953	.6767524	3
Warren (N=3,405)	1953-1969	-.2403081	11
Burger (N=4,259)	1969-1985	.5228324	7
Rehnquist (N=2,995)	1986-2004	.7483636	7
Roberts (N=1,679)	2005-2022	.3375072	10

6 Results

6.1 Descriptive Statistics

To understand how the Court handles precedents based on subject matter, I computed descriptive statistics. Table 5 presents the percentage of cases in which the Court adhered to or overturned precedents for each policy issue.

Table 5: Treatment of Precedent By Subject Matter

Subject Matter	**Precedent Altered**
Privacy (N=623)	3.69%
Federalism (N=750)	3.60%
Criminal Procedure (N=2,410)	3.07%
Unions (N=916)	2.95%
Civil Rights (N=2,260)	2.52%
Economic Activity (N=2,300)	2.09%
First Amendment (N=1,073)	1.86%
Due Process (N=608)	1.81%
Judicial Power (N=2,026)	1.48%
Attorneys (N=140)	1.43%
Federal Taxation (N=401)	1.00%
Interstate Relations (N=119)	0.00%
Miscellaneous (N=77)	0.00%
Private Law (N=7)	0.00%
p-value = 0.001	

As shown in Table 5, most of the cases remain unchanged across policy matters. However, some issues are more prone to precedent alterations. Cases involving privacy rights have the highest percentage of overturned precedents. On the contrary, policy matters related to the First Amendment, Due Process, and Judicial Power have relatively higher percentages of unaltered precedents.

The p-value of 0.001 indicates that there is enough evidence to reject the null hypothesis of independence between the independent and dependent variables. In other words, the decision to alter or not the precedent seems to depend on the policy issue presented in the

case. This is important information to understand how the Court handles precedents.

6.2 Bivariate Analysis

In this thesis, I delved into how the Court handles precedents and conducted a bivariate analysis to further explore the relationship between privacy cases and precedent alteration. This type of analysis helped me identify the relationship between the independent variable (privacy cases) and the dependent variable (precedent alteration) before considering the control variables.

To do this, I dichotomized my independent variable (1: privacy rights; 0: not privacy rights) to account for privacy cases and then evaluated the bivariate relationship between privacy cases and precedent alteration. The results of this analysis are presented in Table 6.

Table 6: Bivariate Analysis: Precedent Alteration and Privacy Cases

Subject Matter	**Precedent Altered**
Not privacy (N=13,156)	2.28%
Privacy (N=623)	3.69%
p-value 0.023	

The analysis revealed a statistically significant relationship between privacy cases and precedent alteration ($p = 0.023$). This suggests that cases involving privacy issues are more likely to see precedents overturned, supporting my hypothesis. These findings confirm the need for further analysis to discern the nuanced factors that influence the Court's decision-making.

6.3 Logistic Regression Analysis

After examining the bivariate relationship between privacy cases and precedent alteration, I ran logistic regression with several models. As discussed previously, each model includes the key independent variable with variations of the control variables to assess their impact on the

dependent variable. Appendix A.7 contains the equations for the logistic regression models used. These models help us understand how the Supreme Court's decisions on precedent alteration are influenced by various factors, including the key independent variable and different control variables. Additionally, please refer to Appendix A.1 for the specific codes utilized in each regression, which can be found in my Github repository.

Table 7: Logistic Regression Analysis

	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Privacy	0.496*	0.472*	0.187	0.529*	0.492*	0.198
	(0.220)	(0.221)	(0.224)	(0.221)	(0.220)	(0.226)
Ideology		-0.304*				-0.376*
		(0.092)				(0.101)
Legal Basis			1.218*			1.229*
			(0.126)			(0.126)
Change in Composition				0.358*		0.369*
				(0.115)		(0.122)
Term of Court					0.00248	0.00431
					(0.003)	(0.003)
Constant	-3.758*	-3.658*	-4.328*	-3.891*	-8.658	-12.87*
	(0.058)	(0.064)	(1.013)	(0.075)	(5.669)	(6.300)
N	13779	13705	12148	13779	13779	12075
Log Likelihood	-1529.26	-1514.87	-1346.04	-1524.51	-1528.88	-1325.84
Wald ch(2)	0.0348	0.0006	0.0000	0.0009	0.0744	0.0000
Pseudo R2	0.0015	0.0049	0.0380	0.0046	0.0017	0.0462

Standard error in parentheses

* indicates significance at $p < 0.05$

Model 1: Unadjusted Model

The first model, which was unadjusted, focused solely on the relationship between privacy cases and precedent alteration. The privacy coefficient was statistically significant, indicating that privacy-related cases are associated with a 0.496 increase in the log odds of precedent

alteration when all other variables are kept constant. Specifically, the odds of a privacy case being altered are approximately 1.643 times higher than that of a non-privacy case. The simulations, produced using CLARIFY, show that the predicted probability of alteration of precedent is 1.5 percentage points higher in cases involving privacy (0.038) compared to cases not related to privacy (0.023)[138] In summary, the first model suggests that cases related to privacy are more likely to be altered than cases not related to privacy. See Appendix A.8.1 for predicted probability table.

Models 2-5: Privacy Variable With Individual Controls

Models 2-5, incorporating privacy along with individual control variables, were examined to discern the impact of each control. Table 7 presents the results for the models, including privacy with *Ideology*, *Legal Basis*, *Change in Composition*, and *Term*. Including each control variable independently offers valuable information on how the effects of privacy interact with each predictor variable.

Model 2: Privacy and Ideology

In Model 2, *Ideology* was introduced as a control variable to assess the relationship of ideology with privacy. When *Ideology* is included in the model, the coefficient of privacy decreases slightly but remains statistically significant. The negative coefficient for *Ideology* indicates that as the Court becomes more conservative, the odds of precedent alteration decrease. Moreover, the increase in pseudo-R^2 compared to Model 1 suggests a slight improvement in the model fit.

[138] Gary King, Michael Tomz, and Jason Wittenberg, "Making the Most of Statistical Analyses: Improving Interpretation and Presentation," *American Journal of Political Science* 44, no. 2 (April 2000): 347–361.

Model 3: Privacy and Legal Basis

Legal Basis becomes a significant predictor in Model 3; its positive coefficient indicates that cases based on constitutional interpretation are associated with an increase in the log odds of precedent alteration. This finding seems to support the hypothesis put forth by various scholars that the Court is more likely to overturn precedent when the case is decided on constitutional grounds. Moreover, the variable of legal basis in this model seemed to change the influence of *Privacy*.

