Journal of Law and Courts (2026), 14: 2, 574–584
doi:10.1017/jlc.2026.10022

CAMBRIDGE UNIVERSITY PRESS

RESEARCH NOTE

Judicial Time: A Research Note

Mark Tushnet

Law School, Harvard University, Cambridge, MA, USA
Email: mtushnet@law.harvard.edu

(Received 29 September 2025; Revised 19 March 2026; Accepted 07 April 2026)

Abstract

This Research Note is an effort to lay out some ways of thinking about the relation between political time and judicial time. We have decent general descriptive theories of Supreme Court behavior when a political regime is consolidated and seemingly stable, but descriptive theories about the Court's behavior during "transitional" periods are under-developed. The Research Note's contribution is to identify some lines along which such theories might be developed. The analysis is highly speculative, identifying possibilities and offering anecdotal examples as illustrations. Future research into the matters discussed here will undoubtedly deepen, qualify, and refute some of those speculations.

Keywords: political time; regime theory; transitional periods; doctrinal time; Robert Dahl

Introduction

On May 31, 1935, Franklin D. Roosevelt held a press conference at which he denounced the Supreme Court's decision four days earlier holding the National Industrial Relations Act unconstitutional as "relegat[ing the nation] to the horse-and-buggy definition of interstate commerce" (quoted in Tushnet 2021, 199). Two years later matters seemed quite different to Felix Frankfurter. The Court had upheld state laws limiting hours of work and the National Labor Relations Act. On April 26, 1937, it struck down Angelo Herndon's conviction for violating Georgia's sedition law. The next day Frankfurter wrote his protégé Charles Wyzanski, "I should like to bet you 10 to 1 that for the rest of the term the Court will sustain everything that should be sustained and invalidate … everything that will vindicate the Court as the unflagging guardian of our liberties!" (quoted in Tushnet 2021, 4). The exclamation point indicates that Frankfurter's words "should" and "vindicate" were meant at least a bit ironically.

This Research Note takes these quotations as offering a perspective on how the Supreme Court can respond when one *political* regime is in the process of giving way to another and when that process has been completed (or nearly so). As discussed in the next section, the Research Note is an effort to lay out some ways of thinking about the relation between political time and judicial

© The Author(s), 2026. Published by Cambridge University Press on behalf of the Law and Courts Organized Section of the American Political Science Association.

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

time.[1] Political time identifies two general categories of time periods: periods in which a political regime or political order (as defined below) is consolidated and relatively stable, and periods in which a political regime has become unstable and seems to be in transition to some new, as yet ill-defined, regime (or, possibly, to the reconsolidation of the seemingly decayed one). I believe that we have decent general descriptive theories of Supreme Court behavior when a political regime is consolidated and seemingly stable, but that descriptive theories about the Court's behavior during "transitional" periods are under-developed. The Research Note's contribution is to identify some lines along which such theories might be developed. As what I believe to be the first reasonably systematic inquiry into judicial time and its characteristics, the analysis is highly speculative, identifying possibilities and offering anecdotal examples as illustrations. Future research into the matters discussed here will undoubtedly deepen, qualify, and refute some of those speculations.[2]

Political, Judicial, and Doctrinal Time

Stephen Skowronek and Karen Orren distinguish among calendar time, electoral time, and political time (Skowronek 2020; Orren and Skowronek 2010). The meaning of calendar time is obvious.

(1) *Electoral* time is set by rules stating when elections must occur – for the United States, two, four, or six years. Electoral time matters because members of Congress and the president have their eyes on the next election and, for members of Congress, the one after that. They act today so as to increase the chance that they will win the next election. And, as the political saying goes, voters ask, "What have you done for me lately?" That is, actions taken in electoral time have to pay off within the electoral cycle. Electoral time leads members of Congress to focus on the short term.

