

## Aula 9: Teorias do Comportamento Judicial, Parte 1

**Disciplina:** Judiciário e Política

**Professores:** Jeferson Mariano Silva e Rogério Arantes

Ensaio

## Decisões finais em ADIs (1988-2017)

<b>Decisões</b>	<b>Frequência</b>	<b>Proporção (total)</b>	<b>Proporção (colegiadas)</b>
Maioria	704	18%	35%
Unânime	1311	33%	65%
Monocrática	1922	49%	
Total	3937	100%	100%

**Fonte:** Mariano Silva. 2018. Jurisdição Constitucional no Brasil (1966-2017).

Suprema Corte dos Estados Unidos (1953-2003): 61% de decisões tomadas por maioria.

## Decisões finais em ADIs (1988-2017)

Sem Marco Aurélio

<b>Decisões</b>	<b>Frequência</b>	<b>Proporção (total)</b>	<b>Proporção (colegiadas)</b>
Maioria	223	6%	15%
Unânime	1311	38%	85%
Monocrática	1922	56%	
Total	3456	100%	100%

**Fonte:** Mariano Silva. 2018. Jurisdição Constitucional no Brasil (1966-2017).

## Decisões liminares em ADIs (1988-2017)

<b>Decisões</b>	<b>Frequência</b>	<b>Proporção (total)</b>	<b>Proporção (colegiadas)</b>
Maioria	596	32%	36%
Unânime	1053	57%	64%
Monocrática	214	11%	
Total	1863	100%	100%

**Fonte:** Mariano Silva. 2018. Jurisdição Constitucional no Brasil (1966-2017).

## Decisões liminares em ADIs (1988-2017)

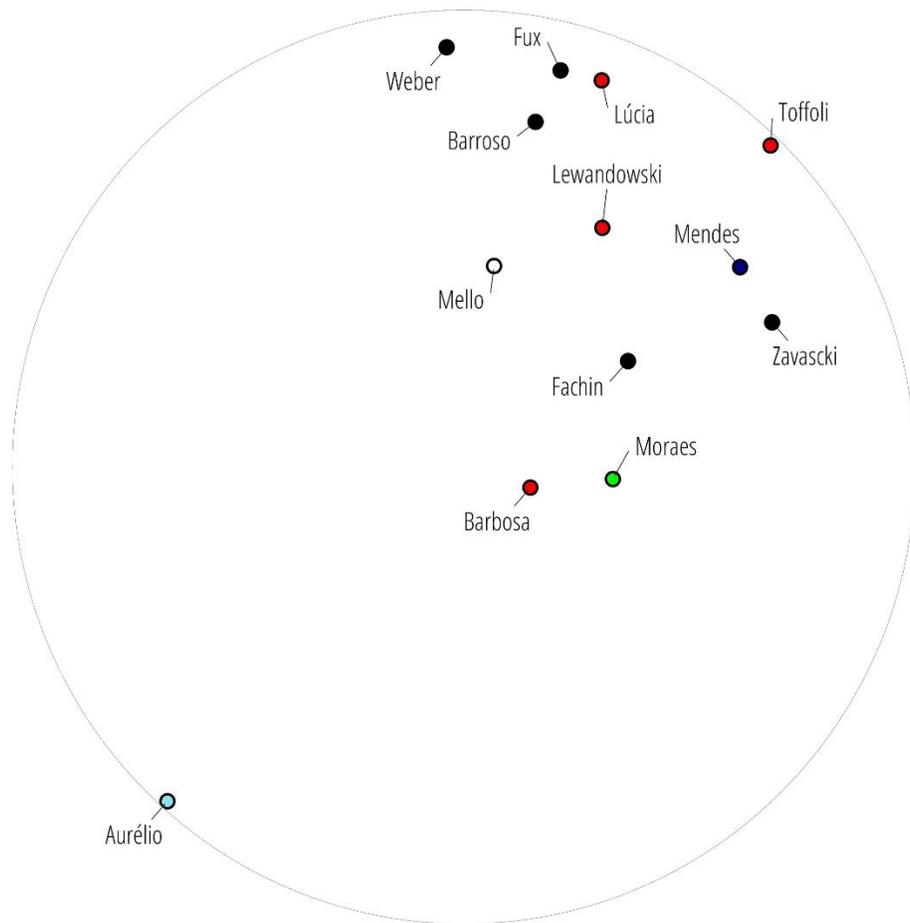
Sem Marco Aurélio

<b>Decisões</b>	<b>Frequência</b>	<b>Proporção (total)</b>	<b>Proporção (colegiadas)</b>
Maioria	232	15%	18%
Unânime	1053	70%	82%
Monocrática	214	14%	
Total	1499	100%	100%

**Fonte:** Mariano Silva. 2018. Jurisdição Constitucional no Brasil (1966-2017).

# De matrizes a mapas

Mapa das votações do Supremo no controle abstrato (2012-2017)

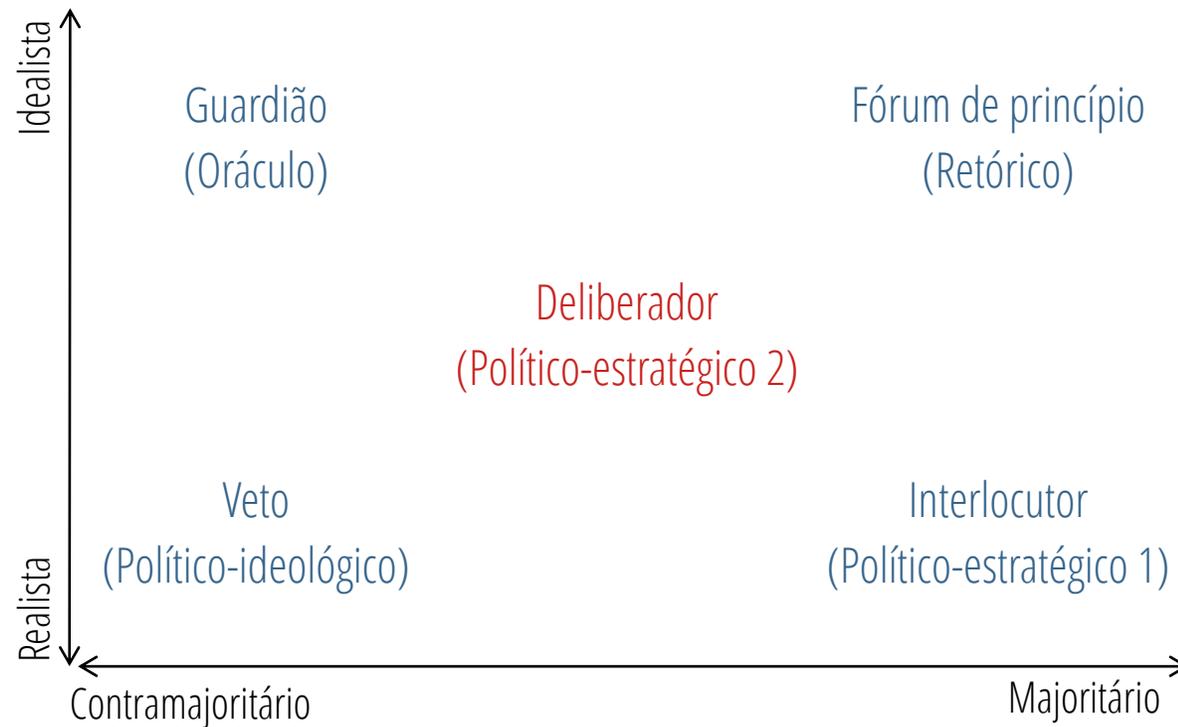


- |          |        |          |
|----------|--------|----------|
| ○ Collor | ● FHC  | ○ Sarney |
| ● Dilma  | ● Lula | ● Temer  |

