Bad law before it goes bad: Citation networks and the life cycle of overruled Supreme Court precedent

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Overview

- Legal Change
- Research Questions
- Data & Methods
- Results
- Conclusion
Legal Change

• Stare decisis
  – Promotes stability and efficiency
  – Not absolute

• Overrulings are occasional, effect change
  – Other sorts of legal change – oftentimes preferred
    • Statutory change
    • Regulatory change
    • Normative change
  – Overruling: Obvious, more sudden, more contentious, sort of retroactive, and potentially more damaging to court's persuasive authority.
But, why did you write *this* paper?

- Overrulings are exceptional. Why are these cases the exceptions?
- Previous research focuses on the ruling and the overruling (judicial behavior focus). Little attention to the 'life cycle' of overruled precedent.
- Data availability and methodological curiosity
Depreciation

- Near universal rates of depreciation amongst legal areas (Black & Spriggs II, 2009)
- Uncertain if this is true for overruled cases.
- **RQ1: Do Supreme Court decisions that go on to be overturned have different rates of depreciation than decisions that do not?**
  - Same rate: No significant difference in citation rates
  - More quickly: Perhaps a delay between recognition of a bad law and its overruling
  - More slowly: Increase in relative salience before overruling, perhaps because they're in contended areas of the law
Inward Centrality

• Overruled cases tend to be much more central than the global average (Fowler & Jeon 2008)
  - But this comparison is somewhat unfair
  - Matched comparisons provides more insight

• RQ2: Are Supreme Court decisions that go on to be overturned cited by more or less authoritative law than similar counterparts?
  - Same centrality: Importance not relevant to decision
  - More centrality: Judges overrule in important legal areas
  - Lower centrality:
    • Bad laws are not cited by important precedents; or
    • Judges hesitant to overrule highly central precedents
Outward Centrality

• It is unclear whether there are unique aspects in the citation behavior of what becomes bad law

• To provide a comparison must match based on out degree

• RQ3: Do Supreme Court decisions that go on to be overturned rely on more or less authoritative law than their counterparts?
  – Same centrality: Strength of precedent cited not related
  – More centrality: Perhaps authors of contentious decisions feel the need to buttress them by citing widely and strongly
  – Lower centrality: Relative weakness in justification may make a decision more susceptible to being overruled
Data

- Fowler et al
  - SCOTUS citation network
  - Various computed network measures
- List of overruled precedent from GPO. Limited to opinions that survive at least 10 years.
  - 217 opinions
Method

For each overruled case:
  Determine when overruled
  Match to case with lowest abs dif in in-citations received while alive
  Match to case with lowest abs dif in out-citations

For each case:
  Calculate citations received for each year before overruling (or overruling of match)
    Rescale these from years to 0-10 normalized lifespans
  Determine authority score for each year prior to overruling
  Determine hub score for each year prior to overruling
## Descriptives

<table>
<thead>
<tr>
<th></th>
<th>Overruled cases n=217</th>
<th>Authority &amp; Depreciation matches</th>
<th>Hub / Out degree matches</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean time to overruling</td>
<td>32.46 years</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Mean in degree</td>
<td>17.25 (18.90)</td>
<td>16.59 (20.17)</td>
<td>10.77 (15.96)</td>
</tr>
<tr>
<td>Mean out degree</td>
<td>10.05 (11.17)</td>
<td>9.45 (9.29)</td>
<td>9.74 (10.02)</td>
</tr>
</tbody>
</table>
Rescaled Depreciation

![Graph showing the proportion of in citations over age for 'Overruled' and 'Matched' categories. The graph displays a decreasing trend with error bars for both categories.](image-url)
Centrality Scores

Authority Scores: Each node's Authority score is equal to the sum of the Hub Scores of each node that points to it. That is, a node is given a high authority score by being cited by opinions that are recognized as Hubs.

Hub Scores: Each node's Hub Score is equal to the sum of the Authority Scores of each node that it points to. That is, an opinion is given a high hub score by cited to opinions that are considered to be authorities.
Authority Scores

![Chart showing authority scores over age]

- Overruled
- Significant
- Matched

Age

Percentile
Conclusions

● Depreciation: Originally less popular, but cited more often as overruling approaches
  - Contention amongst factions leads to death throes

● Centrality: Higher authority/hub scores suggest important and influential areas of law are more often overruled
  - Causal direction not clear. Do bad laws become central because they're contentious or are they overruled because they're central?
  - Perhaps there's no need to overrule unimportant precedent
Take away

Cases that are overruled tend to be firmly situated within a strong body of precedent, exert above average influence on the legal system, and remain relevant and contentious later in their lives than other precedents.