This is true even of members who have "safe" seats, ones they can expect to occupy until they decide to vacate the seat (or until they pass away). In theory members with safe seats can take the long view, and, as I will note below, sometimes some of them do. But, even members with safe seats can get things done only if they are members of a majority coalition. This means that they have to adopt policies that benefit those members of their coalition who have marginal seats. And that in turn means that they have to adopt the short-term perspective of those colleagues.

(2) *Political* time: Skowronek argues that presidents are different (Skowronek 1997, Skowronek, 2020). At least some of them want to leave a legacy or do what they can to ensure that the coalition that elected them continues to hold power. These presidents articulate a set of principles – a governing "philosophy" – that guides their actions so as to secure continuing political support and that will offer solutions to new challenges their successors will face. They also innovate institutionally, devising new modes of governance that, again, will help solve today's problems and tomorrow's, whatever they be.[3]

[1]For definitions of those terms, see text accompanying notes 3-5 *infra*. For an earlier version of some of the points developed here, see Tushnet 2021, 5–7.

[2]This Research Note uses ideas associated with scholarship on American political development in analyzing judicial time. Appendix B offers some broad-brush thoughts about the possible uses of the concept of judicial time in scholarship about comparative constitutional law.

[3]My personal view is that the political logic Skowronek lays out isn't one exclusively applicable to presidents; in my view a visionary member of Congress with a safe seat could similarly articulate a set of

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

The lifetime of a governing philosophy and institutional innovations is longer than one or two presidential terms. That lifetime determines *political* time, during which we can identify a governing regime. Regimes have a life cycle – youth, maturity, and old age – but as with human beings the precise length of each part of the cycle varies. Again, for purposes of this Research Note, Skowronek's description (or any other description) of what happens during each phase of the life cycle doesn't matter. What matters here is that Supreme Court nominations can occur at any point in the life cycle. They are, in a word, independent of political time.

(3) *Judicial* time is set by the goings and comings of Supreme Court justices. I put "goings" first because the occurrence of a judicial vacancy sets the clock of judicial time running just as the immanence of an election sets the clock of electoral time running. And the key feature here is that judicial vacancies arise largely at random, that is, uncorrelated with electoral or political time. There is some albeit quite modest evidence that justices occasionally time their departures with an eye to politics – leaving the Court when the presidency is held by a member of the party of which the justice's nominating president was a member.[4] The evidence is not all that strong and, in any event, the facts that the president who nominated a retiring justice was a Democrat and that the president who will nominate her successor is also a Democrat don't mean that the same *regime* is in place: Byron White retired when Bill Clinton was president, but Bill Clinton's Democratic Party wasn't John F. Kennedy's. Strategic retirements aside, a justice's departure is determined by the justice herself (or by the good lord).

Judicial time is longer, so to speak, than political time. The average tenure of Supreme Court justices rose from roughly 19 years in the 1950s to roughly 26 years in the 1990s. The effect is that justices appointed during one regime's lifetime are likely to comprise a majority for several years or even decades after the regime has passed into history.[5]

Though judicial time as such isn't correlated with political time, nominations often occur during the life cycle of a political regime. (I write "often" to anticipate the argument in Section IV about judicial behavior during periods of transition between one regime and another.) Nominations can occur early in the life cycle, when the regime has become consolidated, and when it is decaying.[6]

(4) Finally, there is *doctrinal* time. Mark Richards and Herbert Kritzer define "jurisprudential regimes" as legal formulations that "structure Supreme Court decision making by establishing which case factors are relevant for decision making and/or by setting the level of scrutiny or balancing the justices are to employ in assessing case factors" (Richards and Kritzer 2002, 305). They identify the distinction in free expression law between content-neutral and content-based regulations as an exemplary jurisprudential regime (Richards and Kritzer 2002, 310-11; see also Kritzer and Richards 2003). Jurisprudential regimes provide a general framework—what I think

guiding principles and lead her colleagues to create new modes of governance. (The latter task might be more difficult for a congressional leader than for a president because of the greater political and institutional resources a president can command.) For purposes of this Research Note, though, nothing turns on whether Skowronek's view is too limited.

