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When Politics and Law Collide: Ranking American Presidents from the Perspective of Their Policy towards the United States Supreme Court[1]

Most scholars conducting research on the U.S. presidency analyze a particular presidency, ranking the ideology and political role of the chief executive, his rhetoric, interior policy program, foreign policy activity, and impact on the economy, as well as the role of the president as national commander of the armed forces. My main field of research is not the presidency, but the American judiciary. However, careful analysis of the theoretical and practical aspects of the functioning of American courts, and especially the U.S. Supreme Court, reveals the enormous impact of presidents on justice. Presidents nominate judges (and Supreme Court Justices), they may determine the scope of legal briefs presented in cases where the government is the party, and they can influence governmental participation as amicus curiae before the Court, which has become a vital tool of the United States in recent years.

The growing political role of the Supreme Court, its enormous activity in applying judicial review, and its high position within the U.S. governmental structure have not only caused changes to the checks-and-balances system, but, above all, have resulted in the increased political activity of various presidents towards the tribunal. As a result, many chief executives consider their 'judicial policy' as one of the most important elements of their legacy. From this perspective, we may rank presidents who had the greatest (or the least) impact on the membership and operation of the Court (i.e. Washington, F.D.R., Lincoln *versus* Taylor, Harrison, Carter), as well as presidents who were willing to impose

[1] This article was presented during the international conference *Ranking American Presidents* held at Northumbria University, Newcastle, on February 23rd, 2012. Its methodology and substance regarding the nomination process to the Supreme Court of the United States is based on the author's own research, which is described in his book *Sąd Najwyższy Stanów Zjednoczonych Ameryki: od prawa do polityki*. Krakow: Wydawnictwo Uniwersytetu Jagiellońskiego, 2011.

revolutionary changes in American constitutional law and succeeded (F.D.R., J.F.K.) or failed (Reagan). Analysis of the amicus curiae participation of the U.S. Solicitor General before the Supreme Court can also rank presidents as more or less active in their judicial politics.

The aim of this paper is to show certain ranks of presidents with regard to their policy towards the Supreme Court, and also to present the *ideological model* which governed the majority of presidents in their politics towards the judiciary throughout U.S. history, leading to an ongoing clash of law and politics.

Every leader who has real influence on the process of governing in a country wishes to leave a long-lasting legacy, and U.S. presidents are no different in this respect. Such a legacy may concern, on the one hand, a concrete political program or certain reforms which will be introduced during the presidential term and the effects of which (rated more or less positively) will be visible in subsequent years. Two presidents sharing the same surname may serve as a good example in this respect, as their reforms had a huge impact on the direction of American social and economic relations: Theodore Roosevelt during the Progressive Era, and Franklin D. Roosevelt during the Great Depression. On the other hand, a legacy may include activities undertaken by presidents on an international level. This is especially visible in recent decades, with doctrines and agreements shaped by American heads of state having a great impact on multilateral international relations. Most of the 20th--century U.S. presidents, such as Woodrow Wilson, the Cold-War chief executives, or Bill Clinton and George W. Bush, have left a strong legacy in this respect, causing discussions and disputes regarding proper assessment of their foreign policy long after their tenures had ended. A third way for a president to leave a permanent legacy is to influence the process of appointment of high officers, whose tenure would survive the President's tenure and who would have a visible impact on legal and political issues. From the perspective of the American structure of government, such a situation is possible in the case of federal judges and Supreme Court Justices, who are nominated by the President and may hold a life-long tenure. One can easily notice that in American history there have been numerous judges whose adjudication produced important effects on the legal and political system for decades after the end of the tenure of the presidents who chose them. Especially considering the impact of chief executives on the Supreme Court Justices, such a list is very long and significant. To name just a few such 'pairs' of presidents and their appointees who had a vital impact on American constitutional relations, there were John Adams-John Marshall, Andrew Jackson-Roger Taney, Theodore Roosevelt-Oliver Wendell Holmes, Woodrow Wilson-Louis D. Brandeis, Herbert Hoover-Benjamin N. Cardozo, Franklin D. Roosevelt-Felix Frankfurter, and Dwight Eisenhower-Earl Warren.

