

**State Supreme Court Decisions and Shared Networking: The Citation of Education
Finance Cases**

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Certain state courts decisions, and by extension, the state courts themselves, are more influential than other decisions and other state courts. While the decisions of state supreme courts are final within their jurisdictions, state high courts often look to the decisions of other courts for guidance. Drawing upon other state high courts carries both utility and disadvantage. While employing the decisions of other courts might give a court access to expert legal reasoning (e.g. Caldiera, 1985), it also surrenders control of a state's case law partially to an outside legal entity which is not accountable to the citing state. In this manuscript, we provide a new perspective on this question by exploring the causal factors which lead a state supreme court decision to be cited by out-of-state courts.

We examine this citation of state high court precedent in the other state courts in the area of public school finance reform, a policy area left solely to states since the 1974 U.S. Supreme Court decision in *San Antonio School District v. Rodriguez*. We argue that citations are the product of contextual factors at the time the decision is issued. Consistent with prior literature, we argue that prestige is a key component of citation. Those courts which occupy a central place in the citation network are more likely to be cited than their more marginal peers. Additionally we argue, and find, that features of the state environment shape the later citation of education decisions by peer courts.

State Supreme Court Decisions and Shared Networking: The Citation of Education Finance Cases

Certain state courts decisions, and by extension, the state courts that author them, are more influential than other decisions and other state courts. Some decisions are well known, frequently cited and form the basis for entire areas of jurisprudence across multiple states. Other decisions fade into obscurity and attract little notice from courts other than the one that issues them. Authoring prominent decisions can propel states into a “first among equals” position where they carry great prestige with peer courts. For example, the New York Court of Appeals, the state court of last resort for New York, has long been one of the most prominent and prestigious courts in the United States. Several of their opinions, penned by Benjamin Cardozo such as *Palsgraf v. Long Island Railroad Co.*,¹ and *MacPherson v. Buick Motor Co*² shaped tort law and products liability in state courts well beyond New York (see Kaufman 1998). Likewise, Roger Traynor and the California Supreme Court had a similar influence on the development of American law in many areas, including decisions striking down California’s ban on interracial marriage,³ and a decision striking down the use by police of illegally obtained evidence⁴ (Ledbetter 1983; Barrett, Jr. 1955).

Prominent courts are cited widely by both state and federal courts thus giving them influence beyond the geographical boundaries of their respective states. Indeed, a succession of studies on prestige amongst state supreme courts has noted the central role of the New York Court of Appeals and the California Supreme Court (Mott, 1936; Merryman, 1954; Caldeira

¹ 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928).

² 217 N.Y. 382, 111 N.E. 1050 (1916).

³ *Perez v. Sharp*, 32 Cal. 2d 711, 198 P. 2d 17 (Cal. 1948).

⁴ *People v. Cahan*, 44 A.C. 461, 282 P.2d 905 (1955).

1983; 1985; 1988; Comparato and Gleason, 2013). However, as Caldeira (1985) suggests, prominence may be issue area specific and a function of the issues which come before a given court on a regular basis. Because the New York Court of Appeals has jurisdiction over Wall Street, it has built up expertise and influence in securities law (see also: Rivoli 2013; Smith and Hall 2013). However, it is important to note that some issue areas allow a greater role for state influence than others.

While the California decisions on interracial marriage and the exclusionary rule ultimately influenced both state federal jurisprudence, the U.S. Supreme Court has explicitly left some issue areas to the state courts. Thus, it is reasonable to conclude that the influence of the New York court in torts is a function of the general lack of federal involvement in the area. Torts are hardly the only area the federal courts have vacated; a number of other areas are predominantly left to state courts, including marriage, divorce, child supervision, health care and, perhaps most prominently, education and education financing.