# Ensaio

<https://doi.org/10.7910/DVN/WWPYNC>

# Cinco arquétipos dos tribunais constitucionais (e suas antípodas cínicas)



# Teorias do comportamento judicial

Modelo atitudinal

# Segal & Cover 1989 (O método)

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## IDEOLOGICAL VALUES AND THE VOTES OF U.S. SUPREME COURT JUSTICES

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*It is commonly assumed that Supreme Court justices' votes largely reflect their attitudes, values, or personal policy preferences. Nevertheless, this assumption has never been adequately tested with independent measures of the ideological values of justices, that is, measures not taken from their votes on the Court. Using content analytic techniques, we derive independent and reliable measures of the values of all Supreme Court justices from Earl Warren to Anthony Kennedy. These values correlate highly with the votes of the justices, providing strong support for the attitudinal model.*

The fundamental assumption about the behavior of Supreme Court justices—that their votes are strongly dependent upon their attitudes, values, or personal policy preferences—has never been adequately tested with independent measures of the attitudes or values of justices.<sup>1</sup> We use a systematic content analysis to derive reliable measures of the ideological values of Supreme Court justices that are independent of the votes they later cast. Despite potential problems of measurement error in the data, our scores correlate quite highly with the votes cast by the justices in civil liberties cases from 1953 through 1988.

### Attitudes, Values, and Judicial Behavior

The study of judicial behavior begins with C. Herman Pritchett's *The Roosevelt Court* (1948). The book systematically examines dissents, concurrences, voting blocs, and ideological configurations

from the nonunanimous decisions rendered by the justices from 1937 to 1947. Pritchett does not provide a theory of Supreme Court decision making; there is no doubt a limit to how many breakthroughs a single book can make. Nevertheless, the theoretical assumptions of the study were made clear in the introduction: "This book, then, undertakes to study the politics and values of the Roosevelt Court through the nonunanimous opinions handed down by its justices" (p. xii), acknowledging that the justices are "motivated by their own preferences" (p. xiii).

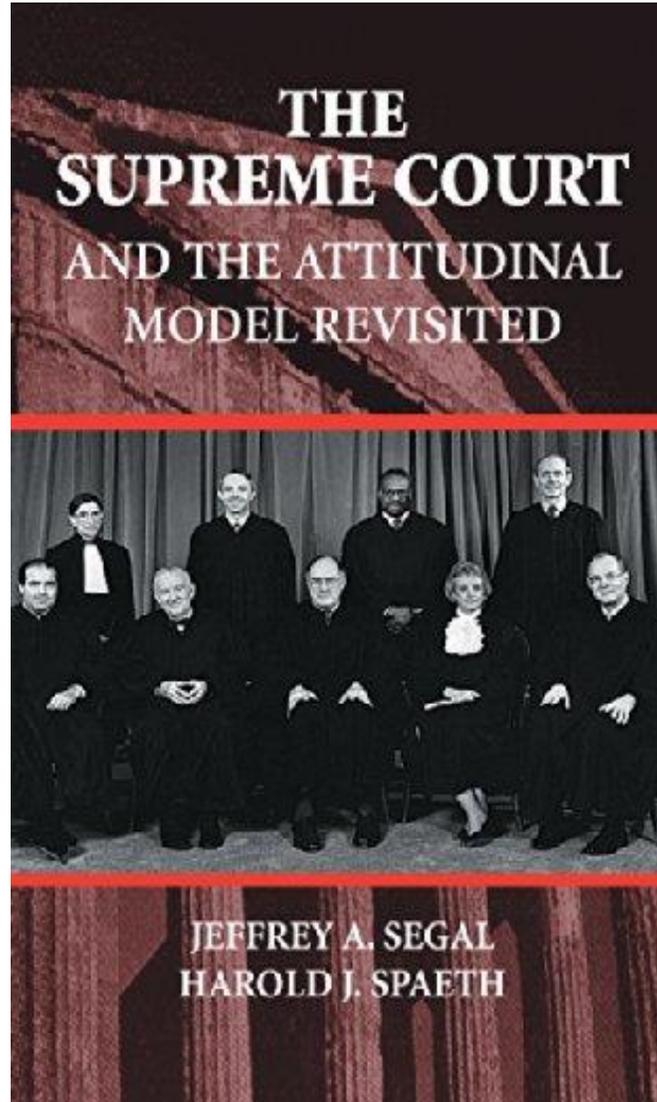
It is Schubert (1965), drawing most heavily on the work of Coombs (1964), who first provides a well-delineated theory of judicial decision making. According to Schubert, justices have ideal points (*j*-points) in multidimensional, ideological space. These points represent the justices' "own syndrome of attitudes" (Schubert 1965, 27). Case stimuli (*j*-points), presented to the justices for approval or disapproval, can similarly be measured in the same multidimensional

## US Supreme Court Database (Os dados)

“A *U.S. Supreme Court Database* traça sua história há cerca de duas décadas, quando Harold J. Spaeth pediu à *National Science Foundation* para financiar um banco de dados que seria tão rico em conteúdo, que vários usuários – mesmo aqueles com projetos e propósitos muito distintos em mente – poderiam desenhar usá-lo. O objetivo do professor Spaeth era ao mesmo tempo simples e extremamente ambicioso: produzir um banco de dados que incluísse e classificasse cada um dos votos dos juízes da Suprema Corte em todos os casos discutidos durante um período de cinco décadas. Depois de garantir o financiamento, Spaeth coletou e codificou os dados, realizou verificações de confiabilidade e montou o banco de dados. No final da década de 1980, ele o disponibilizou (e a documentação necessária para usá-lo) publicamente.”

Spaeth *et al.* 2020. *Supreme Court Database*.

Segal & Spaeth 2002 (A teoria)



# Teoria

“Esse modelo sustenta que a Suprema Corte decide disputas à luz dos fatos do caso vis-à-vis as atitudes ideológicas e valores dos juízes. De forma simples, Rehnquist vota do modo como ele vota porque ele é extremamente conservador; Marshall votava da maneira como ele votava porque ele era extremamente liberal.”