Before embarking upon a closer analysis of the judicial legacy of U.S. presidents, one should pose a question concerning the real position and role of the Supreme Court in the American governmental and legal system. Despite the formal equality of the three branches of government, there are many scholars who believe that the constitutional checks-and-balances system does not produce practical equality

and balance between the executive, legislative and judiciary. Some point out the supremacy of the U.S. presidency, others turn to the advantages exercised by the Congress, but in my opinion it is the U.S. Supreme Court which is an institution with the ability to become the leading force in various constitutional disputes. In order to understand the substance of specific Supreme Court decisions and the individual approach of particular Justices towards certain political and legal issues, one must fully understand the role of the highest judicial tribunal in the United States, as well as its influence on American society and politics. Despite the mainly legal character of the institution, there is no doubt that many issues decided by the Court, as well as its structure and position in the U.S. governmental system, are highly political.[2] Analyzing the political role of the institution, one must take into consideration the three basic functions that the judiciary plays in the United States:

1. Judges are able to create the law by making individual decisions which may be binding in similar cases in the future. These so-called "precedents" are becoming an important part of the hierarchy of sources of law, when made by the Justices of the Supreme Court. The law-making ability locates the Court at the center of politics, since not only Congress, a typical political body, is responsible for establishing important legal norms and regulations.
2. Federal judges, and especially the Justices of the Supreme Court, are able to interpret the Constitution and give the final word on the meaning of particular clauses and provisions of the supreme law of the land. Therefore, it is not the President, nor Congress, who shapes the final scope of particular social and political aspects of American statehood, but the Court, which is able to point out unconstitutional behavior on the part of the main political actors in the United States. There are, of course, some limitations to the exercise of judicial review,[3] but nevertheless, an active Court may become an active interpreter of the Constitution and an active controller of the direction of U.S. politics.
3. The Justices must adjudicate in various criminal and civil disputes as the ultimate instance in the country, and the Constitution provides for their independence in that respect. However, the process of nominating the federal judges is highly politicized, as the President and Senate play a political game of choosing the best ideologically-fitting candidates. From the perspective of the Supreme Court nominations, every time there is a vacancy in the tribunal, the President is willing to fill it with a person who is not only a distinguished legal practitioner, but above all a faithful follower of conservative or liberal ideology. And despite the fact that the Justices cannot be removed from the bench by the President, and that most of them adjudicate longer than the head of state who chooses them, research has proven that the vast majority of Justices continue to argue cases according to their earlier-established ideology. Therefore, the President, as the main political

[2] For more on the political role of the U.S. Supreme Court see: Dahl; Bickel; Funston; Hodder-Williams; MacKeever.

[3] The most often cited limitations to the exercise of judicial review are: ripeness, mootness, justiciability, political question doctrine and "Ashwander rules." See Nowak, Rotunda.

actor of the state, is able to indirectly influence the decision-making process of the Supreme Court, adding to the legal procedure a little bit of political flavor (Laidler 2010: 63-78).

Thus, the Supreme Court, as a political actor, is an attractive addressee of various opinions and arguments given by those who would like to have a direct or indirect influence on the process of legal and political activity in America. From this perspective it is obvious that among U.S. presidents there have been many who believed that the best legacy of their political ideology could be reached by locating a 'proper appointee' in the highest judicial tribunal in the country.

Formally, according to Article Two of the Constitution, the President, with "advice and consent of Senate," appoints the Justices of the Supreme Court. According to Chief Justice John Marshall, who interpreted the Constitution in *Marbury v. Madison*, there are three stages of the appointment process: nomination – a sole act of the chief executive who often consults with close advisors about his choice, appointment – official presentation of the candidate to the Senate, which must approve of the President's choice, and commissioning – a customary act of delivery of a signed and sealed document (5 U.S. 137, 1803). From this perspective the President is solely responsible for the first stage and his choice is most often, but not always, approved by the majority of Senators. As of 2011 there were 160 nominations of candidates to the U.S. Supreme Court made by the chief executives, and 117 Justices had served in the Court.

