

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

**Prepared for NAIL @ ICAIL 2013  
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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

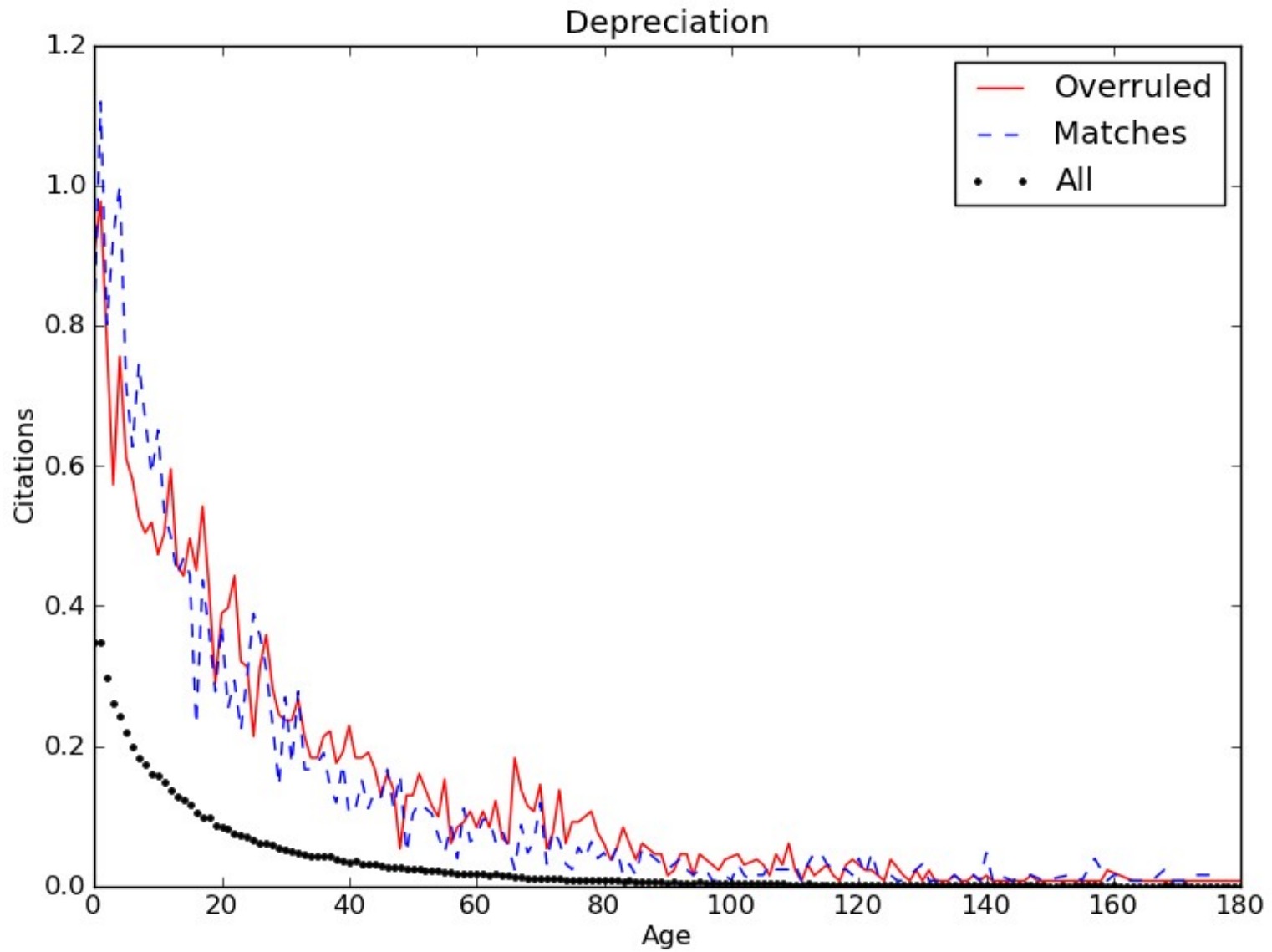
  - Determine authority score for each year prior to overruling

