Research Note

Jurisprudential Regimes and Supreme Court Decisionmaking: The *Lemon* Regime and Establishment Clause Cases

Herbert M. Kritzer Mark J. Richards

In this research note, we apply the construct of jurisprudential regimes as described in our recent article in *American Political Science Review* to the area of Establishment Clause jurisprudence. We hypothesize that *Lemon v. Kurtzman* represented a jurisprudential regime in the Supreme Court's decisionmaking in this area of law. Our analysis shows that the predictors of the Court's decisions in the two periods differed in ways that are very consistent with the types of changes one would expect the hypothesized regime shift to produce.

Introduction

In a recent article (Richards & Kritzer 2002), we proposed a new way of conceptualizing the role of law for use in modeling Supreme Court decisionmaking. We suggested that it is incorrect to think of law at the Supreme Court level as operating through the traditional mechanisms of plain meaning, precedent, or intent of the drafters. Given the Court's discretionary docket, the cases decided by the Court are precisely those that cannot be decided through the relatively mechanistic processes that Segal and Spaeth (1993, 2002) label the "legal model." We posit that the influence of law is to be found in what we label "jurisprudential regimes,"

Address correspondence to Herbert Kritzer, Department of Political Science, University of Wisconsin, 1050 Observatory Drive, Madison, WI 53706; e-mail: kritzer@polisci.wisc.edu. Funding for data collection was provided by the University of Wisconsin Graduate School, the University of Wisconsin Department of Political Science, and the University of Wisconsin Law School. Research assistance was provided by Eric Kasper. We would like to thank Joseph Ignagni for making available the data he collected on Establishment Clause and Free Exercise Clause cases. The results reported in this article were presented at the workshop on Sociological Approaches to Constitutional Law, Socio-Legal Construction of Constitutional Systems, International Institute for the Sociology of Law, Oñati, Spain, May 23–24, 2002.

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which we define as "a key precedent, or a set of related precedents, that structures the way in which the Supreme Court justices evaluate key elements of cases in arriving at decisions in a particular legal area" (Richards & Kritzer 2002:308). The manifestation of jurisprudential regimes appears in the way that specific variables influence the justices' decisions. We propose that the way to test for the presence of regimes is to look for changes in how variables influence justices in a particular jurisprudential area.

In our earlier article, we tested this theory by examining Supreme Court decisions in the area of free expression. We hypothesized that the 1972 companion cases *Chicago Police Department v. Mosley* (408 U.S. 92) and *Grayned v. Rockford* (408 U.S. 104) demarcated a regime change that is reflected in a central distinction between regulation that is content-neutral and regulation that is content-based. Our statistical analysis provided strong support for our theory as applied in this area of Supreme Court jurisprudence. A central question we left for future research is whether the pattern we found for free expression cases can be found for other jurisprudential areas. In this research note, we extend our analysis to the Supreme Court's decisionmaking concerning the Establishment Clause.

Establishment Clause Jurisprudence

Modern Establishment Clause jurisprudence dates from *Everson v. Board of Education* (330 U.S. 1, 1947) when the Supreme Court, in a case involving reimbursing parents of schoolchildren for the costs of transportation to school even if the school involved was a parochial school, extended, by incorporation through the Fourteenth Amendment, the Establishment Clause strictures on Congress to the states. In *Everson*, Justice Black, even while upholding the aid involved in the case using a "child benefit" argument, enunciated what became known as the "no aid" test reflecting a "wall of separation between Church and State" (Levy 1994:152–54). Over the next fifteen years, the Court decided two Establishment Clause cases dealing with voluntary religious instruction during school hours, first striking down programs held in public school buildings (*McCollum v. Board of Education*, 333 U.S. 203, 1948) and then upholding off-premises programs using so-called released time arrangements (*Zorach v. Clauson*, 343 U.S. 306, 1952). In a set of three cases (*McGowan v. Maryland*, 366 U.S. 420, 1961; *Two Guys v. McGinley*, 366 U.S. 582, 1961; and *Gallagher v. Crown Kosher Supermarket*, 366 U.S. 617, 1961), the Court dealt with state laws forbidding various kinds of commercial activities on

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Sunday (so-called blue laws), with the Court rejecting the challenges to these laws in all the three cases.