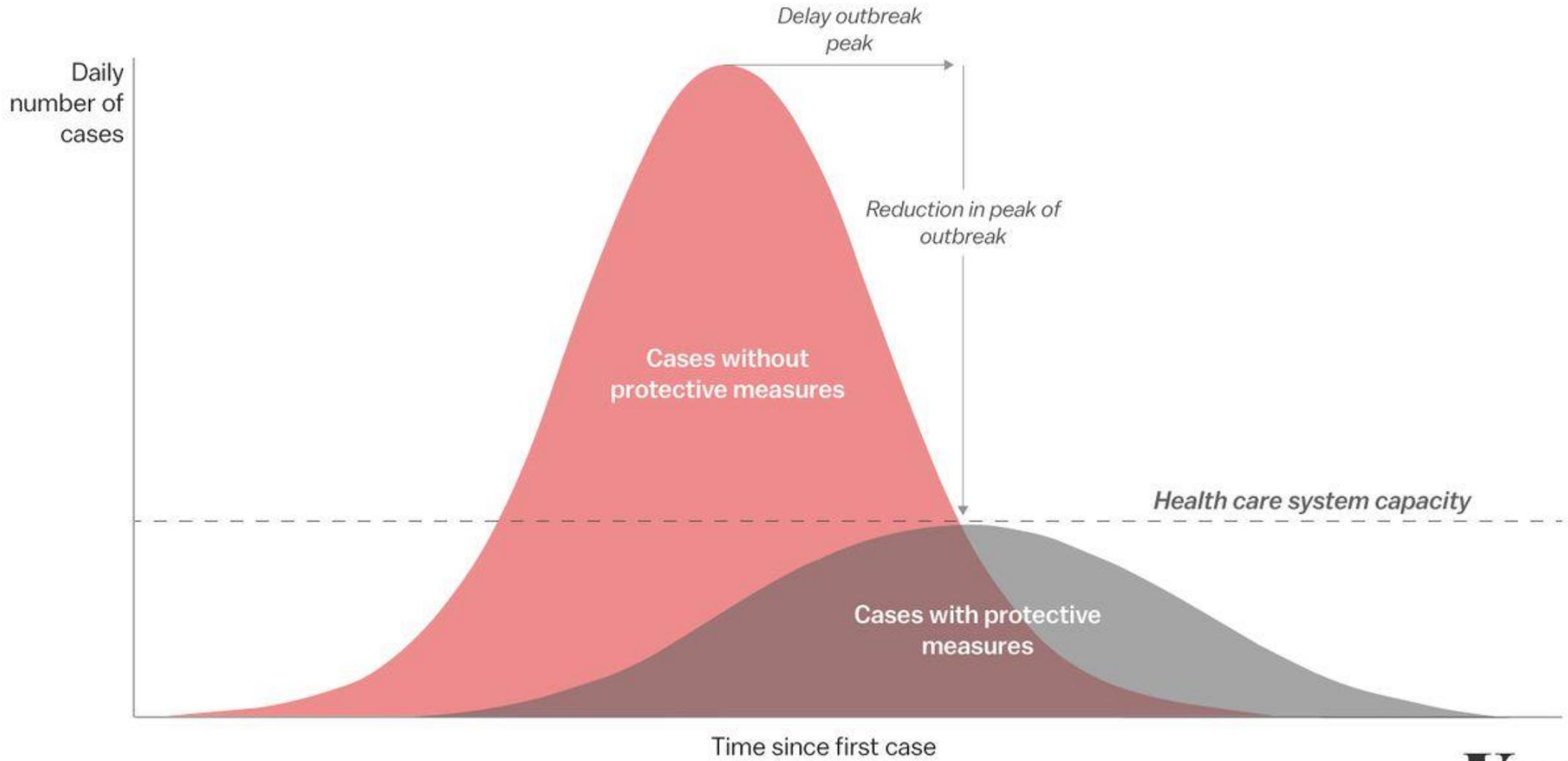
Segal & Spaeth. 2002. *The Supreme Court and the attitudinal model revisited*: 86.

# Dados

Justice	Values <sup>a</sup>	Votes <sup>b</sup>
Warren	.50	78.1
Harlan	.75	41.9
Brennan	1.00	77.9
Whittaker	.00	43.4
Stewart	.50	51.5
White	.00	43.4
Goldberg	.50	89.6
Fortas	1.00	80.4
Marshall	1.00	79.7
Burger	-.77	29.7
Blackmun	-.77	42.9
Powell	-.67	37.9
Rehnquist <sup>c</sup>	-.91	19.5
Stevens	-.50	56.3
O'Connor	-.17	30.9
Rehnquist <sup>d</sup>	-.91	23.0
Scalia	-1.00	34.7
Kennedy	-.27	40.0

Segal & Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices": 560.