This implies that the legal interpretation of a case can play a significant role in the Court's decision-making regarding precedent alteration. The pseudo-R^2 value increased substantially; this indicates that the inclusion of *Legal Basis* explains more variance in the data compared to the two previous models.

Model 4: Privacy and Change in Composition

When the variable for *Change in Composition* is introduced in Model 4, *Privacy* regains statistical significance. Additionally, the privacy coefficient increases, being the highest value for all models. This reaffirms the finding that cases related to privacy rights are associated with an increase in the log odds of precedent alteration. Furthermore, the positive coefficient for *Change in Composition* indicates that a change in the Court's composition is associated with an increase in the log odds of precedent alteration. This suggests that alterations in the Court's composition may contribute to changes in its approach to precedent, supporting the work of previous scholars. The pseudo-R^2 value remains similar to Model 2, which was higher than when only privacy was included, but lower than Model 3, which included a legal basis.

Model 5: Privacy and Term

The introduction of the *Term* as a predictor variable did not produce a significant effect on the alteration of the preceding. The minimal positive coefficient for the *Term* suggests a weak

relationship between the term and the log odds of precedent alteration. However, *Privacy* remains a significant predictor of statistical significance. Finally, the pseudo-R^2 value is lower than in Models 2-4, but slightly higher than Model 1, which did not introduce any control variables.

Model 6: Full Model

The final logistic regression model incorporated all relevant control variables along with the independent critical variable. The results, as shown in Table 7, demonstrate the collective impact of multiple variables on the likelihood that the Court will alter the precedent. Similarly to Model 4, including all control variables, *Privacy* loses statistical significance, but retains a positive value. However, the coefficients for *Ideology*, *Legal Basis*, and *Change in Composition* remained significant. Notably, *Legal Basis* seems to have the most significant effect on precedent alteration.

This analysis provides valuable insights into the relationship between privacy cases and precedent alteration. It highlights the importance of considering individual control variables alongside the primary independent variable in logistic regression analysis. The findings suggest that multiple factors, including legal basis, ideology, and change in composition, play a role in the Court's decision-making regarding precedent alteration. In particular, the legal basis seems to have the most significant effect on the alteration of the precedent.

It is important to note that the privacy coefficient has a large standard error. However, the point estimate of 0.198 suggests that privacy might have an effect beyond the other factors. Next, I turn to an analysis of the Chief Justices to see if the effect varies over time.

6.4 Chief Justice Analysis

6.4.1 Descriptive Statistics

Table 8 outlines the distribution of precedent alteration across the different Chief Justices (see Appendix A.7 for list). Unsurprisingly, the Court did not alter most cases under each Chief Justice. The Chi-Square test assesses whether there is a significant relationship between the Chief Justices and the likelihood of precedent alteration.

Table 8: Precedent Alteration by Chief Justice

Chief Justice	**Precedent Altered**
Vinson (N=1,442)	1.73%
Warren (N=3,405)	2.67%
Burger (N=4,259)	2.23%
Rehnquist (N=2,995)	2.14%
Roberts (N=1,679)	2.86%
p-value = 0.153	

The p-value (0.153) suggests that there is no statistically significant evidence to reject the null hypothesis that the Chief Justices and the precedent alteration are independent. In other words, no clear pattern of Chief Justice tenure is associated with a different probability of precedent alteration.

6.4.2 Bivariate Relationship

Table 9 presents the row percentages, focusing on the proportion of altered cases regarding the right to privacy within each Chief Justice's tenure. The percentages show the distribution of privacy cases among those in which the precedent was changed.

Table 9: Treatment of Privacy Precedent by Chief Justice

	Privacy Cases
Chief Justice	**Precedent Altered**
Vinson (N=22)	4.55%
Warren (N=157)	6.37%
Burger (N=247)	1.62%
Rehnquist (N=128)	2.34%
Roberts (N=69)	7.25%
p-value = 0.054	

Several notable patterns arise when examining the bivariate relationship between the tenures of the Chief Justices and the alteration of precedent on privacy issues. Chief Justice Vinson's era witnessed a relatively lower percentage of altered cases involving privacy at 4.55%; this suggests a potential inclination towards precedent adherence in privacy-related issues. On the contrary, the tenure of Chief Justice Warren showed a higher proportion of 6.37% for altered cases related to privacy, indicating a comparatively more dynamic approach. The Chi-Square test did not reveal a statistically significant relationship at $p < 0.05$ despite these variations. The lack of statistical significance suggests that there is no clear association between Chief Justices and the presence of privacy issues in altered cases. Although percentages illuminate specific trends, the lack of statistical significance emphasizes the complexity of factors that influence the alteration of the precedent. Subsequent multivariate analysis, incorporating additional factors, will further illustrate the nuanced dynamics between the alteration of precedent and privacy cases.

6.4.3 Logistic Regression

In Tables 10 and 11, the results of the logistic regression are presented for the eras of Chief Justice Vinson, Warren, Burger, Rehnquist, and Roberts, exploring the relationship between the alteration of precedent and the privacy cases. Models (a) include only the privacy variable, while Models (b) incorporate additional control variables, including ideology, legal basis,

change in composition, and term. The tables aims to show whether privacy-related cases, independently and in conjunction with other variables, exhibit a statistically significant association with alteration of precedents during the Chief Justices' tenures.For specific details on how each regression was conducted, please refer to the code available on GitHub in Appendix A.1.

Table 10: Logistic Regression by Chief Justice (I)

	Vinson		**Warren**		**Burger**	
	1(a)	1(b)	2(a)	2(b)	3(a)	3(b)
Privacy	1.019	0.687	0.978*	0.785*	-0.344	-0.497
	(1.044)	(1.066)	(0.346)	(0.367)	(0.515)	(0.521)
Ideology		-5.414		-0.719*		0.720
		(6.006)		(0.294)		(0.448)
Legal Basis		1.871*		1.330*		0.794*
		(0.482)		(0.243)		(0.227)
Change in Composition		0.825		0.527*		0.504
		(1.401)		(0.247)		(0.261)
Term		0.554		-0.343		-0.006
		(0.839)		(0.444)		(0.024)
Constant	-4.063*	-1080.287	-3.367*	62.612	-3.763*	7.892
	(0.206)	(1631.14)	(0.113)	(87.036)	(0.106)	(46.953)
N	1,442	1,303	3,045	2,715	4,259	3,771
Log Likelihood	-125.793	-104.547	-416.192	-338.596	-454.963	-400.411
Wald chi(2)	0.395	0.001	0.012	0.000	0.483	0.002
Pseudo R2	0.003	0.096	0.008	0.079	0.001	0.024