Federal court involvement in education finance effectively ended with *San Antonio Independent School District v. Rodriguez*,⁵ leaving state supreme courts as the final arbitrators of the constitutionality of state education funding frameworks. While this devolves a great deal of power to state courts, it also creates a void of federal case law upon which state supreme courts can draw for authority in their opinions, particularly if they have limited experience adjudicating education finance decisions. In these instances, it is likely courts will turn to the decisions of their peers for guidance. However, there is great variation in the number of citations state supreme court education finance decisions receive. For example, two of the earliest decisions, which actually predate *Rodriguez*, have wildly different citation numbers. California's *Serrano*

⁵ 411 U.S. 1 (1973)

*v. Priest*⁶ is cited 38 times. Michigan's *Milliken v. Green*⁷ is cited just seven times. What explains this variation?

Previous work speaks to the diffusion of legislative policies (Walker 1969; Boehmke 2009), but little work examines the diffusion of policy via court decisions (but see: Roch and Howard, 2008). Recently, Gleason and Howard (2015) examine the conditions under which a state supreme courts cite each other in education finance cases. However, their study is limited to the propensity of one court to cite another, not the actual citation of opinions.

In this manuscript, we examine the factors which lead a state supreme court education finance decision issued from 1971 to 2004 to be cited (or not to be cited) by peer courts. We argue, and find, the context in which a decision is issued has important ramifications for its future citation prospects.

The Evolving Education Finance Reform

Education finance reform litigation has not been a continuous process. Instead, many scholars argue that it has undergone three distinct waves since the 1970s (see e.g. Heise 1995a, 1995b). Citations patterns in each of these waves, differ based on the environment imposed by the differing balance of power between federal and state courts, the relative focus of litigation, and the accompanying context in which the decisions occur.

In the first wave opponents of unequal financing premised the remedy to inequality through the use of the Equal Protection clause of the 14th Amendment to the United States Constitution. However, in *San Antonio Independent School District v. Rodriguez* (1973), the U.S. Supreme Court ruled that unequal financing for education did not violate the equal protection clause of the United States Constitution. However, the ruling did not exclude further state court

⁶ 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241, 1971 Cal. LEXIS 273, 41 A.L.R.3d 1187 (1971)

⁷ 389 Mich. 1 | 203 N.W.2d 457 | 1972 Mich. LEXIS 150

action. The second wave rested primarily on state education clauses and state equal protection clauses. This second wave of cases began following the *Rodriguez* decision and lasted until 1989. The third wave focused on specific *adequacy* provisions of state constitutions and continues to the present day (Heise 1995a, 1995b; Thro 1990.)

As of December 2009, forty-four states have experienced some form of state education finance litigation.⁸ While the first wave failed to effectuate change in financing reform and some of the early phases of the second wave were also often unsuccessful because they relied on state constitution equal protections clauses, the latter part of the second wave and the third wave have been much more successful. In these latter efforts, plaintiffs based their arguments on state constitutional education clauses.

State Court Judicial Decision Making and Citation Influence

State supreme court decisions, as with any legal decision, must be justified in citations to prior decisions. While state supreme courts frequently cite their own prior decisions, these are not its only source of legal authority. State supreme court justices often employ citations from other state supreme courts that do not have any precedential authority over the citing court. This discretionary citation is known as horizontal, as opposed to vertical, precedent. Scholars first examined horizontal citations amongst state supreme courts in the 1930s (e.g. Mott, 1936) and have periodically returned to the topic (Merryman, 1954; Caldiera, 1983; 1985; 1988; Comparato and Gleason, 2013; Gleason and Comparato, 2014).

Horizontal citations are important for several reasons. First, these citations can help shape the content of the justice's opinion and thus the policy ultimately promulgated by the court. A

⁸The six states where the courts have not ruled on education finance litigation are Delaware, Hawaii, Mississippi, Nevada and Utah and Iowa. No litigation been filed in the first five, while in Iowa there has not been a court decision (National Access Network <http://www.schoolfunding.info/index.php3>). Hawaii has a statewide unified school district and therefore no variation across districts. In addition, New Mexico has not had a high court decision on education finance.

growing body of literature acknowledges that the ability to shape the content of opinions can have a profound impact on the shape of the decision, perhaps to the point of drawing the opinion into line with outside preferences (e.g. Comparato and Gleason, 2013; Gleason and Comparato 2014; Corley et al., 2011; Gleason and Howard, 2015). Additionally, these citations can enhance the cited court's reputation in the broader legal community (Solimine, 2005). Particularly in a partisan-charged decision, the inclusion of discretionary citations allows opinions to appear grounded in legal reasoning rather than an expression of policy preference (Anderson, 2011; Cross 2010; Garopa and Ginsburg, 2012; Vidal and Leaver, 2013; Gleason and Comparato 2014). Doing so may actually stave off review of state supreme court opinions by the U.S. Supreme Court.