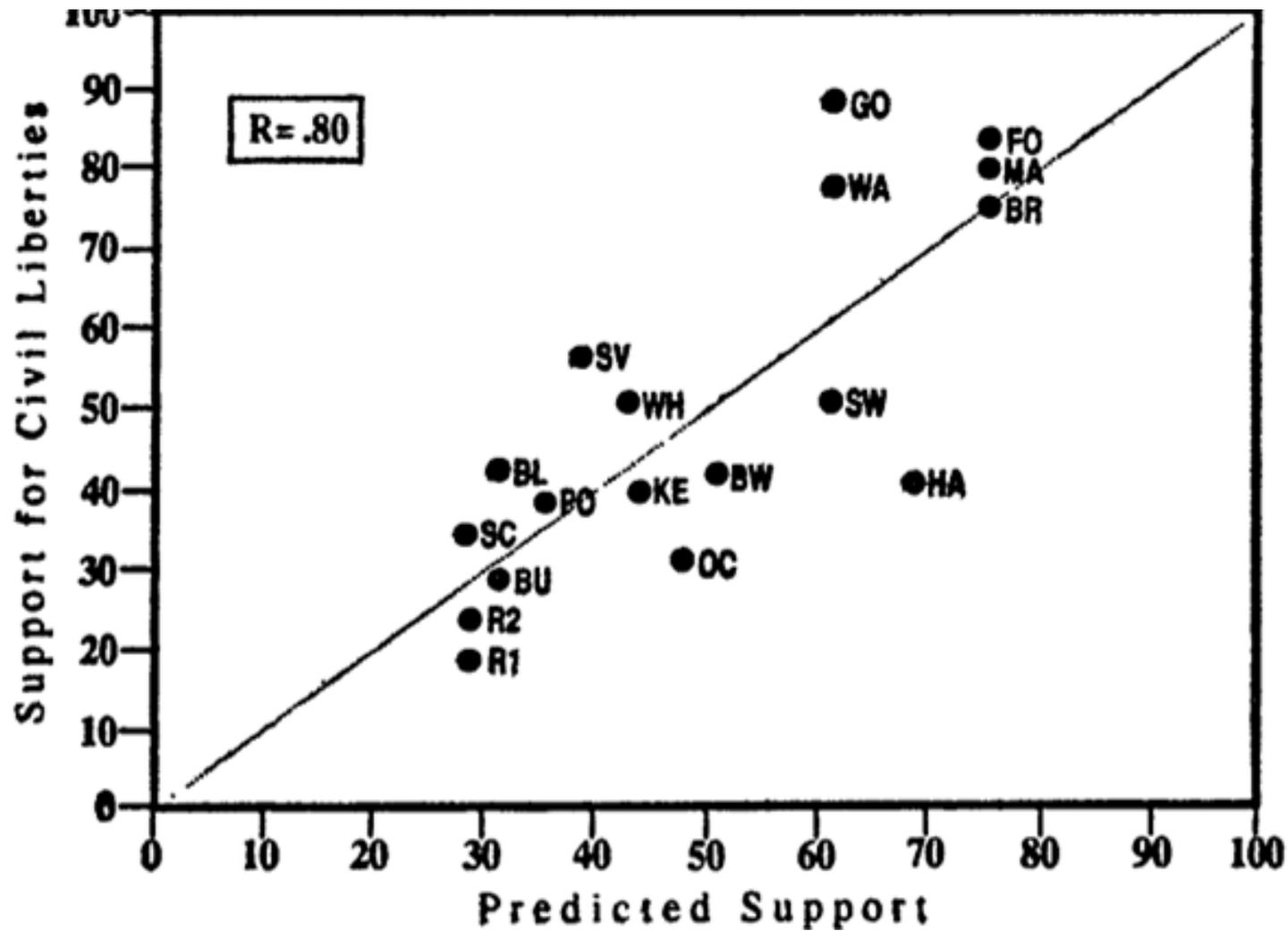
# Flattening the curve



Source: CDC

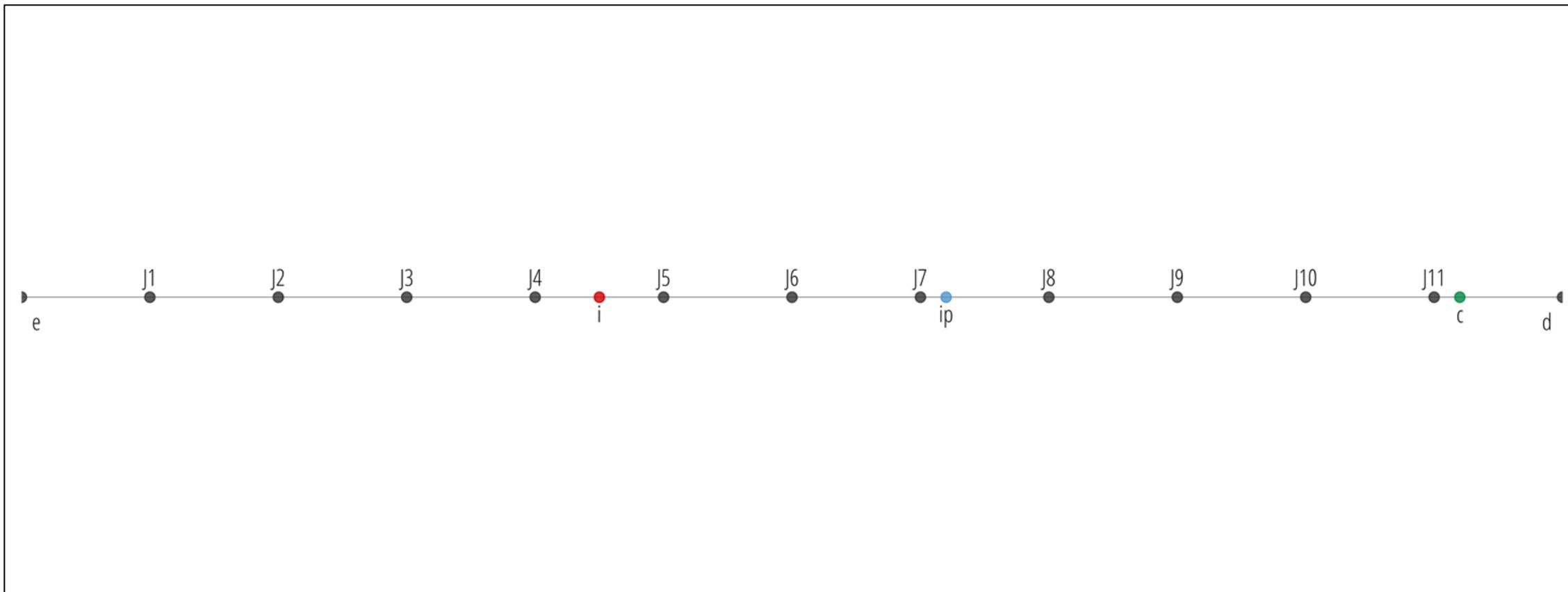
**Vox**

# Método

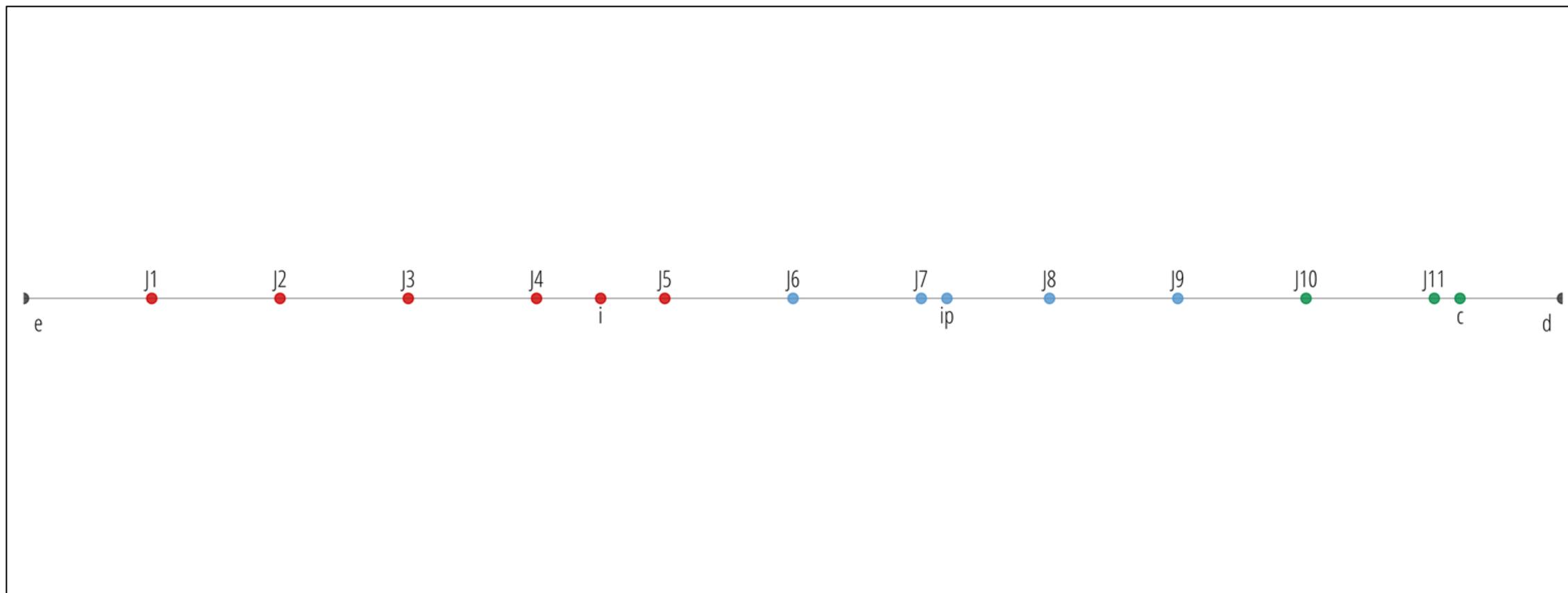


Segal & Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices": 560.