The school prayer cases in 1962 (*Engel v. Vitale*, 370 U.S. 421) and 1963 (*School District of Abington Township v. Schempp*, 374 U.S. 203) raised issues not easily dealt with using the "no aid" test, and the Court turned to a two-pronged secular purpose and primary effect test. Eight years after laying out the two-pronged test, the Court added a third prong, first raising the entanglement issue in *Walz v. Tax Commission* (397 U.S. 664, 1970), a case challenging tax exemptions granted to church property, and then a year later, in *Lemon v. Kurtzman* (403 U.S. 602, 1971), spelling out what has become known as the "*Lemon* test."

The *Lemon* test directs the decision maker to find that the statute or practice does not violate the Establishment Clause only if:

1. The statute (or practice) has a secular purpose.
2. Its principal or primary effect neither advances nor inhibits religion.
3. It does not foster an excessive government entanglement with religion.

While the *Lemon* test has been much criticized, both by justices (see Burger and Rehnquist in *Wallace v. Jaffree*, 472 U.S. 38, 89, 110, 1985;[1] O'Connor and Scalia in *Kiryas Joel v. Grumet*, 512 U.S. 687, 721, 750–01, 1985;[2] Scalia in *Lamb's Chapel v. Center Moriches*

[1] Burger: "The Court's extended treatment of the "test" of *Lemon v. Kurtzman,* suggests a naïve preoccupation with an easy, bright-line approach for addressing constitutional issues. We have repeatedly cautioned that *Lemon* did not establish a rigid caliper capable of resolving every Establishment Clause issue, but that it sought only to provide 'signposts.' 'In each [Establishment Clause] case, the inquiry calls for line-drawing; no fixed, per se rule can be framed'" [cites omitted].

Rehnquist: "These difficulties arise because the *Lemon* test has no more grounding in the history of the First Amendment than does the wall theory upon which it rests. The three-part test represents a determined effort to craft a workable rule from a historically faulty doctrine; but the rule can only be as sound as the doctrine it attempts to service. The three-part test has simply not provided adequate standards for deciding Establishment Clause cases, as this Court has slowly come to realize. Even worse, the *Lemon* test has caused this Court to fracture into unworkable plurality opinions, depending upon how each of the three factors applies to a certain state action. The results from our school services cases show the difficulty we have encountered in making the *Lemon* test yield principled results."

[2] O'Connor: "As the Court's opinion today shows, the slide away from *Lemon*'s unitary approach is well under way. A return to *Lemon*, even if possible, would likely be futile, regardless of where one stands on the substantive Establishment Clause questions. I think a less unitary approach provides a better structure for analysis. If each test covers a narrower and more homogeneous area, the tests may be more precise and therefore easier to apply. There may be more opportunity to pay attention to the specific nuances of each area. There might also be, I hope, more consensus on each of the narrow tests than there has been on a broad test. And abandoning the *Lemon* framework need not mean abandoning some of the insights that the test reflected, nor the insights of the cases that applied it."

Scalia: "I have previously documented the Court's convenient relationship with *Lemon*, which it cites only when useful, and I no longer take any comfort in the Court's failure to rely on it in any particular case, as I once mistakenly did. But the Court's snub of

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School District, 508 U.S. 384, 398, 1993;[3] or Kennedy in *Allegheny v. ACLU*, 492 U.S. 573, 655–56, 1989[4]) and by commentators (see, for example, Levy 1994:158; McConnell 1992:119–20; Paulson 1993), it continues to be the core set of principles guiding decisionmaking in this area. The prominent First Amendment scholar Jesse Choper describes the *Lemon* test as "the governing approach to judging Establishment Clause issues" (Choper 1995:165).