[4]Pérez-Liñán and Araya (2017) provide a review of the US-focused literature in the course of developing a cross-national theory of strategic retirements.

[5]Chilton, Epps, Rozema, and Sen (2022, 16, 49) show an increase in length of tenure from the 1950s to the present and, using simulations, that dominant majorities are likely to last for roughly 30 years.

[6]For discussion of how justices appointed at each of these points can be expected to behave, see text accompanying notes 17=18 *infra*.

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

of as the language and grammar—for dealing with recurrent issues. And, like language and to some extent grammar, jurisprudential regimes accommodate a wide range of outcomes. Consider a simplified version of how a jurisprudential regime operates across consolidated political regimes, whose guiding principles point to contrasting outcomes within the jurisprudential regime's domain. Those contrasting outcomes can be presented in opinions that use the jurisprudential regime's vocabulary and grammar. Sometimes that occurs by tweaking the definition of one of the terms within the vocabulary, sometimes by fitting an exception into the jurisprudential regime, sometimes by offering a common-sense definition for a term rather than a formal one.[7]

The openness of jurisprudential regimes to contrasting results means that they can persist across political regimes. Put differently, doctrinal time—the lifetime of a jurisprudential regime—is longer than that of a political regime. And, like judicial time, doctrinal time has no strong relation to calendar time. Jurisprudential regimes die off when they become too elaborate: the exceptions seem to overwhelm the rule, the tension between cases using common-sense and formal definitions becomes too apparent, and the like.[8]

Descriptive Theories of Judicial Behavior During Stable Periods

What can we say about the way in which Supreme Court justices' positions or, perhaps a bit differently, the positions taken by Supreme Court majorities are related to the principles guiding a consolidated political regime?[9] Persuasive answers have been provided by Robert Dahl and Lee Epstein and Jack Knight.

Writing in 1957, Dahl argued that "the policy views dominant on the Court are never for long out of line with the policy views dominant among the lawmaking majorities of the United States" (Dahl 1957, 285). The principles of a consolidated regime are those dominant policy views, and the Court's majority applies and articulates those principles. The Court will uphold legislation consistent with the regime's principles even when precedent from pre-consolidation periods seems to weigh heavily against the legislation. The Court will invalidate national legislation inconsistent with regime principles, though the very nature of a consolidated regime means that such legislation will rarely get through the national legislative process.[10] The Court will act as the regime's agent in ensuring that state and local legislation is consistent with the regime's principles, a phenomenon sometimes described as "reining in outliers." Sometimes the Court will take sides on an issue that causes

[7]For studies of these processes, though not presented in these terms, see Cushman 2003, dealing with the doctrine of "businesses affected by a public interest"; Tushnet 2021, 371–72. dealing with the doctrine of direct and indirect effects on commerce among the states.

[8]Sometimes a jurisprudential regime leaves a vestigial trace, as in the doctrine today that state regulations of commerce within the state are impermissible if they directly regulate activity outside the state. See, e.g., Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573 (1986).

[9]Studies of Supreme Court behavior that draw on political scientists' regime-based accounts include Tushnet 2009 and Balkin 2020.

[10]It might do so because of highly contingent circumstances, which might include the idiosyncratic preferences of a well-placed Senator or the momentary concurrence of events that strain the bonds holding together the political coalition supporting the regime.

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

tensions within the governing coalition, giving one side a victory and the other an opportunity to run against the Court (Graber 1993; Bridge 2024).