# Situação hipotética



# Expectativa teórica (modelo atitudinal)



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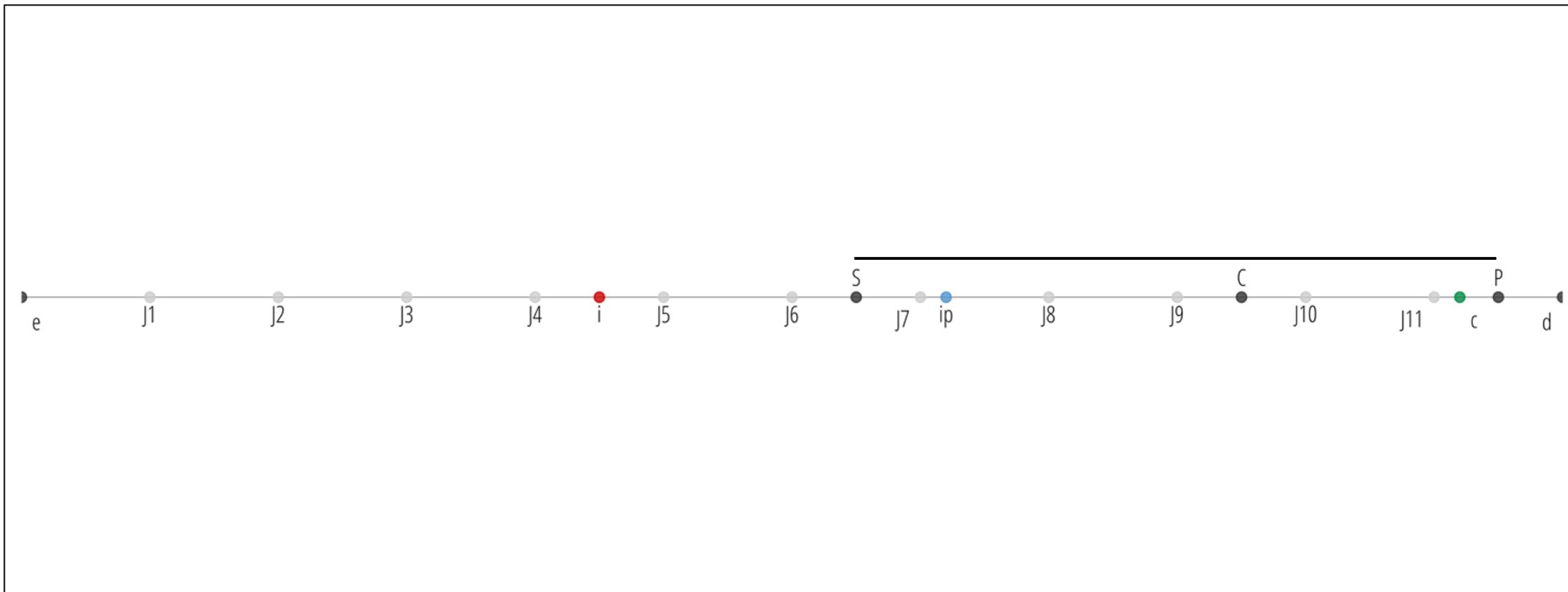
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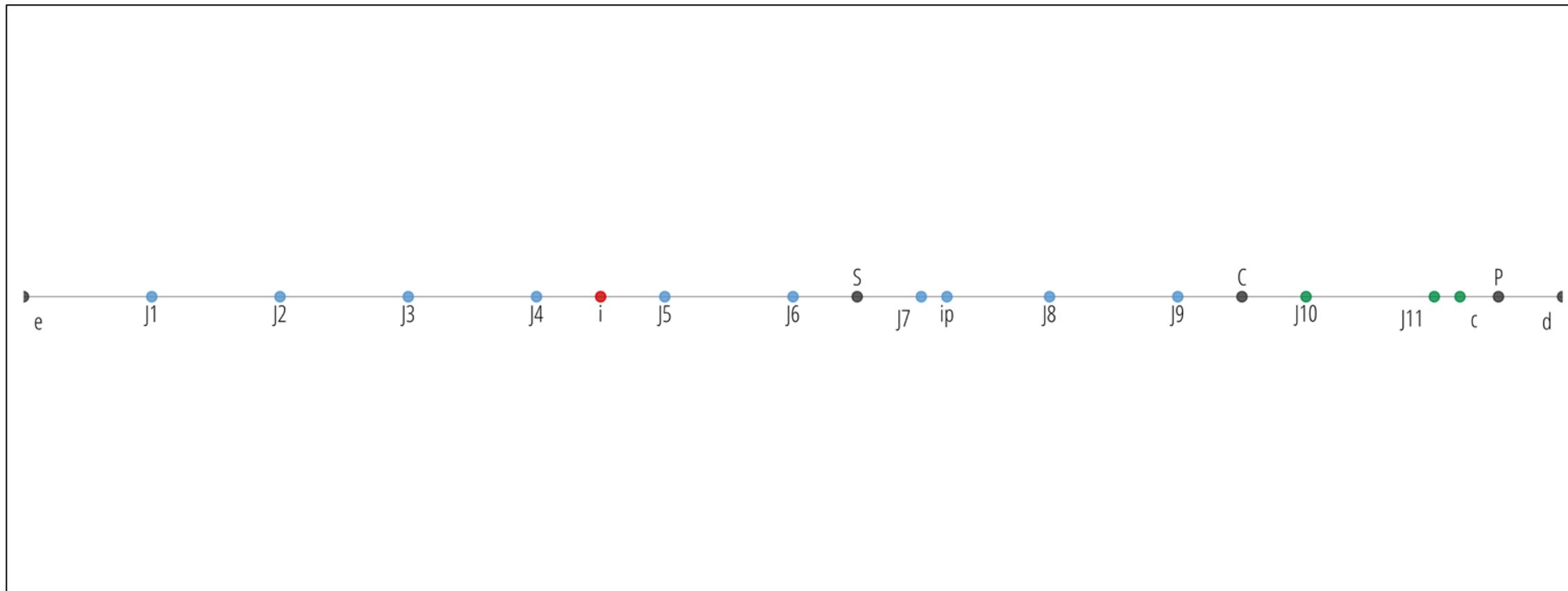
Lei declarada **inconstitucional**.