Finally, and the core of our examination, discretionary citations allow an outside authority to exert influence over the shape of the citing court's case decision and opinion (Corley et al., 2011; Garoupa and Ginsburg, 2012; Gulati et al., 2009; Box-Steffensmeier, Christenson and Hitt 2013). In this sense then, state supreme courts must cede, to an extent, their status as the final authority on legal matters within the state to an outside court of their choosing. Thus, one would expect some care and thought to go into the citation of the opinions from other jurisdictions. Despite this possible deterrent, citations between state supreme courts are exceptionally common (Comparato and Gleason, 2013).

The extent to which citations to outside authority are employed has expanded considerably in recent years (e.g. Comparato and Gleason, 2013; Gleason and Comparato, 2014; Gleason and Howard, 2015). This work notes that outside citations are based on political, legal, and resource based factors; though the extent to which any of these matters is highly context dependent (e.g. Gleason and Howard, 2015). While insightful, these studies have one important

weakness, they all examine the extent to which state supreme courts cite each other, rather than the propensity for a *given opinion to be cited*. We address this gap in the literature.

Citations are highly dependent on context. Each state court has its own preferences, laws, particular set of institutional constraints, and confronts different governors, publics, and state legislatures in rendering decisions. Additionally, every decision exists within a similar context; a decision issued by a marginal state supreme court with an extreme ideological outlook may not be as attractive to other state high courts as those issued by prominent courts with moderate ideology. We argue that citations to state supreme court education finance decisions are dependent on these contexts – policy preferences as well as institutional and structural constraints - within which the decision was authored.

The literature on state courts holds that judicial decisions are a function of attitudes or policy preferences, constrained by institutional considerations, as well as the separation of powers system inherent in each state (Hall 1992, Brace and Hall 1990, 1995; Hall and Brace 1999). State supreme court justices, like their federal counterparts, have distinct policy preferences which they pursue through voting decisions and their opinions (Segal and Spaeth 2002; Hall and Brace 1999). However, while justices on the U.S. Supreme Court enjoy life tenure, as by one example, state supreme court justices must stand for reelection, retention elections, or reappointment on a regular basis. Because of this, state supreme court justices must account for the preferences of other political actors in their respective states in order to continue in office. Accordingly, majoritarian preferences may exert an influence over the decisions of state supreme court justices, and the state court might not want to counter preferences of the elite political actors in the state.

Of course, the specific actors whom justices must appease varies by state. In states such as Ohio where justices must stand for election, a jurist who hopes to retain her seat must appease the voters. In other states, such as New Jersey, justices rely on either the governor or legislature for their continued tenure and will therefore be more attuned to elite preferences. Scholars have found mixed findings with respect to the role of ideology in citation networks. Comparato and Gleason (2013) find that greater ideological distance between two courts increases the probability of citation because citation to ideologically distant courts decreases the probability of future review by the U.S. Supreme Court (see also: Gleason and Comparato, 2014). Comparato and Gleason (2013) argue this is because drawing upon decisions from ideologically diverse courts may make decisions appear better grounded in the law. However, focusing on just education finance decisions, Gleason and Howard (2015) find greater ideological distance between two states *decreases* the probability of citation. Gleason and Howard (2015) explain this seemingly perplex finding by noting state supreme courts need not worry about U.S. Supreme Court review in education finance cases and are thus free to be more ideological. We suspect much the same will be at play for the citation counts of decisions themselves; those decisions which are issued by more ideologically moderate courts are more likely to be cited.