As was mentioned above, presidents cannot freely decide on changes in the membership of the Supreme Court. They must wait until there is a vacancy in the tribunal, which may occur because of four reasons: death, retirement, resignation from office or impeachment of a Justice. This leads to the simple conclusion that presidents cannot realize their political vision of a Court packed by Justices of their own choice – they are bound by exterior factors influencing the emergence of judicial vacancies. Analysis of the reasons for Court vacancies shows that most Justices retired or resigned from office (59), a significant number of them died during their service (49), and none lost their job due to impeachment.[4] The numbers indicate that it was more often the decision of a Justice to resign, than objective criterion (health condition, death), as a reason for a vacancy in the Court. It is obvious, however, that when a president served longer in office, he had a better opportunity to fill judicial vacancies. Such a situation is visible in Table 1, which shows that among the top three presidents holding records for the number of Supreme Court appointments, all served 8-year-terms or more. And, furthermore, four presidents who did not appoint any Justices to the Court were one-term presidents, or they held even shorter posts (i.e. William H. Harrison, Zachary Taylor, Andrew Johnson, and Jimmy Carter).

Another possible reason for vacancies is due to acts of Congress. Under the Constitution, the Congress has power to change the number of Justices in the Court. Congressional legislation in the years 1791-1869 reshaped the number of Supreme Court members several times, from five at the beginning to ten in 1866. Finally, three years later, Congress established the fixed number of nine Justices,

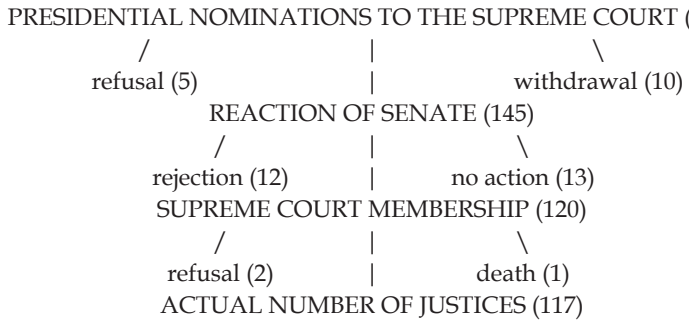
[4] The only Justice tried in the impeachment process was Samuel Chase in 1804. However, he was not impeached. See Simon 168-172.

which has lasted until today.[5] Therefore, there have been some presidents who have used the possibility to nominate Justices thanks to actions undertaken by Congress in which their party had a majority. This primarily concerns presidents serving in the first half of the 19th century, when the constitutional position of the Court was not as significant as it is today. It confirms the perception that it was not presidents' initiative to change the membership of the Court, but rather coincidence or fate thanks to which they could use their constitutional power to appoint specific Justices.

Table 1. Top-ranked presidents with a record number of supreme court appointments

	President	**No. of Justices**
1.	George Washington	11
2.	Franklin D. Roosevelt	9
3.	Andrew Jackson	6
3.	William Howard Taft	6
5.	Abraham Lincoln	5
5.	Dwight D. Eisenhower	5

Furthermore, even if the chief executive had a chance to nominate a candidate to the Court, it was still the role of the Senate to confirm such a nomination. Since the 1930s the confirmation process in the Senate has begun to play a more important role than before, with various interest groups and ideologically-based Senators seeking opportunities to prevent certain nominations from being successful. Chart 1 indicates that out of all presidential nominations to the Supreme Court which have reached Senate for approval (145 candidates), more than 17% have been rejected (25 candidates). On the other hand, Senators have voted consistently with the President regarding the majority of his nominees (120 candidates, 83%):



[5] There were six various Acts of Congress changing the number of Supreme Court Justices, the last of which was *An Act to Amend the Judicial System of the United States, and to Change Certain Judicial Circuits* – 14 Stat. 209, 1866.

While conducting research into the reasons behind the 160 presidential nominations to the Supreme Court, four issues possibly influencing the decision-making process of the forty chief executives were analyzed:

- qualifications to the office,
- relations between the President and candidate,
- earlier adjudication or political affiliation/ideology of the candidate, and
- distinguishing factors of the candidate, such as gender, race, religion, geography, or other.