Modelo estratégico de separação de poderes

# Situação hipotética



# Expectativa teórica (Modelo estratégico de separação de poderes)



0

9

2

Lei declarada parcialmente inconstitucional.

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*University of California, Berkeley*

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## ***Modeling Supreme Court Strategic Decision Making: The Congressional Constraint***

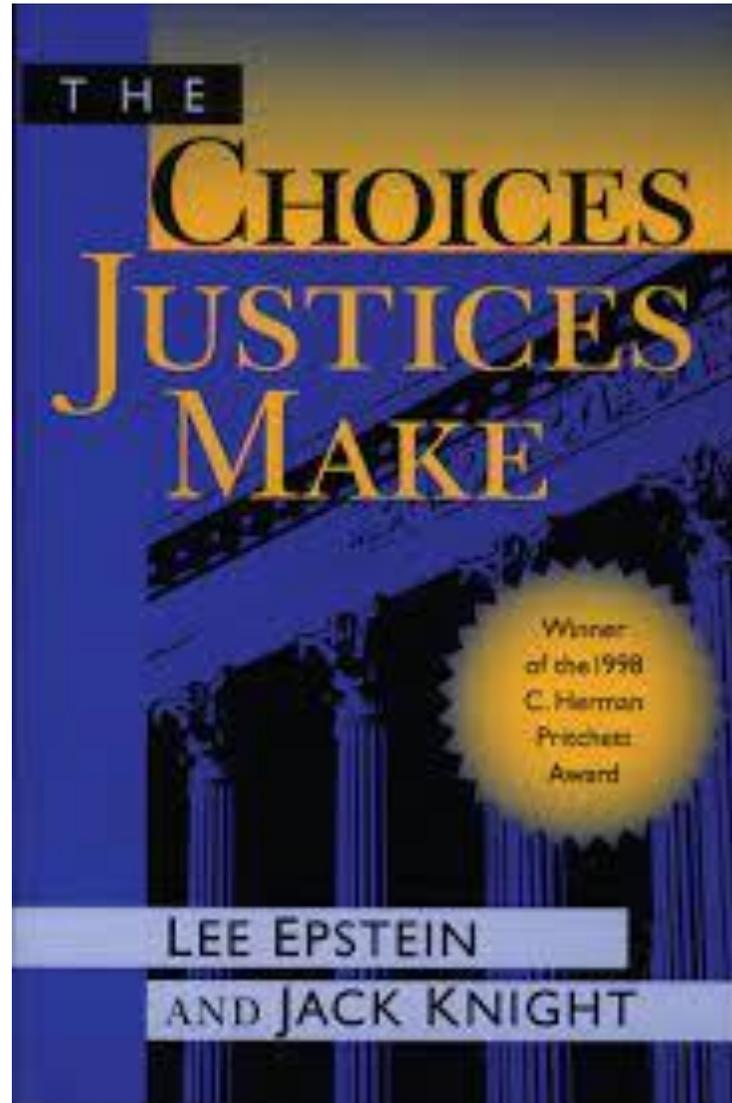
This paper addresses the contradictory results obtained by Segal (1997) and Spiller and Gely (1992) concerning the impact of institutional constraints on the U.S. Supreme Court's decision making. By adapting the Spiller and Gely maximum likelihood model to the Segal dataset, we find support for the hypothesis that the Court adjusts its decisions to presidential and congressional preferences. Data from 1947 to 1992 indicate that the average probability of the Court being constrained has been approximately one-third. Further, we show that the results obtained by Segal are the product of biases introduced by a misspecified econometric model. We also discuss how our estimation highlights the usefulness of Krehbiel's model of legislative decision making.

### **Introduction**

The Supreme Court's power as a policy maker is evident from the effort that politicians devote to the selection of justices. Recently, a debate has emerged over whether or not the Court's contribution to policy making can be understood without a comprehensive understanding of how justices interact with other political institutions and among themselves.

On one side of the debate lies the strategic school, whose modern form first emerged from the nonstrategic approach developed by Marks (1988). This camp has since moved on to develop simple but empirically implementable models of the separation of powers<sup>1</sup> (Epstein and Walker 1995; Gely and Spiller 1990; Spiller and Gely 1992) and later to refine and extend the model to games within the Court (Epstein and Knight 1998; Schwartz 1992).<sup>2</sup> The explicit assumption in all these models is that justices, like all economic actors, are forward-looking