  - Determine hub score for each year prior to overruling

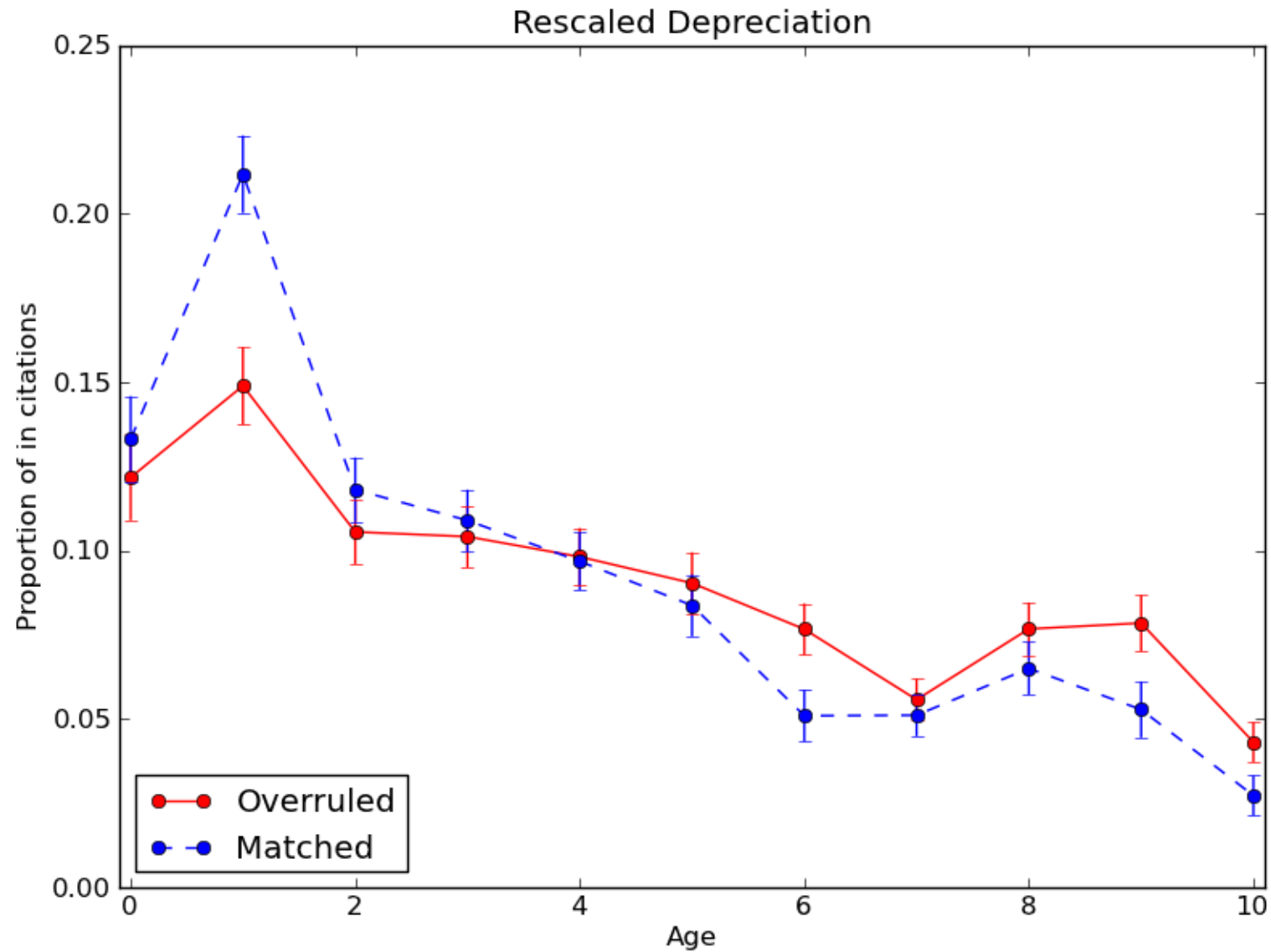
# Descriptives

|                            | Overruled cases<br>n=217 | Authority &<br>Depreciation<br>matches | Hub / Out degree<br>matches |
|----------------------------|--------------------------|--|-----------------------------|
| Mean time to<br>overruling | 32.46 years              | n.a.                                   | n.a.                        |
| Mean in degree             | 17.25 (18.90)            | 16.59 (20.17)                          | 10.77 (15.96)               |
| Mean out degree            | 10.05 (11.17)            | 9.45 (9.29)                            | 9.74 (10.02)                |