Standard errors in parentheses.
* indicates significance at p <0.05

Table 11: Logistic Regression by Chief Justice (II)

	Rehnquist		**Roberts**	
	4(a)	4(b)	5(a)	5(b)
Privacy	0.099	-0.236	1.046*	0.554
	(0.598)	(0.607)	(0.489)	(0.504)
Ideology		1.498		0.740
		(1.011)		(0.558)
Legal Basis		1.230*		1.650*
		(0.285)		(0.330)
Change in Composition		0.425		-0.025
		(0.356)		(0.332)
Term		0.067		0.001
		(0.051)		(0.030)
Constant	-3.829*	-138.588	-3.596*	-5.767
	(0.129)	(102.323)	(0.155)	(60.477)
N	2,994	2,719	1,679	1,567
Log Likelihood	-309.409	-272.231	-216.138	-191.151
Wald chi(2)	0.871	0.001	0.058	0
Pseudo R2	0	0.039	0.008	0.079

Standard errors in parentheses.
* indicates significance at p <0.05

Model 1: Chief Justice Vinson

The logistic regression results for Chief Justice Vinson's era show that privacy alone does not have a statistically significant association with the alteration of precedent, as seen in Model 1(a). The low pseudo-R^2 value of the model suggests limited explanatory power. Furthermore, Model 1(b), which includes the control variables, does not alter the statistical significance of privacy, implying that the impact of privacy on the alteration of the precedent may depend on other factors. In particular, only the legal basis demonstrates a statistically significant relationship to precedent alteration. These findings suggest that the legal basis of cases, rather than privacy considerations alone, significantly influenced the Court's decision to alter precedent during Chief Justice Vinson's tenure.

Model 2: Chief Justice Warren

In Model 2(a) for Chief Justice Warren, there is a statistically significant association with the alteration of precedent and privacy cases. The pseudo-R^2 model suggests a modest explanatory power. As Model 2(b) demonstrates, privacy maintains its significance even when the analysis includes the control variables. This indicates that privacy-related cases have a meaningful impact on altering precedents, even when considering other factors. Additionally, a case's legal basis emerges as a significant factor, suggesting that the legal basis of cases significantly influences the Court's decision-making during Chief Justice Warren's tenure. The negative coefficient for ideology shows that conservative Justices may have a mitigating effect on precedent alteration. However, the low pseudo-R^2 value suggests that caution is required in interpreting these results, implying that other factors may affect precedent alteration decisions.

Model 3: Chief Justice Burger

Model 3(a) for Chief Justice Burger shows no statistical significance between privacy cases and precedent alteration. This model's pseudo-R^2 suggests minimal explanatory power. In Model 3(b), privacy maintains nonexplanatory power. By contrast, the legal basis emerges as a significant factor, indicating that the legal basis of a case significantly influenced the Court's decision-making during Chief Justice Burger's tenure. The overall fit of the model is relatively low, suggesting that unobserved factors may shape precedent decisions under Chief Justice Burger.

Model 4: Chief Justice Rehnquist

In Model 4(a) for Chief Justice Rehnquist, the privacy variable does not demonstrate a statistically significant relationship with the alteration of precedent. As in the previous models, this model suggests minimal explanatory power. In Model 4(b), the results are

similar to those of Chief Justice Burger: privacy maintains its status of nonsignificance, while legal basis emerges as a significant factor. Model 4(b) demonstrates a low overall fit of the model.

Model 5: Chief Justice Roberts

Model 5(a) indicates that during Chief Justice Robert's tenure, there is a significant positive relationship between privacy and the alteration of precedent. This suggests that privacy cases are more likely to alter precedent during his tenure. However, as observed in previous models, the pseudo-R^2 score remains low, indicating low explanatory power. On the other hand, Model 5(b) shows that privacy loses its statistical significance, while the legal basis gains more statistical importance. But we need to interpret these results while keeping in mind that the fit of the model is still low.

In summary, the logistic regression models conducted for Chief Justices Vinson, Warren, Burger, Rehnquist, and Roberts provide valuable insights into the factors influencing the Court's decisions to alter precedent. The analysis reveals nuanced patterns across the various Chief Justices, shedding light on the impact of privacy cases in legal decisions. Although Chief Justice Warren and Roberts demonstrate that cases related to the right to privacy significantly impact precedent alteration, the influence varies for others, such as Chief Justice Vinson. Moreover, the consistent significance of legal basis across the multiple models underscores its importance in the Court's decision-making process.

7 Discussion

Is the Supreme Court more likely to depart from precedent in privacy cases? My results indicate the presence of a relationship between privacy-related cases and the likelihood of precedent alteration. However, the role of a precedents' legal basis emerges as a significant confounding factor in this relationship. As shown in Table 7, the inclusion of the legal basis can reduce the effects of *Privacy*, which indicates that the Court's willingness to depart from past precedent may be directly related to the legal grounds of the case being considered. This finding strongly supports the idea that the Court is more likely to overturn precedent on constitutional rather than statutory grounds.

Moreover, the Chief Justice's analysis supports my finding that the legal basis is the most significant factor in precedent alteration decisions (see Appendix A.9.1 for full table). Although *Privacy* was only a substantial factor under Chief Justices Warren and Roberts, *Legal Basis* had a pronounced effect under each Chief Justice. Thus, this analysis seems to support the theory that privacy cases are the most likely to be overturned compared to other policy issues; however, this relationship might be associated with the fact that the privacy precedent is often based on constitutional interpretation.

Privacy

In line with my hypothesis, the data suggest that privacy-related cases are more likely to be altered than cases that do not involve privacy rights. The preliminary examination of legal precedent treatment across fourteen policy categories revealed that privacy-related cases were the most frequently overturned. Several logistic regression models have supported this conclusion where *Privacy* consistently positively impacted all models, with coefficients ranging from 0.187 to 0.529. However, in two of the six models that included the *Legal Basis*, the coefficient on *Privacy* was insignificant. This suggests that cases dealing with privacy

issues are more likely to result in legal precedent changes than cases not involving privacy rights.