The *Lemon* test has continued to be influential even as a majority of the Court has shifted to an accommodationist stance in recent decisions.[5] In *Zelman v. Simmons-Harris* (122 S.Ct. 2460, 2002), Chief Justice Rehnquist, writing the opinion of the Court, utilized at least the first two prongs of *Lemon*:

> The Establishment Clause of the First Amendment, applied to the States through the Fourteenth Amendment, prevents a State from enacting laws that have the "purpose" or "effect" of advancing or inhibiting religion. *Agostini v. Felton*, 521 U.S. 203, 222–223 (1997).

In her concurring opinion in the *Zelman* case, Justice O'Connor explained that in *Agostini v. Felton* (521 U.S. 203, 204, 1997), the

Lemon today (it receives only two "see also" citations, in the course of the opinion's description of *Grendel's Den*) is particularly noteworthy because all three courts below (who are not free to ignore Supreme Court precedent at will) relied on it, and the parties (also bound by our case law) dedicated over 80 pages of briefing to the application and continued vitality of the *Lemon* test. In addition to the other sound reasons for abandoning *Lemon*, it seems quite inefficient for this Court, which in reaching its decisions relies heavily on the briefing of the parties and, to a lesser extent, the opinions of lower courts, to mislead lower courts and parties about the relevance of the *Lemon* test. Compare ante (ignoring *Lemon* despite lower courts' reliance) with *Lamb's Chapel*, supra (applying *Lemon* despite failure of lower court to mention it)" [citations omitted].

[3] "As to the Court's invocation of the *Lemon* test: like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District. Its most recent burial, only last Term, was, to be sure, not fully six feet under: Our decision in *Lee v. Weisman* [505 U.S. 577, 1992] conspicuously avoided using the supposed 'test,' but also declined the invitation to repudiate it. Over the years, however, no fewer than five of the currently sitting Justices have, in their own opinions, personally driven pencils through the creature's heart (the author of today's opinion repeatedly), and a sixth has joined an opinion doing so."

[4] "In keeping with the usual fashion of recent years, the majority applies the *Lemon* test to judge the constitutionality of the holiday displays here in question. I am content for present purposes to remain within the *Lemon* framework, but do not wish to be seen as advocating, let alone adopting, that test as our primary guide in this difficult area. Persuasive criticism of *Lemon* has emerged. Substantial revision of our Establishment Clause doctrine may be in order; but it is unnecessary to undertake that task today, for even the *Lemon* test, when applied with proper sensitivity to our traditions and our case law, supports the conclusion that both the creche and the menorah are permissible displays in the context of the holiday season" [citations omitted].

[5] In spite of the other tests that have been developed for subcategories of Establishment Clause cases (see Levy 1994; Choper 1995), the *Lemon* test continues to lie at the core of the Supreme Court's opinions in Establishment Clause cases.

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Court incorporated the entanglement prong into the "primary effect inquiry" of *Lemon*, and she declared, "Nor does today's decision signal a major departure from this Court's prior Establishment Clause jurisprudence. A central tool in our analysis of cases in this area has been the *Lemon* test" (*Zelman v. Simmons-Harris*, 122 S.Ct. 2460, 2476, 2002). Not surprisingly, the separationist dissenting opinions of Breyer and Souter in *Zelman* utilize *Lemon* as well.

Mitchell v. Helms (530 U.S. 793, 2000) is, among recent cases, perhaps the Court's most serious jurisprudential departure from *Lemon* in terms of its jurisprudential rationale, as Justice O'Connor, concurring, stated, "The plurality announces a rule of unprecedented breadth for the evaluation of Establishment Clause challenges to government school aid programs" (*Mitchell v. Helms* 793, 797, 2000). Justice Souter's dissent is replete with arguments and references about the inconsistency of Justice Thomas's opinion with *Lemon*. However, Thomas, writing the judgment of the Court for four justices (*Mitchell v. Helms* 793, 808, 2000), used *Lemon* as an analytic framework, explaining that *Agostini* revised *Lemon*'s effect test and quoting a key portion of O'Connor's majority opinion in *Agostini v. Felton* (521 U.S. 203, 234, 1997) that relied heavily on *Lemon*:

> We then set out revised criteria for determining the effect of a statute: "To summarize, New York City's Title I program does not run afoul of any of three primary criteria we currently use to evaluate whether government aid has the effect of advancing religion: It does not result in governmental indoctrination; define its recipients by reference to religion; or create an excessive entanglement."