Dahl's argument was formulated with consolidated regimes—"dominant political coalitions"—in mind, but it might have some bite *before* a regime is consolidated, depending on the vagaries of judicial time. In a political regime's early years the main contours of its principles might have been articulated, for example, in important presidential campaign speeches or public addresses.[11] Many details typically remain to be filled in, with competing possibilities on the table. Regime-friendly justices appointed in the early years can articulate those competing possibilities.[12]

For completeness I note that justices appointed as a regime that is decaying are likely to act as if the regime were still vibrant. In part that's because the presidents who nominate them don't themselves see the regime as in decline and so choose nominees fully committed to the regime's principles. And in part it's so because justices don't think in regime-related terms. When looked at in retrospect it might seem as if the justices were "seizing the day"—taking advantage of their soon-to-disappear controlling position to entrench even more the regime's principles for as long as they can. But, as just suggested, that mistakes their decision-making calculus. From their point of view late-regime justices are simply doing what they understand to be the right thing—that is, developing and implementing the regime's guiding principles.

Epstein and Knight provide a strategic account of judicial behavior (Epstein and Knight 1998). A majority might find that its policy preferences differ from those of the dominant coalition. Again, judicial time matters. The divergence might occur because the majority consists of justices who were appointed before the regime was consolidated and who have no commitment to the new regime's principles. Or it might occur because the Court majority's preferences conform to the detailed versions of the regime's general principles adhered to by a minority in the dominant coalition. According to Epstein and Knight, these Court majorities will calculate just how far they can go before they are reined in by the dominant majority (or the dominant faction within the dominant majority).[13]

As I have presented them, these two answers to the question, How are justices' positions related to regime principles?, look at the regime in place. To caricature: Dahl's justices ask, What does the regime want from me? Epstein and Knight's justices ask, How strong are the constraints the regime places on me? Suppose, though, the justices take a dynamic view of things and frame their actions with reference to what they think is going to happen down the line – a few years from now rather than tomorrow.

Judicial time means that the justices' time horizons are longer than those of elected officials, who pay attention to electoral time and sometimes to political time. As noted

[11]A frequently cited example is Roosevelt (1932).

[12]An example, which has not to my knowledge been filled out in detail in the relevant academic literature, might be the contrast between Frank Murphy's statements about a vigorous liberal judicial activism (a term apparently first used in a 1947 article by Arthur Schlesinger Jr.) and Felix Frankfurter's statements about judicial restraint. See Schlesinger (1947).

[13]For purposes of this Research Note the details about *how* justices are reined in aren't important. They include constitutional amendments and jurisdiction-stripping legislation, of course, but there is some evidence that justices can be reined in by unimplemented *threats* to amend the Constitution, strip jurisdiction, and the like. See Clark (2011).

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

earlier, judicial time doesn't operate according to any calendar at all, only each justice's personal choices and those of the good lord.

One implication is clear. Analyses that focus on consolidated regimes will be most informative when a regime is consolidated or – and this is important – if the transition between one regime and the next is essentially instantaneous. And one part of the argument for regime theory conduces to the assumption that transitions are indeed instantaneous. That component is the concept of the critical election, the election that (in the concept's crispest formulation) shoves one regime out of control and installs another one.[14]

Of course, though, regime replacements don't always occur like that. Skowronek suggests, for example, that it takes time for a new regime to devise and, more importantly, get up and running the new institutions that distinguish it from its predecessor (Skowronek 1997, 51–52). Meanwhile the new regime has to get out from under the constraints the existing institutions place on its program. A Supreme Court whose majority was appointed prior to the regime's accession – which is to say, the Supreme Court in place when the new regime starts implementing its programs – is well-positioned to block or at least slow down the new regime's programs.[15]