The purpose of the research was to find out the scope of influence of politics on the process of presidential nominations to the Supreme Court. Therefore, each of the issues mentioned above was marked with 0 or 1, with regard to every single candidate. 0 indicates a larger impact of policy factors, 1 – of legal factors. As a result, while grading qualifications of the candidates, better-qualified nominees were marked with 1, and worse received 0. If there were close relations between the President and candidate, or between the candidate and members of the presidential party, which could be visible in various political functions held earlier by the candidate, he received 0, but if there were no visible traces of an earlier political career of the nominee, he received 1. The next issue, the political ideology of the candidate, was graded as convergent (0) or non-convergent (1) with presidential ideology. And, finally, if there was any distinguishable factor which played an important role in the presidential decision-making process about the 'proper' candidate to the Supreme Court, the nominee received 0, while others received 1.

The sum of four figures has led to recognition of the reasons affecting presidential nominations to the highest judicial tribunal in the United States: the higher the final number was, the more objective, bipartisan choice, based on a candidate's qualifications rather than personal relations with governing politicians, clear ideology determining the choice, or other distinguishing factors having a subjective impact on the decision of the chief executive. The lower the sum was, a larger influence of political and partisan factors may be observed.

0 — 1 — 2 — 3 — 4
political factors — bipartisan factors

Qualifications

The history of presidential nominations to the Supreme Court shows numerous controversies concerning the proper qualifications of candidates, as the Constitution is silent about this aspect of the nomination process (*Judiciary Act*, 1789). In order to analyze the level of qualifications of the nominees, some formal assumptions had to be made: On one hand, there is no doubt that a candidate who has a lot of judicial experience (holding judicial posts in lower state or federal courts) can be ranked as qualified (1). On the other hand, there have been some candidates who had never held any judicial or legal posts before being nominated to the Supreme Court, thus they are ranked as unqualified (0). However, one must acknowledge that some candidates gained legal experience by practicing law, standing before courts or becoming law clerks of other judges and Justices. It would be wrong to name all of them as unqualified, and the analysis had to take into consideration any possible ways in

which presidential candidates to the Supreme Court gained legal experience before their nomination.

Throughout the 222 years of history of the Court, there have been candidates whose experience was confined to a few years of private practice, which they abandoned for more prominent and better-paid political posts on the state and federal level (i.e. Bushrod Washington, Alexander Wolcott, John C. Spencer, Levi Woodbury, and Roscoe Conkling). On the other hand, there have been many candidates holding legal posts in federal or state governments, such as solicitors general or attorneys general) who had to make legal decisions consistent with concrete policies. The largest group consists of well-experienced candidates who had an opportunity to adjudicate in state and federal courts years before their official nomination to the highest judicial tribunal. There have even been some Justices for whom the post in the Supreme Court was treated as a consummation of several dozen years of judicial service in lower courts (i.e. David J. Brewer, Willis van Devanter or David Souter).[6]

The issue of candidates' qualifications has often become an important element of public debate concerning concrete nomination. When President Herbert Hoover had a chance to appoint a new Justice due to the retirement of the famous Oliver Wendell Holmes, many politicians and members of society suggested that the new Justice should be very well qualified. Hoover, a Republican, decided to follow these suggestions and nominated Benjamin N. Cardozo, one of the most respected lawyers of that time, despite the fact that his liberal ideology was closer to the Democratic Party (Tribe 80). Three out of six nominations made to the Supreme Court by President William Howard Taft (Horace H. Lurton, Edward D. White, Joseph R. Lamar) were based on the qualifications of the candidates, instead of their ideology. Furthermore, during his Chief Justiceship, Taft had a great impact on the administrations of William Harding, Calvin Coolidge and Herbert Hoover, encouraging them to nominate well-qualified candidates to the Supreme Court (Scigliano 65-66). On the other hand, there have been highly-qualified candidates nominated by presidents who were not approved by the Senate, and due to political reasons had to resign from their plans of service in the highest judicial tribunal. John Crittenden, nominated in 1828 by John Quincy Adams, can serve as a good example, because he was rejected due to political tensions in Congress (Watson, Stookey 64-66).

The history of presidential nominations to the Court is full of examples of candidates whose qualifications were, diplomatically speaking, not out of the best possible. Bushrod Washington, nephew of the first president of the United States, was nominated by John Adams mainly with regard to his family connections and position within the Federalists. His only legal experience was limited to law school and, most of his career was devoted to political functions, but this did not prevent him from becoming the Associate Justice of the Court in 1798. Thirty-seven years later, President Andrew Jackson nominated Roger Taney for the post of Chief Justice. Jackson's opponents accused him of nominating a close associate who was in practice a politician, not a lawyer (Urofsky). These examples prove that the matter of qualifications could also become a highly political issue.