The point we wish to make here is not that the justices always follow *Lemon* or that *Lemon* has dictated outcomes since it was established as precedent. Few, if any, legal or judicial scholars argue that law matters for the Supreme Court in such a deterministic manner. Instead, what we see is that the justices continue to reference *Lemon*'s analytic categories such as entanglement or effect as relevant to their decisionmaking, even if those categories do not determine outcomes and if dissenting or concurring justices question whether the majority or plurality opinion has correctly interpreted *Lemon* and its analytic framework.

Does *Lemon v. Kurtzman* Define a Jurisprudential Regime?

The empirical question we test below is whether the *Lemon* test serves as the core of a jurisprudential regime underlying Supreme

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Court decisions concerning the Establishment Clause.[6] Specifically, we test the hypothesis that the factors predicting Supreme Court decisionmaking in Establishment Clause cases differed before and after *Lemon v. Kurtzman* (1971). Testing this hypothesis involves fitting a model to the justices' votes and comparing results before and after *Lemon v. Kurtzman*.

In doing this, we draw on the analysis (and data) of Joseph Ignagni, who published two articles reporting statistical analyses of Establishment Clause cases, one looking at Court decisions during the Burger Court (Ignagni 1994a), and one looking at the votes of the individual justices extending into the early years of the Rehnquist Court (Ignagni 1994b). One way to view Ignagni's analyses is that they focus specifically on what we hypothesize to be the *Lemon* regime. The variables included in Ignagni's analyses reflect the factors enunciated in *Lemon* along with other variables that he hypothesizes as relevant:

- Whether the law or practice had a secular *purpose*.
- Whether the law was *neutral* toward different religions.
- Whether the law required substantial *surveillance* by government.
- Whether the law dealt with a *general government service* (e.g., fire, police, etc.).
- Whether the law reflected *historical tradition*.
- Whether the law dealt with aid to institutions of *higher education*.
- Whether the case involved *one-time* aid.
- Whether the *federal government* took a separationist or accommodationist (or no) position on the case, either as a party or as amicus.
- Whether the case also involved a *free exercise* issue.[7]

In his analysis of court decisions, Ignagni finds that the Court is more likely to make accommodationist decisions if the case involves a general government service, does not require government surveillance, is neutral toward different religions, reflects historical practice, involves aid to an institution of higher education, and is one-time aid. Whether the law has a secular purpose, the position of the federal government, and the presence of an accompanying

[6] Skeptics may wonder why we focus on *Lemon* as a candidate regime if the first purpose and effect prongs of *Lemon* came from *Engel* and *Schempp*. We do so for two reasons. First, it is not clear that *Engel* and *Schempp* defined a regime because in *Walz*, the Burger court ignored the purpose and effect prongs and instead focused on entanglement (O'Brien 2002:2002). It was not until *Lemon* that the three prongs were unified. Second, the casebook commentary confirms that *Lemon* is case most likely to define a regime for the Establishment Clause.

[7] Ignagni has also published a similar analysis of free exercise cases (Ignagni 1993).

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free exercise claim do not, according to Ignagni's analysis, significantly affect the Court's decision.

In his analysis of individual justices' votes, Ignagni drops the one-time aid variable but adds dummy variables for individual justices as a means of controlling for justices' ideology; he presents separate analyses for the Burger and Rehnquist Courts. For the Burger Court, his results are similar to that at the case level, with certain important exceptions. Specifically, aid to higher education is not significantly more likely to garner support, an accompanying free exercise claim does increase the likelihood of an accommodationist vote, and the position of the federal government is influential, with the justices more inclined to go along with the government. For the first five years of the Rehnquist Court, the results are somewhat different. Secular purpose does matter, while neutrality does not. The influence of the presence of a free exercise claim and the position of the federal government still matter, but in the opposite direction as in the Burger Court; that is, the Rehnquist justices are likely to disfavor the position of the federal government, a particularly perplexing finding given that the entire period involved there is under a Republican administration.