Until, of course, the clock of judicial time ticks forward and the president has a chance to appoint justices who he or she expects will support the regime. Here another complexity arises. A nominating president has to juggle many balls when considering a Court nomination. Geography used to be important, for example, but plays almost no role today. Predictions about what a nominee will do once on the Court always play some role, though how large a role varies with political circumstances. These predictions are tricky. To the extent that predictions about the nominee's actions with respect to regime principles matter, they have to rely on information in hand. Sometimes there will be direct evidence. Roosevelt nominated Hugo Black and Stanley Reed because he knew from what they had done between 1933 and 1938–39 that they agreed with the New Deal's vision of the scope of national regulatory power (McMahon 2004). Sometimes, though, the evidence is different. It comes from what Calvin TerBeek calls the nominee's constitutional ideology or, in other terms, the nominee's judicial philosophy (TerBeek unpublished). And that consciousness typically is shaped well before the new regime's accession to power. Again because of the disjuncture between political and judicial time, that means that a person nominated during a transitional period will have a judicial philosophy shaped during a prior consolidated regime. Felix Frankfurter had been thinking and writing about the Supreme Court's place in our system of government for decades before Roosevelt chose him for the court. John Roberts developed his judicial philosophy when the Reagan Revolution was still in place.

To this point I've been writing about new regime replacing ones that have collapsed. And eventually they do. Sometimes, though, a regime collapses and nothing is yet ready to take its place. There is a transitional period, and that period can last quite a while. In my view, for example, the best regime-related account of the

[14]Burnham (1971). I want to be clear that Burnham himself didn't claim that critical elections led to instantaneous regime replacements.

[15]The emerging literature on "democratic front-sliding," defined as the recovery from democratic backsliding, touches on this issue when dealing with what two authors call the "institutional remnants" of the prior regime. Scherz and Pavone (2025); Ginsburg and Huq (2022, 445, discussing President Biden's Commission on Supreme Court Reform).

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

late twentieth century is that the New Deal/Great Society regime collapsed in 1968 and was followed not by a new "Nixon" regime but by a twelve-year transitional period that lasted until Ronald Reagan's election in 1980.

How might we identify the onset and conclusion of transitional periods? The accounts offered by theories of critical elections might suggest some clues. Critical elections exhibit significant shifts in support for competing parties, which typically manifest themselves in significant and enduring increases in the vote margins between the major parties. Perhaps we could identify the onset of an interregnum by observing decreasing margins for the previously dominant party when it wins reelection (during the period of decay) and then narrow victories by the opposition party or a succession of back-and-forth narrow victories by both parties. Another possibility might be to define interregnums with reference to persistent divided government. But inevitably, in my view, some degree of judgment by the observer will be necessary.

How might we think about judicial behavior during extended transitional periods?

IV. Some Thoughts About Describing Judicial Behavior During Transition Periods

> The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear (Gramsci 1971, 275–76).

I believe that the best regime-based description of recent political history is this: The New Deal/Great Society regime lasted from roughly the late 1930s through the late 1960s. It was followed by a transition period that lasted until 1980 and Ronald Reagan's election. The Reagan Revolution regime lasted from the early 1980s through the late 2000s. It has been followed by an interregnum that persists today.

Justices adopt positions under conditions combining constraints and preferences. The latter can be regime-oriented, policy-oriented, or law-oriented. Constraints are stronger when a regime is consolidated because political actors agree on the range within which a justice's preferences can operate. During interregnums, constraints are weaker and preferences come to the fore.

For example, consider John Paul Stevens, appointed after the collapse of the New Deal/Great Society regime but before the accession of the Reagan Revolution, and Sonia Sotomayor, appointed after the collapse of the Reagan Revolution. What could they do? Roughly, and informally, anything they wanted. Stevens wasn't guided by New Deal/Great Society principles but didn't have Reagan Revolution principles at hand, and similarly for Sotomayor. Majorities they assembled could get away with almost anything because divided government during the interregnum is quite likely, though not inevitable. Divided or near-divided government means that the constraints Epstein and Knight focus on are absent.

What might justices appointed during transitional periods want? Here are sketches of some possibilities.