# Depreciation



# Rescaled Depreciation

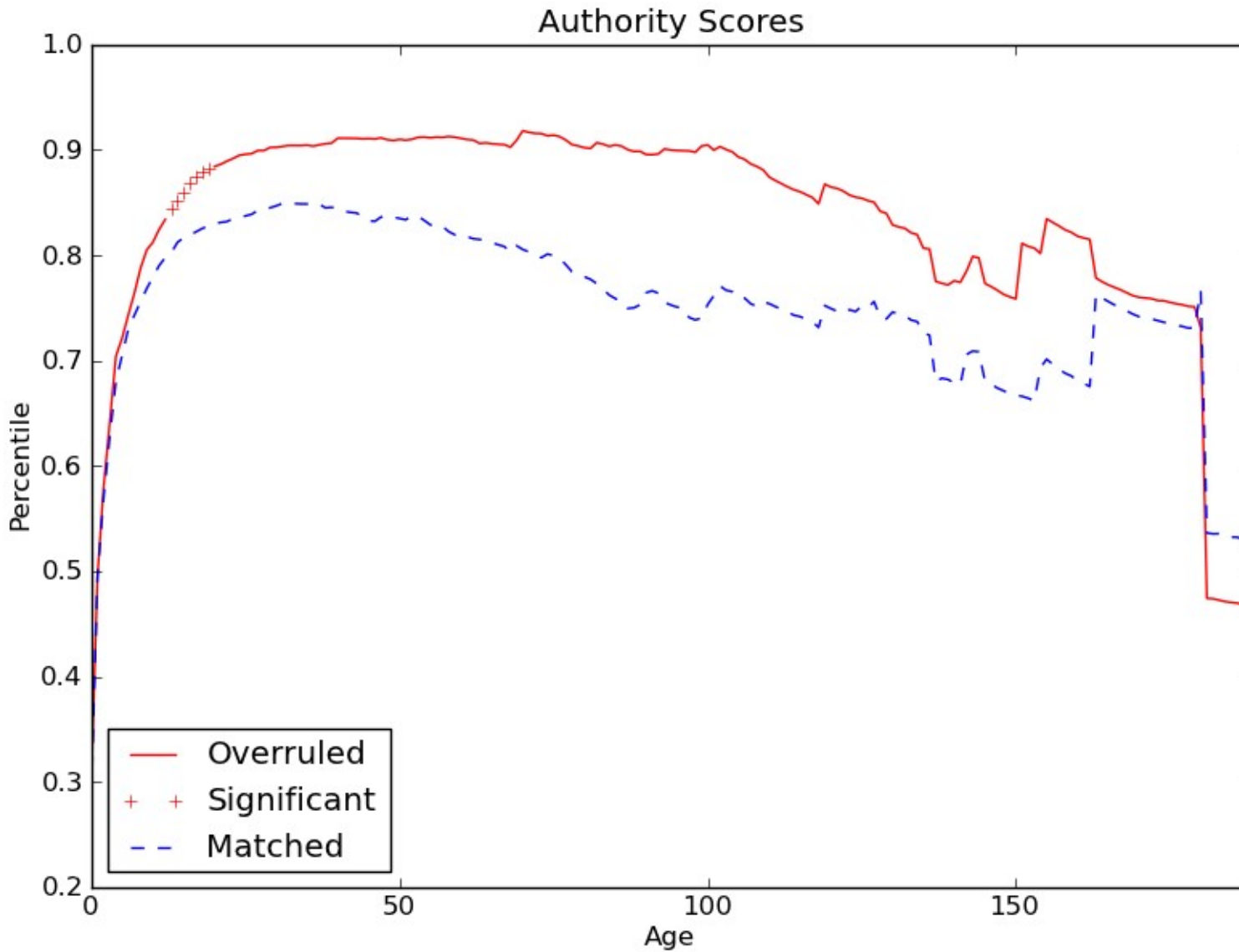


# Centrality Scores

**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



# Hub Scores



# 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.