In the analysis reported below, we rely essentially on the same explanatory variables used by Ignagni. We drop some insignificant variables from our model and add to the model a standard measure of judicial attitudes (Segal & Cover 1989). Most important, we report analyses comparing decisions pre- and post-*Lemon*.[8]

Data and Variables

Professor Ignagni graciously shared his data with us. We then expanded his data set, both backward to 1947 (beginning with *Everson v. Board of Education*), and forward through cases decided in the October 1999 Court term (i.e., through summer 2000, ending with *Mitchell v. Helms*, 530 U.S. 793). Our data set consists of 73 cases, involving 88 Establishment Clause issues and 760 votes by individual justices on those issues.[9]

[8] In line with our earlier work on freedom of expression, we exclude from the analysis the votes in *Lemon v. Kurtzman* (1971), the regime-defining case.

[9] Ignagni (1994b:33) reports that his data set consists of 790 votes during the Burger Court and 149 during the Rehnquist Court, more than our data set contains for the entire period 1947–2000 (summer). The difference is in how we handled consolidated cases. If a decision involved a consolidated appeal, Ignagni entered the case multiple times to reflect the different cases. We did not do this; if we had, our data set would have consisted of 1,056 votes from 122 separate issues.

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Our dependent variable is whether a justice cast an accommodationist vote (1) or a separationist vote (0). The independent variables included in our statistical analysis are the following:

- Does the law have a *secular* purpose (1 secular purpose, 0 no secular purpose)?
- Does the law require government monitoring or surveillance (1 surveillance required, 0 surveillance not required)?
- Is the law neutral toward different religions (1 neutral, 0 not neutral)?
- Does the law involve a general government service, including fire protection, police protection, school transportation, school lunches, loaning of textbooks, standardized testing, and ensuring school attendance (1 general government service involved, 0 no general government service involved)?
- Was the aid or practice supported by *historical* practice (1 consistent with historical practice, 0 no historical practice)?
- Was the issue involved aid to an institution of *higher education* (1 aid to higher education, 0 other issue)?

Justices' *attitudes* are measured by what are known as the "Segal-Cover" scores (Segal & Cover 1989; Segal et al. 1995), which score individual justices on a liberal (+1.0) to conservative (−1.0) continuum based upon editorial commentary at the time justices were appointed. We expected liberal justices to be more separationist and conservatives to be more accommodationist; hence we hypothesized a negative sign for this relationship.[10]

In some preliminary analyses, we also included variables for

- Whether the aid was a *one-time* contribution or ongoing (1 one-time, 0 ongoing).
- Whether the case also raised a *free exercise* question (1 accompanying free exercise question, 0 no free exercise question).
- What stand, if any, the *federal government* took on the case, either as a party or as *amicus* (−1 separationist, 0 no position, 1 accommodationist).

We dropped these variables after preliminary analysis showed nothing approaching significant effects.[11]

[10] Segal and Spaeth (1993:229) employ an alternative attitudinal measure that combines the Segal-Cover scores with the justice's party affiliation and the ideological orientation of the appointing president's selection strategy (Tate & Handberg 1991). We also did the analysis using this measure; our core results did not change.

[11] We decided to retain the higher education variable even though it did not achieve statistical significance because none of the pre-*Lemon* cases involved such aid, and consequently it controlled for a difference between before and after cases.

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Given the dichotomous nature of the justices' votes, our method of analysis was logistic regression. To test the core hypothesis of difference between the before and after *Lemon* periods, we employed a Chow test (Hanushek & Jackson 1977:128–29), which involves adding interaction terms to the basic model to allow coefficients to differ for the two periods and then testing to see if the set of interaction terms indicates a statistically significant improvement to the model's fit. And as a measure of control against the possibility that any before-after differences simply reflected personnel changes, we repeated the analysis limiting the data set to votes of the seven justices deciding cases in both the before and after periods.[12]

Results

Table 1 shows the results of our analysis. The table shows the logistic regression coefficients for all cases, for cases decided before *Lemon*, and for cases decided after *Lemon*. The "all cases" panel is included primarily because it serves as the basis for the Chow test discussed above. In addition to the coefficients themselves, the table shows the multiplicative effects odds ("odds impact") of an accommodationist versus a separationist vote (this value is simply the exponentiation of the logistic regression coefficient) and the impact on the probability ("prob. impact") of an accommodationist vote assuming an otherwise 50-50 case (i.e., a case that otherwise has an equal probability of an accommodationist or separationist vote).