[6] See: Abraham 2007; Goldinger; Watson, Stookey.

Relations with the president

There is no doubt that most of the chief executives chose candidates whom they knew, or who were recommended by prominent members of their party. History contains many examples of candidates who were chosen because of their friendship with presidents, or because of a political debt of the chief executive. If one also mentions the various political posts held by candidates before their nomination to the Supreme Court, it can be seen that this political-personal pact between the President and his nominee sometimes has a significant impact on the appointment process. Among the many nominees to the Court there have been presidential political advisors (i.e. Taney-Jackson, Black-Roosevelt, Vinson-Truman, Rehnquist-Nixon), and their party colleagues (i.e. Swayne-Lincoln, Hunt-Grant, Butler-Harding, Fortas--Johnson). Nominations when the President did not know the candidate personally or could not cooperate with him on political grounds are rare (i.e. Field-Lincoln, Lamar-Taft, Cardozo-Hoover).

Four nominations to the Supreme Court made by President Harry Truman fall exactly within the category of friendship-political relations between the chief executive and his nominees. Harold Burton and Sherman Minton were close cooperators with the President from the Senate times, Fred Vinson was his political advisor serving also as Secretary of Labor in Truman's administration, and Tom Clark as Truman's Attorney General often advised him on the legal and political level (Heller 29-31). Political cooperation with the President was visible even after their appointment to the Supreme Court, especially in the case confronting the constitutionality of Truman's executive order directing seizure and operation of national steel-mills during the Korean War, the legality of which was confirmed by Fred Vinson. It was Vinson and Minton who wrote two of the three dissenting opinions in the *Youngstown Sheet & Tube Co. v. Sawyer* case in 1952, arguing in favor of Truman (343 U.S. 579, 1952).[7] Other presidents aimed at paying off political debts by awarding certain people the highest judicial post in the country. This is visible in most of the nominations made by Andrew Jackson, who openly admitted that Supreme Court Justiceship was a good way to eliminate political debt or gain political support (Remini 268). Roger Taney was called a "cringing tool of Jacksonian power" (Newmyer 93), and the President's choice of John McLean was explained as a reward for official support given by the nominee to Jackson in the 1828 presidential elections (Carney 121-144). Close relations between the President and his nominee were at stake in many nominations which were not approved later by the Senate: Madison-Wolcott, J. Q. Adams-Crittenden, Tyler-Spencer, Fillmore-Badger, Cleveland-Hornblower and Nixon-Thornberry.

The President who personally knew most of his nominees was Franklin D. Roosevelt, which led to close political cooperation between them after their formal appointment. Close relations with the White House helped Felix Frankfurter, William Douglas, Robert Jackson and Frank Murphy to be appointed, and new Justices did not forget about their personal affiliation with the chief executive (Leuchtenburg). Similar relations were maintained by President Lyndon B. Johnson and Justice Abe Fortas, who cooperated from the beginning of Johnson's political career

[7] See also Rosen 1-2.

(Kalman). Considering recent nominations, the personal factor played an important role in the unsuccessful nomination of Harriet Miers by George W. Bush, and the successful nomination of Elena Kagan by Barack Obama. Kagan and Obama have known each other since the early 1990s when they cooperated at the University of Chicago, and later in federal government when Kagan held the post of Solicitor General in Obama's administration (Milligan).

Political ideology

While commenting on one of the candidates to the Supreme Court, President Theodore Roosevelt admitted that the only thing that really counted was his ideology (Abraham 1980: 78). President Taft assumed that the opinions of the nominees on the most crucial constitutional issues should be convergent with his own (McHargue 508-510). Paradoxically, Taft was one of the few chief executives who chose candidates from both sides of the political scene. But these two statements reveal a vital reason behind presidential nominations to the Supreme Court: candidates' ideology. Of course it is not always simple to determine the clear conservative or liberal ideology of a specific nominee, but most presidents have not had many problems with finding out what their candidates to the Court think about certain important legal, social, economic and political issues. In the words of Dwight Eisenhower, "My thought was that this criterion [being on a lower bench] would ensure that there would then be available to us a record of the decisions for which the prospective candidate had been responsible. These would provide an inkling of his philosophy" (Hodder-Williams 30).