Epstein & Knight 1998



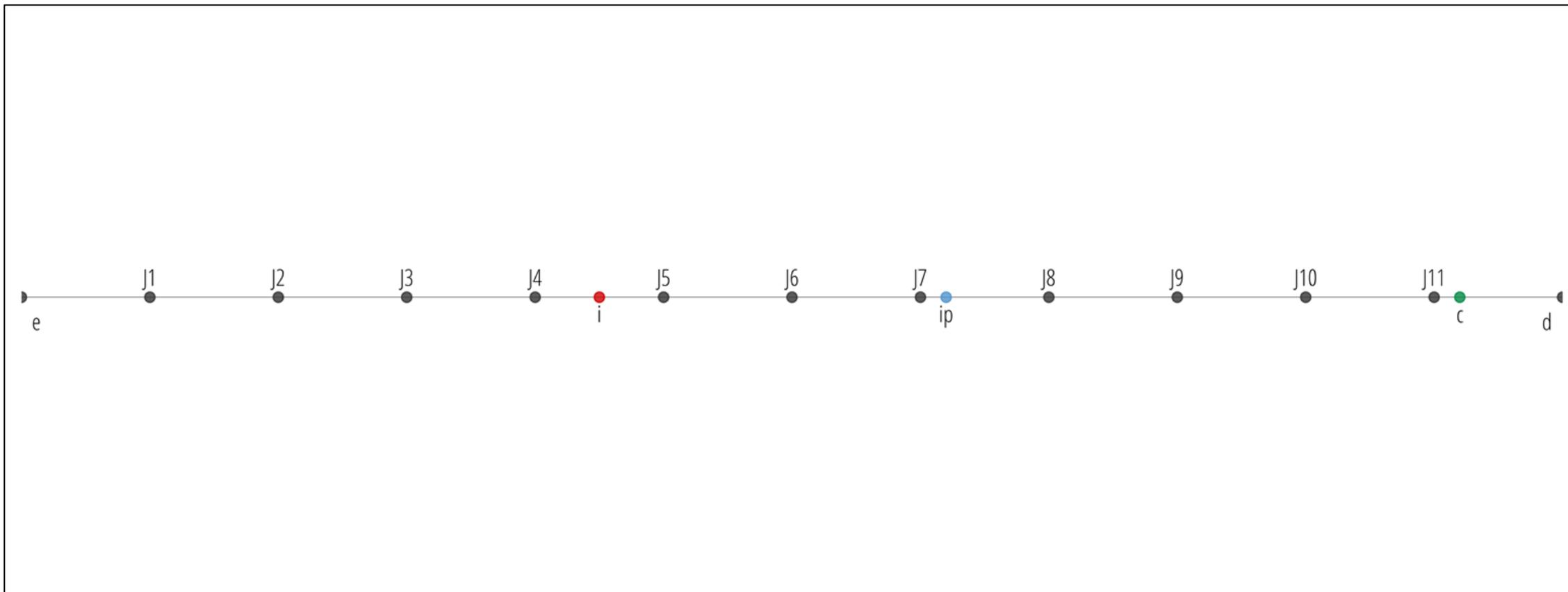
# Teoria

“Em nossa abordagem, que nós chamamos de abordagem estratégica, juízes podem ser primariamente orientados por políticas, mas eles não são personagens sem sofisticação, que fazem escolhas baseadas apenas em suas preferências políticas. Em vez disso, juízes são atores estratégicos que percebem que sua capacidade de atingir seus objetivos depende da consideração das preferências dos outros, das escolhas que eles esperam que os outros façam e do contexto institucional no qual eles atuam.”

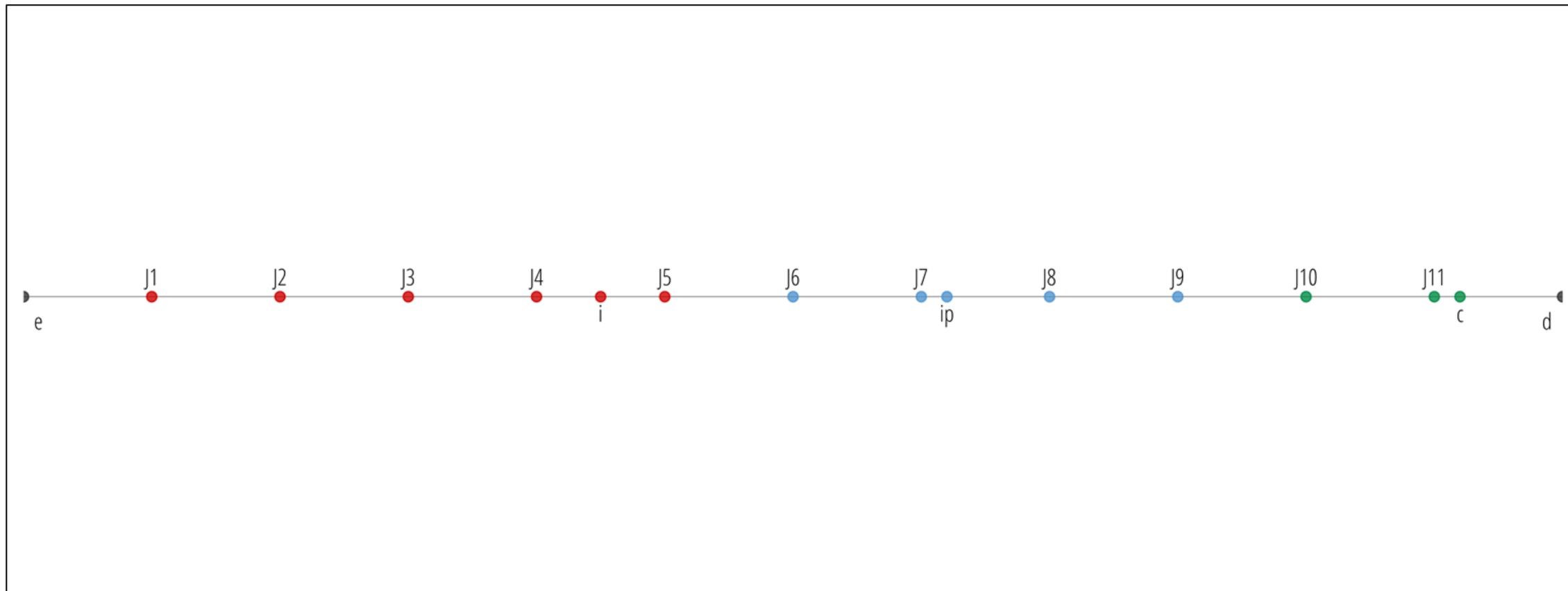
Epstein & Knight. 1998. *The Choices Justices Make*: xii.