The first thing to note in Table 1 is the result of the Chow test in the lower right-hand corner. The test produces a statistically significant chi-square of 35.287 (d.f. = 6, $p \leq 0.001$). Above the Chow test results are indicators of which specific coefficients differ significantly before and after *Lemon*, which we will discuss below.

Let us look first at the results post-*Lemon*. Three of the variables in the model—the absence of a secular purpose, neutrality toward different religions, and the requirement for government monitoring—reflect the three prongs of the *Lemon* test. All three variables have significant effects, and these effects are in the direction suggested by the *Lemon* test. In terms of impact on the odds, the absence of a secular purpose or a requirement for government monitoring roughly halves the odds of an accommodationist vote, while neutrality toward different religions more

[12] Two of the *Lemon* justices (Black and Harlan) left the Court before any post-*Lemon* cases were decided, not counting a case decided the same day as *Lemon*, *Tilton v. Richardson* (403 U.S. 672, 1971).

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Table 1. Assessing the *Lemon* Regime: All Justices

	All Cases				Before *Lemon*				After *Lemon*				
	B	se(B)	Prob. Impact	Odds Impact	B	se(B)	Prob. Impact	Odds Impact	B	se(B)	Prob. Impact	Odds Impact	Before/ After Difference
Law does not have secular purpose	−0.573**	0.209	−0.140	0.564	−0.155	0.999	−0.039	0.856	−0.542*	0.255	−0.132	0.582	
General government service involved	0.002	0.248	0.001	1.002	2.452*	1.252	0.421	11.610	−0.238	0.270	−0.059	0.788*	
Neutral toward different religions	1.064***	0.173	0.243	2.897	0.623	0.619	0.151	1.865	0.922***	0.197	0.215	2.515	
Involves aid to colleges/ universities	0.250	0.311	0.062	1.285					0.382	0.317	0.094	1.465	
Law supported by historical practice	1.353***	0.268	0.295	3.869	4.101***	0.784	0.484	60.395	0.373	0.332	0.092	1.452***	
Law requires government monitoring	−0.635***	0.184	−0.154	0.530	2.431**	0.882	0.419	11.371	−0.801***	0.195	−0.190	0.449***	
Justice's attitude	−0.999***	0.125	−0.231	0.368	−0.440**	0.688	−0.108	0.644	−1.102***	0.137	−0.251	0.332	
Constant	−0.385	0.191			−2.030	1.316			−0.213	0.204			
N	743				123				620				
PRE	0.33				0.64				0.33				
Model chi-square	168.581				70.140				137.131				35.287
df	7				6				7				6
Significance level	<.001				<.001				<.001				<.001

NOTE: Dependent variable coded 1 = Accommodationist; 0 = Separationist; *Lemon v. Kurtzman* (1971) omitted from the analysis.

*$p < 0.05$

**$p < 0.01$

***$p < 0.001$

than doubles it. The only other variable that influences the justices' votes after *Lemon* is the justices' attitude; the odds of an accommodationist vote by the most conservative justice are roughly nine times that of the most liberal justice.

The influences on the justices before *Lemon* are quite different. The only *Lemon* factor that has a significant effect is the government monitoring variable, *and it has the opposite effect* compared to after *Lemon*: required government monitoring *increases* the likelihood of an accommodationist vote. As indicated by the last column in the table, the difference in effect of government monitoring before and after *Lemon* is statistically significant. Neither secular purpose nor neutrality achieves statistical significance before *Lemon*; however, we cannot discern a statistically significant before/after difference in the coefficients for these two variables (i.e., the specific interaction terms for these variables do not achieve statistical significance). Judicial attitudes are also significant influences before *Lemon*, and this influence continues in the expected direction; the coefficient is smaller in magnitude than after *Lemon* (the odds of a accommodationist vote by the most conservative justices are only two-and-a-third times the odds of such a vote by the most liberal justices), although this specific before-after difference does not achieve significance.