The analysis conducted under the Chief Justices provides a more profound understanding of the relationship between privacy rights and precedent alteration. The variations observed under different Chief Justices, notably Warren and Roberts, highlight the debate on the temporal relativism of privacy. The finding that *Privacy* played a considerable role during these eras may be linked to significant societal changes in attitudes towards privacy, which technological advancements and cultural changes could have influenced.

This study consistently revealed that *Privacy* plays a crucial role in the Court's decision-making regarding altering precedents. This reinforces the dynamic nature of privacy as a legal concept, particularly as society faces the implications of technological advances. The variability in the significance of privacy across the models suggests that, while essential, privacy issues are often considered within the broader context of judicial decision-making. Additionally, the varying degrees of significance across the Chief Justices may reflect the ever-evolving landscape of privacy concerns relevant to each era. These findings emphasize the initial problem that drove this research, the challenge of finding a balance between the need for consistency of precedents and jurisprudence while considering the changing nature of privacy concerns.

Ideology

The inclusion of *Ideology* had a significant negative effect, indicating that conservative courts were less likely to alter precedents than liberal courts. This finding aligns with the traditional view that conservative judges stick to established precedents, placing stability and predictability in the law as their top priority. However, the inconsistent impact of the variable across models implies that ideology cannot be viewed in isolation. This finding challenges the oversimplification of conservative versus liberal ideologies in predicting judicial outcomes.

The influence of ideologies is likely to be interrelated with the specific circumstances presented in each case, the composition of the Court, and the broader socio-political context.

These findings support the conclusions of Hanford and Spriggs (2006), who demonstrated that ideological differences are related to the likelihood of a precedent being overruled. Specifically, as the ideological distance between judges increases, the risk of a precedent being overruled also increases.[139] However, this effect is not absolute, and it depends on the importance of the precedent in question. In other words, the study suggests that the influence of ideological shifts in the Court on precedent alteration is nuanced, and it is not the only factor that determines how precedents are upheld. This finding challenges criticisms of the Court that oversimplify judicial decision-making to ideological beliefs.

Legal Basis

The study's results indicate that the *Legal Basis* has a pronounced and consistent effect on the alteration of precedents across all models, including those separated by Chief Justice. This suggests that the constitutional interpretation process plays a critical and decisive role in judicial decision-making. The study's findings prove that constitutional cases are more susceptible to overruling than those decided on statutory grounds.

The Court's inclinations to review and update its constitutional interpretations based on legal grounds show the significant impact of *Legal Basis* on the alteration of precedents. These findings are consistent with previous research highlighting the importance of legal basis in understanding the mechanisms underlying precedent alteration decisions. According to Barrett, "Statutory precedents receive 'super-strong' stare decisis effect, common law receive medium-strength stare decisis effect, and constitutional cases are the easiest to overrule."[140] Many scholars, including Banks, have tested this hypothesis, finding that precedents decided

[139] Hansford and Spriggs, "Explaining the Interpretation of Precedent," 91.
[140] Barrett, "Precedent and Jurisprudential Disagreement Symposium," 1713.

on constitutional grounds were overturned twice as often as statutory cases.[141]

The findings of this study provide a fresh perspective on the research conducted by Epstein, Landes, and Liptak in 2015. Their analysis suggested that there was "little difference between the Court's treatment of constitutional and all other precedent" when it came to deciding whether to overturn precedent based on constitutional grounds.[142] However, it is essential to note that this study only examined the Supreme Court's treatment of precedent during Chief Justice Roberts's tenure. Furthermore, the researchers carried out a multivariate analysis that included many more variables than my study and those of previous scholars who studied the impact of the legal basis on the alteration of precedent. Therefore, the results of this study offer a valuable contribution to the existing literature on the subject and emphasize the need for further research in this area.

Change in Composition

The consistent significance of *Change in Composition* is particularly revealing. Notably, this variable persistently emerged as a positive predictor across models, indicating that changes in the Court's composition introduce new judicial philosophies, which may shift the Court's stance on various issues. This finding supports the idea that the Court is a dynamic institution rather than an isolated entity that reflects society's changing values and judgments through the appointed Justices. Moreover, the stability of the effect of the variable, even after controlling for other variables, highlights the importance of the individual Justices' views and the Court's collective composition in shaping judicial outcomes.

The findings suggest that the Court's composition plays a crucial role in shaping judicial outcomes. This conclusion is consistent with previous research that affirms the immediate impact of personnel changes on the Supreme Court's interpretation of precedent. For instance, Banks (1992) provided empirical support for this phenomenon, highlighting the Court's fluid

[141] Banks, "The Supreme Court and Precedent".
[142] Epstein, Landes, and Liptak, "The Decision to Depart (or Not) from Constitutional Precedent," 1146.

and adaptable nature.[143] This shows that despite the appearance of continuity and stability, the Supreme Court is, in reality, a fluid and adaptable entity that responds to the ideological shifts that occur with new appointments.

These insights call for reconsidering traditional views on stare decisis within the Supreme Court. Rather than attributing precedent alteration solely to legal doctrines or constitutional mandates, this study proposes that changes in the Court's composition, which reflect shifts in judicial philosophy, significantly influence such decisions. In essence, the Court's rulings reflect not merely the law but also its current members' ethical and societal judgments. It further underscores the Supreme Court as dynamic and adaptable to evolving social values.

Term

Lastly, this analysis demonstrated that the Term of the Court did not have a notable effect on the decision to change precedents. The variable *Term* increases by 1 with each new Term. It is a rough estimate of linear trends in court procedures, judicial restraint, precedent, and other related factors that may impact the probability of altering a precedent.[144] These factors could potentially influence the likelihood of precedent alteration. Therefore, the results suggest that the Court's stare decisis approach is not linearly progressive or regressive over time. Instead, it is influenced by a complex array of factors where historical trends alone cannot predict shifts in jurisprudence.

7.1 Implications

These results indicate that privacy-related cases are more likely to result in changes in legal precedents, which supports my earlier hypothesis. I hypothesized that privacy rights are always unpredictable and, given the rapid evolution of technology and social norms,

[143] Banks, "The Supreme Court and Precedent."
[144] Epstein and Martin, *An Introduction to Empirical Legal Research*, 279.

privacy cases are more vulnerable to changes in legal precedents. These results suggest that the Supreme Court recognizes the significance of adapting constitutional principles to contemporary standards and issues and responds with a flexible application of stare decisis. The crucial role of legal basis in precedent alteration emphasizes the importance of balancing the weight of past decisions with the needs of the current socio-technological landscape. Therefore, interpreting precedents in cases related to the right to privacy reflects the current need for the rule of law to recognize the consequences of technology and cultural change.