While much of the research on law and courts emphasizes the importance of attitudes and institutional constraints, courts have to defend their decisions in the law, and recent scholarship has reemphasized that this goes beyond mere justification. Law and legal considerations matter even after controlling for attitudes. Recent literature incorporates the importance of statutory language (Randazzo and Waterman 2014), legal doctrine (Bartels 2009; Bailey and Maltzman 2008; Richards and Kritzer 2002), oral arguments (Johnson, Wahlbeck and Spriggs 2006),

precedent (Fowler et. al. 2007), and the influence of litigant and amici briefs (Corley 2008; Box-Steffensmeier, Christenson and Hitt 2013).

This scholarship is in accordance with our normative view of judicial decision making. Text, intent and precedent or stare decisis are all supposed to normatively matter to judicial decision making. In particular, stare decisis or precedent remains at the heart of scholarly thinking about law (Segal and Howard 2001). Almost all judicial opinions contain numerous references to precedential authority. While a court might want to and often does, follow its policy preferences, a court decision must premise its decision on prior decisions.

In state education financing cases, an important consideration is the language contained in state constitutions. Most state constitutions have provisions guaranteeing free public education. While many of these only speak of the obligation to provide free education, several states have much more detailed provisions describing the funding of, or providing for, uniform or efficient free public schools.⁹ Generally the stronger the constitutional education provision, the more likely the state court will adopt education finance reform. For example, in *Connecticut Coalition for Justice in Education Funding v. Rell* (2010), the Connecticut court explicitly referenced their state constitution's educational provision and similarly worded education provisions of other state constitutions. The majority opinion noted that "We have discussed in detail... cases from states whose education clauses are worded and structured closely to article eighth, § 1, of the constitution of Connecticut. The vast majority of the other states have reached the same conclusion, namely, that students are entitled to a sound basic or minimally adequate, education in the public schools."¹⁰ Thus, a court that has strong constitutional language

⁹For example while Kansas Constitution (Kansas Constitution, Art. 6 sec. 1) speaks only of "establishing and maintaining public schools," the Idaho Constitution (Idaho Constitution, Art. 9, Section 1) calls for a "general, uniform and thorough system of public, free, common schools."

¹⁰*Connecticut Coalition for Justice In Education Funding, Inc. v. Rell* 295 Conn. 240, 245; 990 A.2d 206, 210 (2010)

regarding education finance reform will likely produce strong opinions which will be attractive to other courts.

Since certain state courts throughout American legal history have expertise and prominent reputations in certain fields of law one can assume that some state court decisions would be more likely to be cited than other states court decision. That is, some state court decisions have a greater influence over a multitude of peer courts because of the status of the issuing court as a legal authority in these areas (e.g. Calidiera, 1985). There are numerous benefits to citing a prestigious court, first the prestige of the cited court can serve as a signal of legal quality to those who might review the decision. Secondly, prestige is a useful heuristic to reduce the time commitment needed to locate citations. Particularly when searching across a universe of up to 49 other courts, a prestige heuristic can dramatically reduce the amount of time needed to locate horizontal citations.

An important question, however, arises; how does a state supreme court decide which decisions are prestigious? The earliest operationalizations were sheer citation counts (e.g. Mott, 1936; Merryman, 1954). Later, Caldieria (1983; 1985; 1988) measured prestige as expertise in a given issue area, through the types of a case law a court likely adjudicate (see also: Comparato and Gleason, 2013; Gleason and Comparato, 2014). More recently, Box-Steffensmeier and her colleagues use social network analysis to measure the centrality of various interest groups to evaluate the impact of amicus brief prestige on the brief's ultimate effectiveness. That is, "Influence stems from the informational character of legal advocacy like amicus briefs" (Box-Steffensmeier, Cristenson and Hitt 2013, p. 449). For these authors status matters because high status groups are likely to have the benefit of high quality legal help in crafting their briefs. High quality matters because that will get the attention of the justices. We argue a similar process is at

play in state supreme court education finance decisions. In the present context, we contend that the network centrality, or prestige, of the issuing court shapes the attractiveness of a decision to future courts.