As interesting as what is not significant before *Lemon* are the variables that are significant. Both the general government service variable and the historical practice variable are statistically significant, and the coefficients for both of these variables differ significantly from the corresponding coefficients from the after-*Lemon* period. Moreover, both variables have very large impacts on the odds.

The obvious question is whether the differences between before and after *Lemon* reflect anything more than personnel changes. Table 2 replicates Table 1, limiting the data to the seven justices who decided cases both before and after *Lemon*. While there are some differences between Table 1 and Table 2, the overall pattern is generally the same. Some variables do not achieve statistical significance in Table 2, but that at least in part reflects that the sample size is roughly a third of that used in Table 1. Despite these differences, Table 2 does eliminate that alternative explanation of simple personnel change. The overall test of difference (bottom right-hand corner of the table) before and after is significant (and achieves an only slightly diminished chi-square), and the coefficients that differed before and after differ in the same way (assuming one is willing to relax the criterion for judging statistical significance ever so slightly for the general government service variable).

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Table 2. Assessing the *Lemon* Regime: Justices on Court When *Lemon* Decided

	All Cases				Before *Lemon*				After *Lemon*				
	B	se(B)	Prob. Impact	Odds Impact	B	se(B)	Prob. Impact	Odds Impact	B	se(B)	Prob. Impact	Odds Impact	Before/ After Difference
Law does not have secular purpose	−1.823***	0.422	−0.361	0.162	−0.839	1.044	−0.198	0.432	−2.302**	0.693	−0.409	0.100	
General government service involved	−0.232	0.451	−0.058	0.793	2.115	1.400	0.392	8.287	−0.753	0.555	−0.180	0.471(*)	
Neutral toward different religions	0.614	0.349	0.149	1.847	0.211	0.780	0.053	1.235	0.290	0.479	0.072	1.336	
Involves aid to colleges/ universities	1.009	0.610	0.233	2.743					1.254	0.706	0.278	3.503	
Law supported by historical practice	1.446**	0.469	0.309	4.248	3.038***	0.849	0.454	20.872	−0.846	0.888	−0.200	0.429**	
Law requires government monitoring	−1.635***	0.423	−0.337	0.195	1.653	1.556	0.339	5.221	−2.384***	0.551	−0.416	0.092***	
Justice's attitude	−3.044***	0.476	−0.455	0.048	0.973**	1.205	0.226	2.647	−4.142***	0.640	−0.484	0.016	
Constant	2.276	0.543		9.740	−1.614	1.487		0.199	3.736	0.755		41.928	
N	242				72				170				
PRE	0.70				0.57				0.68				
Model chi-square	101.706				35.916				93.697				32.002
df	7				6				7				6
Significance level	<.001				<.001				<.001				<.001

NOTE: Dependent variable coded 1 = Accommodationist; 0 = Separationist; includes only seven justices with significant numbers of cases both before and after *Lemon; Lemon v. Kurtzman* (1971) omitted from the analysis.

(*) $p < 0.06$

* $p < 0.05$

** $p < 0.01$

*** $p < 0.001$

Conclusion

Law does matter when the justices of the Supreme Court decide cases. Understanding how law influences the justices requires a theoretical framework that recognizes the institutional characteristics that set the Supreme Court apart from other courts, both in terms of the position occupied by the justices on the Court and the kinds of cases that the Court decides.

The influence of law is to be found in what we call jurisprudential regimes. Such regimes do not dictate outcomes in a mechanical way. Rather, jurisprudential regimes structure the decisionmaking process by establishing through law the parameters that justices, and other actors, should take into account in deciding cases. In this research note, we have replicated our previous analysis focusing on free expression by demonstrating that the *Lemon* test enunciated in the majority opinion in *Lemon v. Kurtzman* has served to provide a framework for the decisions in Establishment Clause cases decided over the last 30 years.

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