Additionally, the significant role of the legal basis in precedent alteration underscores the unique weight constitutional interpretation carries in the Justices' decision-making. These results support the Supreme Court's primary responsibility for adapting constitutional principles to contemporary norms and issues.

This study's findings emphasize the importance of the legal system recognizing the impact of technology and cultural changes. This means that legal theories based on precedent must consider both the weight of past decisions and the needs of the current socio-technological environment. In this regard, the interpretation of precedent in cases relating to the right to privacy reflects the need for the legal system to protect this fundamental right against the ever-growing threat of new technologies.

7.2 Limitations

Because of the time and budget allocated to this study, this thesis suffers from several inherent limitations that must be acknowledged to grasp its scope and implications.

First, although logistic regression models offer valuable insights into patterns within Supreme Court decisions, their pseudo-R^2 values suggest that other unobserved factors influence precedent alteration. Therefore, this quantitative method may only partially capture the nuanced nature of judicial decision-making. In other words, while it is a valuable approach, more complex considerations likely influence how legal precedents are established

and altered over time.

Secondly, while this study has controlled for factors such as ideology, legal basis, change in composition, and Term, it is essential to note that there are still unmeasured variables that could have influenced the Court's inclination towards overturning precedent. For example, social pressures, public opinions, and media impact are some variables that were not considered in this study. However, they could have impacted the Justices' decision-making processes. Considering these variables when analyzing the Court's decisions and understanding the factors that influence them is crucial.

Third, the study's scope and the Supreme Court case selection process have resulted in a limited sample size of privacy cases. This limitation has significant implications for the statistical power of the study results and could negatively affect the robustness of the conclusions drawn. Furthermore, the study's exclusive focus on the Supreme Court's treatment of precedent has excluded decisions made by state courts and lower federal courts. As such, the study findings may not be representative of the broader legal landscape.

Fourthly, operationalizing privacy-related cases is a necessary approach for quantitative analysis, but it may oversimplify the social and legal complexities of these cases. Although this method is essential for quantitative analysis, it may need to fully reflect the intricate arguments, historical contexts, and legal subtleties that characterize privacy jurisprudence. Due to the limited sample size and operationalization of the cases, I could not investigate whether the Court's treatment of precedent varied between the different types of privacy cases. Initially, I planned to determine whether the Court is more likely to overturn privacy cases based on Fourth Amendment privacy in contrast to First Amendment privacy, tort privacy, and fundamental decision privacy. This analysis would have had significant implications for my theory that the ever-changing nature of technology, societal values, and the evolving landscape of privacy concerns make privacy cases more susceptible to overruling.

Lastly, the study's focus on the period after 1946 means that it only examines the modern

behavior of the judiciary. However, this narrow time frame may fail to consider broader trends and changes in the Court's approach to precedent across different legal and societal eras. It is possible that this temporal boundary may not fully encompass the complete historical progression of the Court's treatment of privacy rights and precedents.

8 Conclusion

This thesis aimed to elucidate the factors that propel the Supreme Court to overturn precedent, with a specific focus on the Court's adjudication of privacy-related cases. To gain this understanding, it quantitatively measured the relationship between subject matter and the number of cases overturned by logistic regression analysis.

The results provide mixed support for the proposed hypothesis, affirming the argument that privacy rights, given their dynamic nature and intertwining with fast-evolving technology and societal values, are particularly vulnerable to being overturned. Additionally, the study unveils a formidable relationship with legal interpretation, indicating that the Court's decisions are not solely influenced by the subject matter but also by intricate legal analyses. In other words, while my findings underscore the theory that subject matter, particularly privacy, is a significant factor in the Supreme Court's approach to stare decisis, the influence of privacy is not unilateral. Still, it is mitigated by an array of factors that reflect the Court's role as both a conservative and progressive institution. Embedded within these findings is support for the theory that the Court recognizes the fast-paced evolution of privacy issues and responds with a flexible application of stare decisis. Moreover, the compelling justifications for overturning precedent are evidently present in privacy cases, underscored by rapid technological advancements and evolving societal norms.

These findings contribute to a deeper understanding of the Supreme Court's approach to judicial decision-making and provide empirical support for several theoretical claims. By conducting an empirical analysis of the influence of privacy, ideology, and legal basis, this study offers scholars with data to develop more nuanced theories on judicial behavior. Moreover, understanding the individual philosophies of each justice, beyond mere political leanings, is crucial to appreciating the Court's composition and its impact on decision-making.

Additionally, these results may fit into the broader debates of constitutional interpretation

theories, including interpretivism and non-interpretivism. The practice of stare decisis, especially in the context of privacy and constitutional precedent, seems to reflect a balance between legal stability and responsive dynamism. Future studies might explore how the Justices' constitutional interpretation theories impact the Court's treatment of precedent. Although some may argue that this would be similar to the ideology of the Justices, it is well established that "neither approach is inextricably linked to either a liberal or a conservative political philosophy."[145]

It is imperative that future scholarship dig deeper into the variances among different types of privacy cases, especially regarding Fourth Amendment privacy, as it is most affected by changes in technology. Investigating the Court's treatment of various areas of privacy would provide additional support as to whether it is truly due to the ever-evolving technological landscape. In light of technology's swift evolution and societal impact, future studies need to specifically target how these advancements influence the Court's rulings. Scholars could examine cases related to emerging technologies, such as social media and artificial intelligence, to understand how the Court navigates new privacy challenges and whether the existing precedent remains workable in light of technological innovations. Such investigations would be particularly insightful if researchers conducted a longitudinal study tracing the evolution of privacy and its impact on the Court's jurisprudence over a more extended period.

Additional research is necessary to determine the influence of societal pressures and public opinion on the Supreme Court's decisions to overturn precedent. This could involve a correlational study to assess how changes in public sentiment towards privacy and technological advancements correlate with judicial decisions. For example, it was asserted by Warren and Brandeis themselves that public opinion had a significant impact on the establishment of the right to privacy.[146] Such studies would offer insights into the extralegal factors that

[145] O'Brien and Silverstein, *Constitutional law and politics*, 73.
[146] Bratman, "Brandeis and Warren's the Right to Privacy and the Birth of the Right to Privacy," 628.

may influence the Court's decision-making, enhancing the understanding of the complex interaction between law, society, and judicial behavior.