(1) *Restoration.* Consider Democratic nominees during the interregnum after the end of the Reagan Revolution. They might hope that the transition will end with the restoration of the prior regime. They might seek to implement the principles of the New Deal/Great Society regime. I suspect that restorationism is the least likely of the possibilities because justices initially inclined to restorationism might well be chastened by the very fact of regime collapse. That is, the judge inclined to restorationism

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

might ask herself, Did the regime I'm inclined to restore decay and collapse at least in part because of the regime principles I admire? She might answer, No, and persist in her restorationism. If she answers, Yes, restorationism will seem less attractive: she'll want to at least tinker with the prior regime's principles that, as she sees things, weakened the regime she would like to see restored.

Although nothing really turns on whether the following description of restorationist justices is accurate, some examples might help. Chief Justice Roberts's positions on affirmative action and the scope of executive power are restorationist, reflecting regime principles from the Reagan Revolution that Republican administrations had been unable to enact in full force before the regime decayed. The positions taken by Justices Sotomayor and Ketanji Brown Jackson in affirmative action cases also illustrate restorationism, in my view. Justice Sotomayor's dissent in *Parents Involved in Community Schools v. Seattle School Dist. 1* came within inches of saying that affirmative action was constitutionally required, an extension of Great Society principles of inclusion.[16] Perhaps more dramatically, Justice Jackson's dissent in *Students for Fair Admissions v. President & Fellows of Harvard College* is best understood, I believe, as tracking the restorative and distributive justice arguments that motivated the adoption of affirmative action programs during the Great Society, motivations that were held impermissible when the Court during the interregnum between the Great Society regime and the Reagan Revolution held constitutionally impermissible.[17]

(2) *Limping along.* Transitional justices can live off the accumulated capital from the prior regime. They will follow the precedents, limiting or extending them modestly depending on their values, but not innovate doctrinally. They may be attracted to compromise solutions, as in Justice Powell's use of diversity as a rationale for affirmative action, rejecting the "extremes" of distributive or restorative justice (with, as he saw it, no discernible boundaries) and complete race blindness (inattentive to the realities of American society).

Limping along leads to modest decisions and incremental changes in doctrine. To give it a more attractive label we could describe limping along as the common law method at work in constitutional law.

(3) *Anticipating a new regime.* Justices can hope that the interregnum will end with the emergence of a new regime. They might discern in the symptoms – not in their view morbid, of course – the possibility of new guiding principles. Or they can use their opinions to offer principles that they believe ought to be built into those of a new regime.

We might describe them as thinking, "Tomorrow belongs to me" (from the musical Cabaret, music and lyrics by John Kander and Fred Ebb). Decontextualized the song's first verses are a stirring patriotic anthem. Then it takes a turn to nationalism and, restoring the context, to the Naziism that was there from the start. And that's the difficulty with anticipating a new regime. We know that it will be politically dominant because that's what makes it a regime. What we can't know is whether the new regime will be normatively attractive, and indeed the very fact that the justices act during an interregnum means that lots of people want quite different

[16]551 U.S. 701 (2007).

[17]600 U.S. 181 (2023). Obviously dissents aren't examples of the Court doing anything it wants during an interregnum, and polling data suggests that the Court's affirmative action decisions are reasonably in accord with popular sentiment. See, e.g., Pew Research Center (2023). (visited June 2, 2025).

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

regimes to emerge. And yet the justices who anticipate the future have to think that the ones they hope for will be normatively attractive. That, I think, is a prescription during an interregnum for persistent misgivings about the Supreme Court.

Associating an individual justice with one of these categories is again a matter of judgment. Some thoughts about possible strategies for doing so are these. A justice's orientation to precedent might help distinguish between the first and third: Every justice relies on precedent to some degree but a restorationist will refer more frequently and more approvingly to precedents from the prior regime than will a transformational justice. In dissent restorationists will heavily criticize the majority for departing from precedent. Transformational justices may refer to precedents more lightly, offer innovative interpretations of them, and cite concurring and even dissenting opinions more readily as authorities. "Limping along" justices may prefer balancing or multi-pronged tests to hard-edged categorical rules because the former give them more leeway to adapt results to factual patterns whose regime implications are unclear.