Recently, judicial scholars at all levels have noted the importance of resources. While resources are important in federal courts (e.g. Nicholson and Collins, 2008), scholars specifically note their importance in state supreme court citation networks. Typically operationalized as professionalism, which is a composite of a number of metrics including salary, support staff, case load, and docket discretion (Squire, 2008), greater resources afford state supreme courts a greater ability to craft opinions attractive to peer courts (Comparato and Gleason, 2013). We contend the effect of prestige, which Comparato and Gleason (2013) find across all issue areas, is present within education finance reform decisions.

We also control for the age of the opinion and how justices are chosen. The greater the age of the opinion, the greater the opportunity for an opinion to be cited (Fowler et. al. 2007). The literature also notes that decision making is different for justices that are elected and appointed; accordingly, we control for selection mechanism.

We now are able to offer the following hypotheses:

Hypotheses

1. Decisions issued by more ideologically extreme courts are more likely to be cited.
2. Decisions issued by states with stronger education provisions in their constitutions are more likely to be cited.
3. Decisions issued by more prestigious courts are more likely to be cited.
4. Decisions issued by more professional courts are more likely to be cited.

5. Older decisions are more likely to be cited.
6. Decisions issued by courts with appointed justices are more likely to be cited.

Data & Methods

Our hypotheses call for a count model, as we are interested in the total number of citations a given state supreme court decision receives over its lifetime. We first construct a dataset of all 117 state supreme court education finance decisions from 1971 through 2004, which we obtain from Lexis and subsequently use Shepard's Citations to determine which state supreme courts, and intermediate courts of appeal, subsequently cite each decision from 1971 to 2010. By counting the total number of citations which each state supreme court decision receives, we are able to construct our depended variable, the count of citations which each state supreme court education finance decision receives over its lifetime.

We include several independent variables to test our hypotheses. We measure the ideological extremity of a state by subtracting 50 (a pure moderate score) from each state's ideology score in Berry et al's (2010) measure of state ideology. We then take the absolute value of the resulting number. We create measures for both elite ideology and citizen ideology and employ citizen ideology if the justices are accountable to voters and elite ideology otherwise. We measure the strength of each state's constitution's language with the measure developed by Roch and Howard (2008).

We measure court prestige by taking each court's centrality in the network for the wave in which the decision is issued. To obtain this value, we employ the state supreme court education finance network created by Gleason and Howard (2015) and calculate the centrality score for each state in each wave (see also: Box-Steffensmeir et al, 2013). Centrality is a social network statistic which notes how well connected a given actor is in a network. A high centrality score

indicates that a given actor (in this case court) is well connected in the network, which is to say, it is generally regarded as a leader by its peers (see also: Wasserman and Faust, 1994). We note state court professionalism with the measure developed by Squire (2008).

We also include two control variables. We utilize a dichotomous measure which notes whether the issuing court was elected or appointed. We also note the age of each decision. We measure age with the total number of years in which a case may be cited in our dataset.

Our dependent variable is highly skewed. 47 of the 117 cases in our dataset do not receive any citations.¹¹ As such, the best methodological approach is a negative binomial regression model (Kennedy, 2003). Importantly, as we previously showed, Gleason and Howard (2015) note that the supreme court education finance network has gone through three distinct phases in which the legal basis of education finance reform, as well as the determinants of citation, change. Thus, in order to account for any resultant changes in the likelihood of citation, we cluster our model on the wave in which a decision is issued

Results

The results of our models are presented in Table 1. Since negative binomial coefficients are somewhat unintuitive, we discuss our significant findings in terms of incidence rate ratios. In general, our hypotheses are largely borne out. State supreme court education decision citations are highly context dependent and influenced by the political, legal and institutional characteristics of the issuing court. Importantly, more centrally located courts are more likely to receive citations than their less prominent peers. We now turn to a detailed discussion of the results.

¹¹We initially suspected that those decisions which are not cited might be disproportionately younger. However, the average cited decision in the dataset is 18.2 years old. The average non-cited decision is 13.7 years old.