Finally, expanding the scope of this study beyond privacy cases to include a comparative analysis with other areas of law could provide a broader perspective on the factors that influence the Supreme Court's approach to precedent. Based on my initial analysis of the Court's treatment of precedent based on subject matter, some areas that would be interesting to investigate include criminal procedure, civil rights, unions, and federalism, as these areas had a higher rate of alteration in comparison to the other areas of law. This comparative approach would allow for a more nuanced understanding of how and why the significance of subject matter, ideology, legal basis, and the Court's composition may vary across different legal domains.

Although further study is needed to substantiate its findings, this thesis provides insight into how the Court navigates precedent in an area of law that is constantly challenged by rapid technological advancements and evolving societal norms. In uncovering the multifaceted influences on the Supreme Court's decision to overturn precedent, this thesis underscores the law's nature not as static but as a living entity that adapts to modern societal norms, technological advancements, and evolving ideological landscapes. This entity navigates through shifting societal norms, ideological pressures, and its own evolving composition to uphold the principles of the Constitution in a modern context.

A Appendix

A.1 Supreme Court Database

The code used in the data cleaning and analysis can be found at this link: https://github.com/lunagilson/Supreme-Court-Database-Code

A.2 Supreme Court Database Codebook

Table 12: Supreme Court Database Codebook

Dependent Variable		
Formal Precedent Alteration	0	no determinable alteration of precedent
	1	precedent altered
Independent Variable		
Subject Matter	1	Criminal Procedure
	2	Civil Rights
	3	First Amendment
	4	Due Process
	5	Privacy
	6	Attorneys
	7	Unions
	8	Economic Activity
	9	Judicial Power
	10	Federalism
	11	Interstate Relations
	12	Federal Taxation
	13	Miscellaneous
	14	Private Law
Privacy	0	No privacy issue
	1	Privacy issue
Control Variables		
Ideology (*Estimates of the ideal point of each justice in each term*)	-6	On the far left (most liberal)
	6	On the far right (most conservative)
Legal Basis (*Legal Provisions Considered by the Court*)	0	Federal Statute Court Rules Infrequently litigated statutes State or local law or regulation No Legal Provision
	1	Constitution Constitutional Amendment
Change in Composition	0	No change in Court composition
	1	Change in Court Composition
Term	1946-2022	Term of Court

A.3 Martin and Quinn Ideology Scores

The datasets provided include the Martin-Quinn scores for the U.S. Supreme Court term from October 1937 to October 2022. The Court dataset contains specific data related to the Court, such as the estimated position of the median justice.

Table 13: Martin and Quinn Dataset 2022: Ideological Scores

term	med	med_sd	min	max	justice	just_pr
1937a	-0.326	0.335	-2.928	3.464	CEHughes2	0.653
1937b	-0.558	0.335	-2.928	3.463	LDBrandeis	0.442
1938a	-0.523	0.36	-3.232	3.598	LDBrandeis	0.496
1938b	-0.681	0.344	-3.318	3.598	HFStone	0.886
1939	-1.004	0.354	-3.427	3.561	SFReed	0.65
1940	-0.628	0.344	-3.474	3.384	FFrankfurter	0.492
1941	-0.145	0.333	-3.393	1.852	JFByrnes	0.459
1942	0.089	0.331	-3.145	2.101	SFReed	0.571
1943	0.037	0.323	-2.807	2.416	RHJackson	0.439
1944	-0.087	0.329	-2.578	2.752	SFReed	0.903
1945	0.065	0.315	-2.198	0.901	SFReed	0.89
1946	0.244	0.259	-2.037	1.164	SFReed	0.639
1947	0.444	0.233	-1.973	1.242	SFReed	0.481
1948	0.548	0.26	-1.969	1.315	FFrankfurter	0.531
1949	0.881	0.304	-1.655	1.436	HHBurton	0.271
1950	0.926	0.288	-1.565	1.523	HHBurton	0.369
1951	0.93	0.294	-1.596	1.673	HHBurton	0.545
1952	1.068	0.368	-2.158	1.643	TCClark	0.307
1953	0.576	0.41	-2.883	1.583	TCClark	0.541
1954	0.349	0.439	-3.576	1.551	FFrankfurter	0.671
1955	0.558	0.473	-4.136	1.349	FFrankfurter	0.772
1956a	0.16	0.5	-4.633	1.326	TCClark	0.984
1956b	0.162	0.5	-4.633	1.338	TCClark	0.996
1957	0.583	0.536	-5.032	1.39	TCClark	0.95
1958	0.644	0.57	-5.397	1.644	TCClark	0.492
1959	0.337	0.615	-5.685	1.85	TCClark	0.866
1960	0.444	0.659	-5.943	1.994	PStewart	0.916
1961	-0.041	0.701	-6.183	2.315	BRWhite	0.465
1962	-1.077	0.742	-6.391	2.565	AJGoldberg	0.605

1963	-1.13	0.777	-6.594	2.663	WJBrennan	0.508
1964	-0.706	0.798	-6.821	2.448	AJGoldberg	0.559
1965	-0.566	0.815	-7.034	2.355	HLBlack	0.908
1966	-0.413	0.837	-7.204	2.05	HLBlack	0.976
1967	-1.044	0.859	-7.356	1.471	TMarshall	0.46
1968	-0.893	0.883	-7.476	0.77	AFortas	0.338
1969	0.191	0.913	-7.551	2.021	BRWhite	0.523
1970	0.383	0.942	-7.617	2.186	BRWhite	0.522
1971	0.639	0.967	-7.68	3.574	BRWhite	0.995
1972	0.943	1.002	-7.703	3.985	BRWhite	0.799
1973	0.609	1.034	-7.741	4.252	BRWhite	0.636
1974	0.615	1.066	-7.794	4.348	BRWhite	0.809
1975	0.492	1.111	-7.8	4.452	BRWhite	0.458
1976	0.475	0.279	-2.708	4.422	PStewart	0.51
1977	0.235	0.295	-2.857	4.427	PStewart	0.387
1978	0.156	0.34	-3.091	4.463	HABlackmun	0.814
1979	0.238	0.378	-3.34	4.495	BRWhite	0.821
1980	0.227	0.404	-3.486	4.351	BRWhite	0.898
1981	0.265	0.422	-3.617	4.205	BRWhite	0.991
1982	0.672	0.435	-3.786	4.133	BRWhite	0.994
1983	0.876	0.458	-3.871	4.04	BRWhite	0.828
1984	0.824	0.481	-3.953	3.817	LFPowell	0.809
1985	0.929	0.5	-4.069	3.606	LFPowell	0.897
1986	0.875	0.509	-4.272	3.347	LFPowell	0.924
1987	0.975	0.531	-4.416	2.897	BRWhite	0.721
1988	1.097	0.564	-4.477	2.773	BRWhite	0.868
1989	0.878	0.611	-4.457	2.629	BRWhite	0.963
1990	0.92	0.704	-4.309	2.47	DHSouter	0.569
1991	0.757	0.297	-2.164	2.86	SDOConnor	0.321
1992	0.838	0.334	-2.376	3.083	SDOConnor	0.582
1993	0.82	0.361	-2.606	3.431	AMKennedy	0.69
1994	0.736	0.385	-3.009	3.655	SDOConnor	0.519
1995	0.686	0.398	-3.273	3.776	AMKennedy	0.684
1996	0.785	0.412	-3.391	3.882	AMKennedy	0.711
1997	0.797	0.43	-3.364	3.901	AMKennedy	0.824
1998	0.859	0.428	-3.378	3.921	AMKennedy	0.565
1999	0.849	0.435	-3.317	3.909	SDOConnor	0.757
2000	0.589	0.45	-3.145	3.926	SDOConnor	0.916