I turn now from what individual justices can do during an interregnum to what a Court majority can do. The answer is the same: anything it wants. Recent history is rife with examples: *Dobbs*, *Heller*, and *Bruen* are the triumvirate here.[18] None are consistent with popular opinion and none can be fit into the as-yet-undefined regime principles of a MAGA regime if that's how the interregnum ends.

The only difficulty here, not that it is trivial, is that we can't say anything systematic about what a Court majority during an interregnum might want, because of the randomness of the goings and comings to the Court. As it happens during the transition between the Great Society and the Reagan Revolution the Court's majority was probably a bit more liberal than the public and certainly didn't anticipate the Reagan Revolution's regime principles. Today the Court's majority is quite substantially more conservative than the public. We can't know whether that anticipates a MAGA regime, nor can we know, as I've suggested, how today's decisions might fit into such a regime's guiding principles.[19] And of course we can't know whether today's majority will find itself in conflict with a potential progressive regime.

Conclusion

This Research Note's primary argument is that studies of the Supreme Court could profit by incorporating the idea of judicial time and then integrating that idea with related ideas about political and doctrinal time. Such studies deal with rather small N's – 41 successful Supreme Court nominations since Franklin Roosevelt's first. The N is even smaller when we try to link judicial behavior to nomination during early, mature, and late stages of political regimes, and to nominations during transition periods.[20] A full account of the reasons why each justice acted as she or he did will

[18]Dobbs v. Jackson Women's Health Org., 587 U.S. 215 (2022); District of Columbia v. Heller, 554 U.S. 570 (2008); New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).

[19]A complete speculation: A MAGA regime would take white ethnonationalism as a guiding principle; reconciling that with the Roberts Court's universalism with respect to race might be quite difficult. A MAGA regime with a guiding principle of Christian nationalism might in some contexts run up against existing doctrine requiring that government formally place all religions on an equal footing.

[20]*See* Appendix A, which relies on my seat-of-the-pants judgments about regime stage and the modal behavior of selected major and minor justices and, again, nothing important turns on whether my judgments are correct.

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

undoubtedly draw upon much more than regime theory: individual and idiosyncratic backgrounds, general cultural influences, and more. The Research Note's claim is only that looking at regimes and judicial time will bring some matters to our attention that we might otherwise misunderstand by ignoring the looseness of the connection between political and judicial time.

Supplementary material. The supplementary material for this article can be found at http://doi.org/10.1017/jlc.2026.10022.

References

Balkin, Jack. 2020. *The Cycles of Constitutional Time*. New York: Oxford University Press.

Bridge, Dave. 2024. *Pushback: The Political Fallout of Unpopular Supreme Court Decisions*. Columbia, MO: University of Missouri Press.

Bugaric, Bojan and Mark Tushnet. 2021. *Power to the People: Constitutionalism in the Age of Populism*. New York: Oxford University Press.

Burnham, Walter Dean. 1971. *Critical Elections and the Mainsprings of American Politics*. New York: Norton.

Chilton, Adam, Daniel Epps, Kyle Rozema and Maya Sen. 2022. "Designing Supreme Court Term Limits." *Southern California Law Review* 95 (1): 1–72.

Clark, Tom C. 2011. *The Limits of Judicial Independence*. New York: Cambridge University Press.

Cushman, Barry. 2003. *Rethinking the New Deal Court: The Structure of a Constitutional Revolution*. New York: Oxford University Press.

Dahl, Robert. 1957."Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6 (2): 279–95.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.

Ginsburg, Tom and Aziz Huq. 2022. "The Pragmatics of Democratic 'Front-Sliding.'" *Ethics and International Affairs* 36 (4): 437–53. https://doi.org/10.1017/S0892679422000508.

Graber, Mark. 1993. "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary." *Studies in American Political Development* 9 (1): 35–73. https://doi.org/10.1017/S0898588X00000687.