Modelo estratégico colegial

# Situação hipotética



# Expectativa teórica (atitudinal)



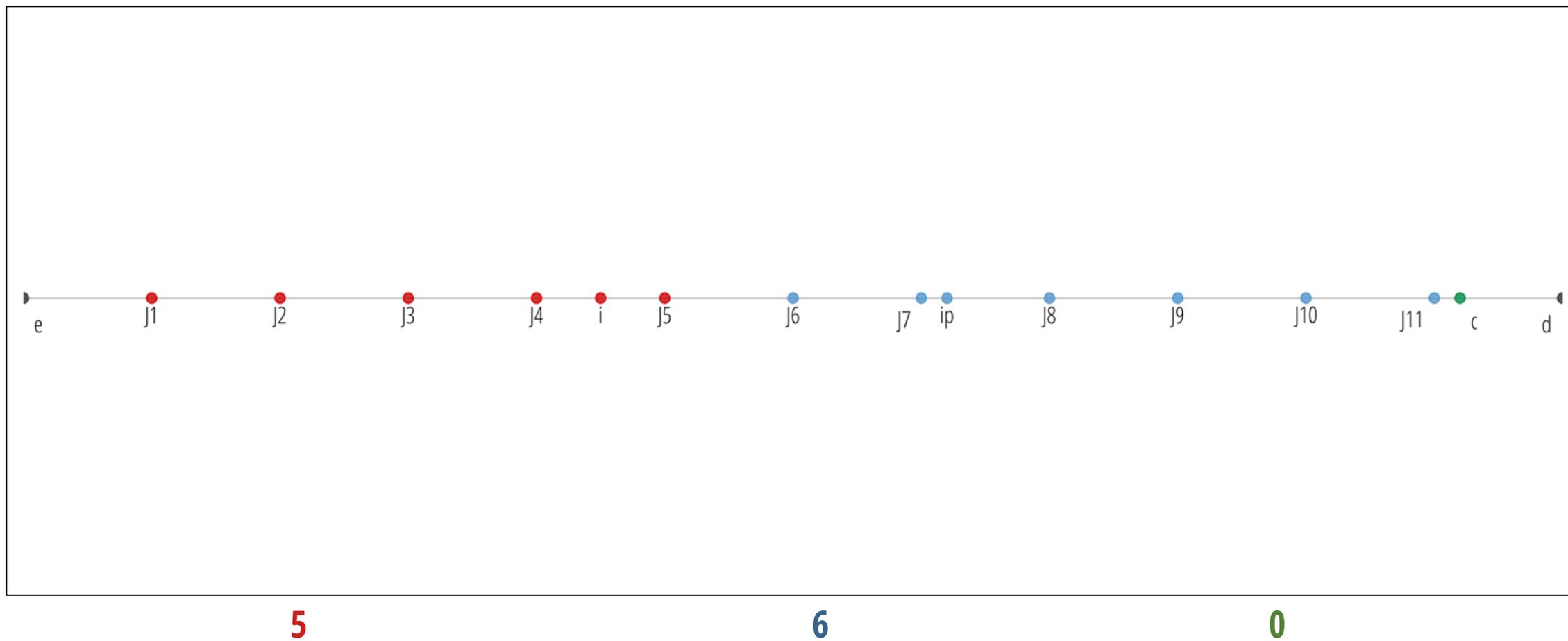
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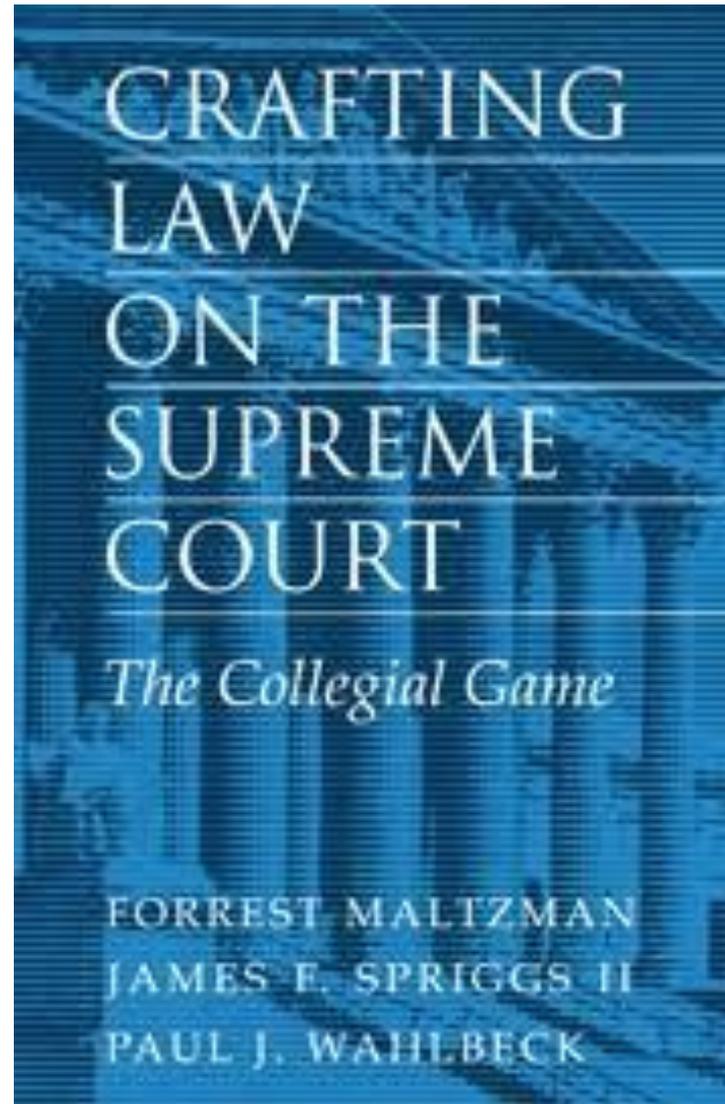
Lei declarada **inconstitucional**.

# Expectativa teórica (colegial)



Lei declarada parcialmente inconstitucional.

Maltzman *et al.* 2000

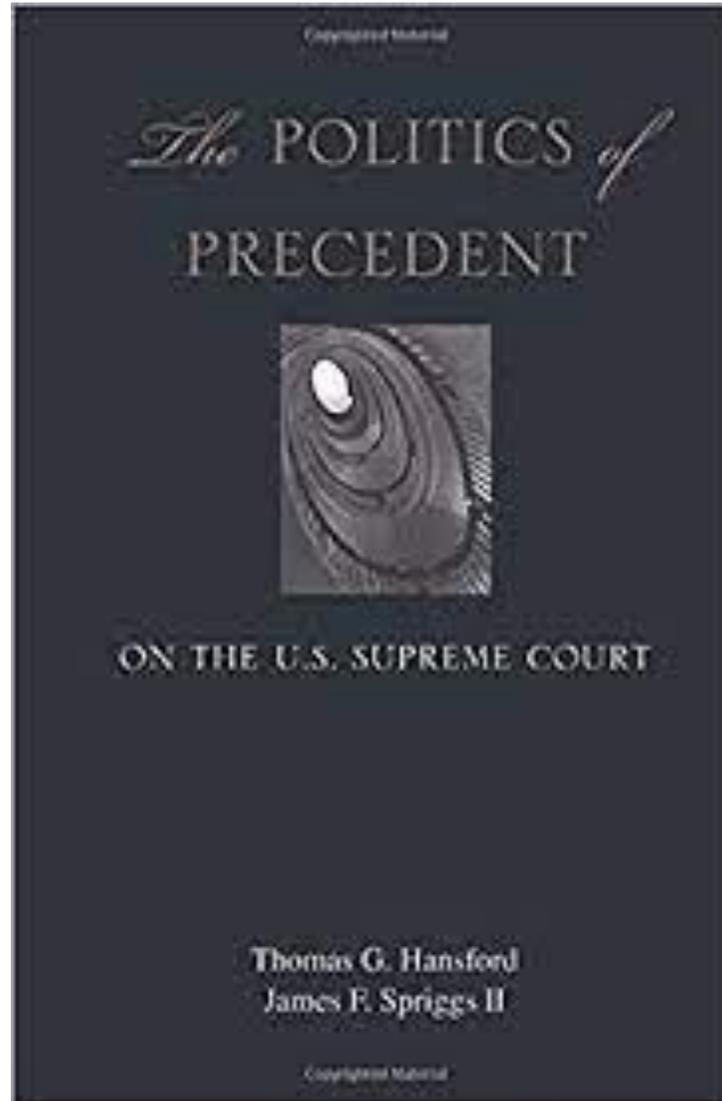


# Teoria

“os juízes precisam levar em consideração as preferências e escolhas de seus colegas ao decidirem casos os mesmos casos. As decisões tomadas por cada juiz são, portanto, propensas a variar conforme as posições e sinais enviados pelos outros juízes. Como discutido anteriormente, a tomada de decisões da Suprema Corte é interdependente porque os custos ou benefícios que cada juiz recebe de uma decisão em particular dependem, em parte, das escolhas feitas pelos demais juízes.”

Maltzman *et al.* 2000. *Crafting Law on the Supreme Court*: xii.

Hansford & Spriggs *et al.* 2006



# Cinco arquétipos dos tribunais constitucionais (e suas antípodas cínicas)