2001	0.37	0.452	-3.037	3.854	SDOConnor	0.994
2002	0.263	0.453	-2.924	3.912	SDOConnor	0.986
2003	0.224	0.443	-2.911	3.913	SDOConnor	0.978
2004	0.108	0.437	-2.901	3.939	SDOConnor	0.93
2005a	0.044	0.439	-2.857	3.961	SDOConnor	0.858
2005b	0.497	0.439	-2.857	3.961	AMKennedy	0.985
2006	0.457	0.444	-2.822	3.908	AMKennedy	0.999
2007	0.411	0.465	-2.702	3.76	AMKennedy	0.999
2008	0.573	0.473	-2.863	3.504	AMKennedy	0.999
2009	0.512	0.526	-2.874	3.355	AMKennedy	0.998
2010	0.573	0.306	-2.156	3.177	AMKennedy	0.996
2011	0.29	0.331	-2.421	3.131	AMKennedy	0.999
2012	0.237	0.334	-2.635	3.068	AMKennedy	0.999
2013	0.062	0.365	-2.829	3.076	AMKennedy	0.99
2014	-0.233	0.399	-3.089	3.054	AMKennedy	0.999
2015	-0.281	0.431	-3.318	3.054	AMKennedy	0.979
2016	-0.073	0.457	-3.516	3.037	AMKennedy	0.912
2017	0.277	0.481	-3.731	2.929	AMKennedy	0.513
2018	0.362	0.514	-3.856	2.912	JGRoberts	0.712
2019	0.298	0.549	-3.965	2.848	JGRoberts	0.78
2020	0.63	0.604	-4.051	2.712	BMKavanaugh	0.46
2021	0.666	0.648	-4.108	2.739	BMKavanaugh	0.483
2022	0.528	0.713	-4.087	2.761	BMKavanaugh	0.411

Table 14: Martin and Quinn 2022 Court Data Codebook

Variable	**Description**
term	Term
med	Location of the median justice (posterior mean)
med_sd	Posterior standard deviation of the median justice
min	Location of the minimum justice (posterior mean)
max	Location of the maximum justice (posterior mean)
justice	Justice most likely to be median
just_pr	Probability of most likely justice

A.4 Dependent Variable

Table 1: Summary Statistics for Dependent Variable

Variable	Measure	Percentage
Formal Alteration of Precedent	Precedent altered(=1) Precedent unaltered(=0)	2.37%=altered (n=323)

*N=13,780

A.5 Independent Variable

Table 2: Subject Matter Breakdown

Subject Matter	Measure	Percentage
Criminal Procedure	Rights of persons accused of a crime	17.58%
Civil Rights	Cases that pertain to classifications based on race, age, indigence, voting, residence, military, or handicapped status, sex, or alienage	16.48%
First Amendment	Guarantees contained therein	7.83%
Due Process	Non-criminal due procedural guarantees and the takings clause	4.43%
Privacy	Tort privacy, Fourth Amendment privacy, First Amendment privacy, and fundamental decisions privacy	4.54%
Attorneys	Attorneys' fees, commercial speech, removal from and admission to bar, and disciplinary matters	1.02%
Unions	Labor union activity	6.68%
Economic Activity	Commercial regulation, intellectual property, and governmental regulations of corruption	16.78%
Judicial Power	Exercise of the judiciary's power and authority	14.78%
Federalism	Conflicts between the federal and state governments and issues concerning federal-state court relationships	5.47%
Interstate Relations	Conflicts between states, boundary disputes, and non-property disputes	0.87%
Federal Taxation	Encompasses issues relating to the Internal Revenue Code and statutes	2.92%
Miscellaneous	Includes: legislative veto, separation of powers, and matters not included in any other category	0.56%
Private Law	Disputes between private persons	0.05%

Table 15: Treatment of Precedent By Subject Matter

	Precedent Unaltered		**Precedent Altered**	
Criminal Procedure	96.93%	(N=2,336)	3.07%	(N=74)
Civil Rights	97.48%	(N=2,203)	2.52%	(N=57)
First Amendment	98.14%	(N=1,053)	1.86%	(N=20)
Due Process	98.19%	(N=597)	1.81%	(N=11)
Privacy	96.31%	(N=600)	3.69%	(N=23)
Attorneys	98.57%	(N=153)	1.43%	(N=2)
Unions	97.05%	(N=889)	2.95%	(N=27)
Economic Activity	97.91%	(N=2,252)	2.09%	(N=48)
Judicial Power	98.52%	(N=1,996)	1.48%	(N=30)
Federalism	96.40%	(N=723)	3.60%	(N=27)
Interstate Relations	100.00%	(N=119)	0.00%	(N=0)
Federal Taxation	99.00%	(N=397)	1.00%	(N=4)
Miscellaneous	100.00%	(N=77)	0.00%	(N=0)
Private Law	100.00%	(N=7)	0.00%	(N=0)
p-value = 0.001				

A.6 Control Variables

Table 3: Summary of Control Variables

Variable	**Measure**	**N**	**Summary**	**Range**
Ideology	Median Ideology (Absolute Value)	13,706	0.38=mean (0.56=std. dev.)	-1.133-1.098
Legal Basis	Constitutional=1	12,148	37.70%(=1) (n=4,580)	0-1
Change in Composition	Yes=1	13,780	33.03%(=1) (n=4,547)	0-1
Term of the Court	Year of Decision	13,780	1978.167=mean	1946-2022