Gramsci, Antonio. 1971. *Selections from the Prison Notebooks*. Translated by Quintin Hoare and Geoffrey Nowell-Smith. London: Lawrence and Wishart.

Jackson, Vicki C., Mark Tushnet, Rosalind Dixon and Madhav Khosla. 2025. *Comparative Constitutional Law*. 4th ed. New York: Oxford University Press.

Kosař, David and Katarina Šipulová. 2023. "Comparative Court-Packing." *International Journal of Comparative Constitutional Law* 21 (1): 80–126. https://doi.org/10.1093/icon/moad012

Kritzer, Herbert M. and Mark J. Richards. 2003. "Jurisprudential Regimes and Supreme Court Decision-Making: The Lemon Regime and Establishment Clause Cases." *Law and Society Review* 37 (4): 827–40. https://doi.org/10.1046/j.0023-9216.2003.03704005.x

McMahon, Kevin. 2004. *Reconsidering Roosevelt on Race: How the Presidency Paved the Way to Brown*. Chicago: University of Chicago Press.

Orren, Karen and Stephen Skowronek. 2010. *The Search for American Political Development*. New York: Cambridge University Press.

Pérez-Liñán, Aníbal and Ignacio Arana Araya. 2017. "Strategic Retirement in Comparative Perspective: Supreme Court Justices in Presidential Regimes." *Journal of Law and Courts* 5 (2): 173–97. https://doi.org/10.1086/692962.

Pew Research Center. June 8, 2023. "More Americans Disapprove Than Approve of Colleges Considering Race, Ethnicity in Admissions Decisions," available at https://www.pewresearch.org/politics/2023/06/08/more-americans-disapprove-than-approve-of-colleges-considering-race-ethnicity-in-admissions-decisions/ (visited June 2, 2025).

Richards, Mark J. and Herbert M. Kritzer. 2002. "Jurisprudential Regimes in Supreme Court Decision Making." *American Political Science Review* 96 (2): 305–20. https://doi.org/10.1017/S0003055402000187

Roosevelt, Franklin D. September 23, 1932. "Campaign Address on Progressive Government at the Commonwealth Club," available at https://www.presidency.ucsb.edu/documents/campaign-address-progressive-government-the-commonwealth-club-san-francisco-california (visited May 27, 2025).

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press

Sadurski, Wocjiech. 2019. *Poland's Constitutional Breakdown*. New york: Oxford University Press.
Scherz, Antoinette and Tommaso Pavone. 2025. "Democratic Front-Sliding in the European Union: Political, Legal, and Normative Paths Forward," abstract available at https://ecpr.eu/Events/Event/PaperDetails/75210 (visited June 11, 2025).
Schlesinger Jr., Arthur M. 1947. "The Supreme Court, 1947." *Fortune* 35 (1): 73.
Schwartz, Alex. Forthcoming. "'Court-Curbing' in the United Kingdom." *American Journal of Comparative Law*.
Skowronek, Stephen. 2020. *Presidential Leadership in Political Time: Reprise and Reappraisal*. 3rd ed. rev. and expanded. Lawrence, KS: University Press of Kansas.
Skowronek, Stephen. 1997. *The Politics Presidents Make: Presidential Leadership from John Adams to Bill Clinton*. Cambridge, MA: Belknap Press of Harvard University Press.
TerBeek, Calvin. "Constitutional Ideologies and Judicial Time: Outlining a New Historical Framework for Modern Supreme Court Politics" (unpublished ms. in author's possession).
Tushnet, Mark. 2021. *The Hughes Court: From Progressivism to Pluralism, 1930 to 1941*. New York: Cambridge University Press.
Tushnet, Mark. 2009. *The New Constitutional Order*. Princeton: Princeton University Press.

Cite this article: Tushnet, Mark. 2026. "Judicial Time: A Research Note." *Journal of Law and Courts* 14, 574–584, doi:10.1017/jlc.2026.10022

https://doi.org/10.1017/jlc.2026.10022 Published online by Cambridge University Press