The ideology of the issuing court is a strong predictor of future citations. For an increase from the mean to one standard deviation above the mean ideology score (mean = 17.081, standard deviation= 10.590), the number of citations a decision receives increases by a factor of 10.643. We also find decisions authored by elected judges are less likely to be cited than those decisions written by their appointed counterparts by a factor of 0.671.

Case level characteristics are also important predictors of citation count. Opinions authored by justices in states with stronger education constitutional provisions are less likely to be cited by a factor of 0.562, which is opposite of our expectations. We also find that the longer a decision has been in circulation the more likely it to be cited. Each additional year in a decision's age increases the incidence rate of citation by a factor of 1.107.

We find evidence that the prestige of the issuing court predicts future citation. Courts which occupy a central place in the network in the wave in which the decision is issued are more likely to be cited. A one standard deviation increase in issuing court centrality (mean= 0.134, standard deviation= 0.0868) increases the incident ratio of citation by a factor of 0.5.

Discussion

Our results support our expectations, the citation of state supreme court education finance decisions hinges largely on court level contextual factors. However, some of our findings are not consistent with the prior literature, which indicates that education finance decisions are unique from the broader literature on state supreme court citations. We now turn to a detailed discussion of our results.

At the court level, we find that ideology and selection mechanism predict citations. Surprisingly, we find that more ideologically extreme courts are more likely to be cited. While this is consistent with Gleason and Howard (2015), it departs from previous work by Comparato

and Gleason. This indicates that while state supreme courts seek out ideologically similar or moderate cases in education finance cases, they seek out ideologically *distant* courts in all cases. This may point to a different decision making calculus depending on the potential for higher review.

We also find the prestige of the issuing court is a strong indicator of whether a decision will be cited in the future. Should a decision be issued by a court centrally located in the network, the probability of citation increases. This indicates that though state supreme courts are all “peer courts,” not all peers are created the same. Much like then-Judge Cardozo helped to propel the New York Court of Appeals to national prominence, the education finance decisions of some state supreme courts have granted those courts' decisions national prestige and influence for years after the decision was issued. This finding serves to highlight that Box- Steffensmeier et al.'s approach to measuring prestige extends beyond amicus briefs to judicial decisions themselves.

From a more legal perspective, we find that decisions issued by courts that have more detailed constitutional education constitutional provisions are less likely to be cited by peer courts. This surprising finding suggests that specialization is somewhat of a double edged sword. While a court specializing in an issue area may bring network centrality and eventual national leadership, a constitution specializing may make subsequent judicial decisions so particular to a given state that its decisions are not easily portable to other states.

In terms of selection mechanism, we find opinions authored by elected judges are less likely to be cited than those written by their appointed counterparts. This is likely a court-specific marker of legal quality. Whereas elected justices may only be on the court as a political stepping stone or as a function of their political ambition, appointed judges are more likely to be

selected for the court by virtue of their legal qualifications. Thus, appointed judges, we expect, write more persuasive opinions than their elected counterparts.

Conclusion

State supreme courts are the final authority on the meaning of the state constitution; this is particularly true in those issue areas where the U.S. Supreme Court has effectively vacated and ceded legal authority to state courts, such as education finance. While state courts have the final word, they often seek guidance from outside sources, such as the decisions of their peer courts in other states. While scholarly attention has often focused on what leads a court to cite another court, little work until now has focused on what led a particular decision to be cited. We find that decisions are cited based on ideological extremity, selection mechanism, network centrality, age, and characteristics of the state constitutions.

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Table 1: Number of Citations for Education Finance Decisions

Variable	Coefficient	Standard Error
Constitutional Provisions	-0.575**	(0.159)
Court Ideology	0.005**	(0.001)
Court Professionalism	-1.562	(1.030)
Court Centrality	1.748**	(0.153)
Opinion Age	0.102**	(0.0131)
Elected Justices	-0.399†	(0.230)
Intercept	1.560**	(0.491)
N	117	
α	2.008**	(0.188)
Standard errors clustered on wave		
Significance levels : † : 10% * : 5% ** : 1%		