A.7 Logistic Regression Models

This appendix presents the logistic regression models used to analyze the likelihood of the Supreme Court overturning precedent in cases related to the right to privacy. The models are structured as follows:

1. **Unadjusted Model:**

$$\ln\left(\frac{p(y=1)}{1-p(y=1)}\right) = \beta_0 + \beta_{\text{Privacy}} \tag{4}$$

2. **Partial Model:**

$$\ln\left(\frac{p(y=1)}{1-p(y=1)}\right) = \beta_0 + \beta_{\text{Privacy}} + \beta_{\text{Control}} \tag{5}$$

3. **Full Model:**

$$\begin{aligned}\ln\left(\frac{p(y=1)}{1-p(y=1)}\right) =& \beta_0 + \beta_{\text{Privacy}} \\ &+ \beta_{\text{Ideology}} + \beta_{\text{LegalBasis}} \\ &+ \beta_{\text{Change}} + \beta_{\text{Term}}\end{aligned} \tag{6}$$

Next, Table 4 the terms of Chief Justices of the United States Supreme Court from 1946 to 2022. It includes their tenure, median ideology scores, and total changes in composition during their leadership.

Table 4: Summary Chief Justice

Chief Justice	**Term**	**Median Ideology**	**Total Changes in Composition**
Vinson (N=1,442)	1946-1953	.6767524	3
Warren (N=3,405)	1953-1969	-.2403081	11
Burger (N=4,259)	1969-1985	.5228324	7
Rehnquist (N=2,995)	1986-2004	.7483636	7
Roberts (N=1,679)	2005-2022	.3375072	10

A.8 Logistic Regressions

Logistic Regression Analysis

	Model 1	**Model 2**	**Model 3**	**Model 4**	**Model 5**	**Model 6**
Privacy	0.496*	0.472*	0.187	0.529*	0.492*	0.198
	(0.220)	(0.221)	(0.224)	(0.221)	(0.220)	(0.226)
Ideology		-0.304*				-0.376*
		(0.092)				(0.101)
Legal Basis			1.218*			1.229*
			(0.126)			(0.126)
Change in Composition				0.358*		0.369*
				(0.115)		(0.122)
Term of Court					0.00248	0.00431
					(0.003)	(0.003)
Constant	-3.758*	-3.658*	-4.328*	-3.891*	-8.658	-12.87*
	(0.058)	(0.064)	(1.013)	(0.075)	(5.669)	(6.300)
N	13779	13705	12148	13779	13779	12075
Log Likelihood	-1529.26	-1514.87	-1346.04	-1524.51	-1528.88	-1325.84
Wald ch(2)	0.0348	0.0006	0.0000	0.0009	0.0744	0.0000
Pseudo R2	0.0015	0.0049	0.0380	0.0046	0.0017	0.0462

Standard error in parentheses

* indicates significance at $p < 0.05$

A.8.1 CLARIFY: Estimate Predicted Probabilities

Table 16: Clarify Results For Non-Privacy Cases

Quality of Interest	**Mean**	**Std. Err.**	**[95% Conf.**	**Interval]**
Pr(preced∼n=0. prece)	.9773	.0014	.9744	.9797
Pr(preced∼n=1. prece)	.0227	.0013	.0202	.0256
setx privacy 0				

Table 17: Clarify Results For Privacy Cases

Quality of Interest	**Mean**	**Std. Err.**	**[95% Conf.**	**Interval]**
Pr(preced∼n=0. prece)	.9619	.0079	.9449	.9756
Pr(preced∼n=1. prece)	.0381	.0079	.0244	.0550
setx privacy 1				

A.9 Chief Justice Analysis

Table 8: Precedent Alteration by Chief Justice

Chief Justice	**Precedent Altered**
Vinson (N=1,442)	1.73%
Warren (N=3,405)	2.67%
Burger (N=4,259)	2.23%
Rehnquist (N=2,995)	2.14%
Roberts (N=1,679)	2.86%
p-value = 0.153	

Table 9: Treatment of Privacy Precedent by Chief Justice

	Privacy Cases
Chief Justice	**Precedent Altered**
Vinson (N=22)	4.55%
Warren (N=157)	6.37%
Burger (N=247)	1.62%
Rehnquist (N=128)	2.34%
Roberts (N=69)	7.25%
p-value = 0.054	

A.9.1 Chief Justice Logistic Regression

Table 10: Logistic Regression by Chief Justice

	Vinson		**Warren**		**Burger**		**Rehnquist**		**Roberts**	
	1(a)	1(b)	2(a)	2(b)	3(a)	3(b)	4(a)	4(b)	5(a)	5(b)
Privacy	1.019	0.687	0.978*	0.785*	-0.344	-0.497	0.099	-0.236	1.046*	0.554
	(1.044)	(1.066)	(0.346)	(0.367)	(0.515)	(0.521)	(0.598)	(0.607)	(0.489)	(0.504)
Ideology		-5.414		-0.719*		0.720		1.498		0.740
		(6.006)		(0.294)		(0.448)		(1.011)		(1.650)
Legal Basis		1.871*		1.330*		0.794*		1.230*		1.650*
		(0.482)		(0.243)		(0.227)		(0.285)		(0.330)
Change in Composition		0.825		0.527*		0.504		0.425		-0.025
		(1.401)		(0.247)		(0.261)		(0.356)		(0.332)
Term		0.554		-.0343		-0.006		0.067		0.001
		(p0.839)		(0.444)		(0.024)		(0.051)		(0.030)
Constant	-4.063*	-1080.287	-3.367*	62.612	-3.762*	7.892	-3.829*	-138.588	-3.596*	-5.767
	(0.206)	(1631.14)	(0.113)	(87.036)	(0.106)	(46.953)	(0.129)	(102.323)	(0.155)	(60.477)
N	1,442	1,303	3,045	2,715	4,259	3,771	2,994	2,719	1,679	1,567
Log Likelihood	-125.793	-104.547	-416.192	-338.596	-454.963	-400.411	-309.409	-272.231	-216.138	-191.151
Wald chi(2)	0.395	0.001	0.012	0.000	0.483	0.002	0.871	0.001	0.058	0.000
Pseudo R2	0.003	0.096	0.008	0.079	0.001	0.024	0.000	0.039	0.008	0.079

Standard errors in parentheses.
* indicates significance at $p<0.05$

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