In the history of presidential nominations to the Supreme Court there are some extreme examples of choosing candidates whose ideology was to play a significant role in the future Court's adjudication, or who were an ideological safeguard for the presidents willing to change particular decisions of the highest judicial tribunal. One can mention the nominations of William Strong and Joseph P. Bradley made by President Ulysses S. Grant, aimed at overruling the Court's decision concerning legal tender. Filling in the two vacancies in 1870 led directly to ideological change in the Court which reviewed the constitutional status of legal tender and decided consistently with the President's expectations.[8] The ideological revolution was more significant in the 1930s and 1940s, during the long tenure of Franklin D. Roosevelt, who was in an open conflict with the Supreme Court. The conservative wing of the Court influenced the majority of the economic decisions undertaken by the Justices between 1933 and 1936, declaring most of the activities undertaken by Roosevelt's administration under the New Deal program unconstitutional. Having an opportunity to change nearly the entire membership of the Court, Roosevelt replaced conservative Justices with liberals, thus causing the largest ideological earthquake in the history of the Court. The key to Roosevelt's success was the liberal approach of his nominees to economic issues, which was visible in their consent to greater interventionism of the state in economic and social relations (Leuchtenburg). Roosevelt's

[8] This approach was documented in their opinions in the following cases: *National Labor Relations Board v. Jones & Laughlin Steel Corporation* 301 U.S. 1 (1937), *United States v. Darby* 312 U.S. 100 (1941), and *Wickard v. Filburn* 317 U.S. 111 (1942).

Justices' ideology shaped the new constitutional order in respect of the right to privacy and the broader scope of various freedoms, such as freedom of speech, freedom of religion, and rights of the accused in criminal trials. Roosevelt's appointees, Hugo L. Black and William O. Douglas, became leading liberal activists in the Court influencing the broad understanding of the constitutional right to free speech (Black) and the right to privacy (Douglas).[9]

Similar intention to redefine the ideology of the Court by appointing politically-oriented Justices became the foundation of Ronald Reagan's policy towards the Supreme Court. The President criticized most of the liberal decisions of the tribunal, especially those concerning school prayer, the right to privacy (abortion), rights of the accused and affirmative action. Reagan openly admitted to the vision of a new conservative Court aimed at changing social and political relations by using the best possible tool: his conservative nominees. In his words: "What we need are strong judges who will aggressively use their authority to protect our families, communities and way of life; judges who understand that punishing wrong-doers is our way of protecting the innocent; judges who do not hesitate to put criminals where they belong, behind bars" ("Reagan Aims Fire at Liberal Judges"). During his two tenures he had an opportunity to make four changes in the membership of the Court, and most of his candidates were clearly conservative.[10] Reagan's legacy in the Supreme Court cannot be simply estimated, because most of the goals the President determined for his appointees were not fulfilled. Today, twenty years after the conservative revolution, the legal status of affirmative action, the scope of various rights to privacy, and the clear division of state-church relations proves the failure of Reagan's Supreme Court. The main reason is connected with two of the presidential nominations, Sandra Day O'Connor and Anthony Kennedy. The two most famous swing-voters in the Court's recent history decided many cases consistently with the liberals, thus disappointing Republican politicians. However, the circumstances of their nomination may explain such a status quo: O'Connor was chosen above all as the first female nominee in history, not as a radical conservative, and Kennedy was Reagan's moderate answer for the harsh rejection of his former nominee, ultra-conservative Robert Bork (Schaetzel, Pertschuk). From another perspective, one should notice the significant impact of Reagan's appointees on the Court's adjudication in economic issues (i.e. the commerce clause) and some cases concerning the rights of the accused. The strongest legacy of the conservative revolution so far is, of course, the Court's decision in *Bush v. Gore*, when all of Reagan's appointees ordered the recount of ballots in Florida's counties to be stopped, which led directly to the victory of George W. Bush in the 2000 presidential elections (531 U.S. 98, 2000).

There have also been, however, presidents who did not share the concept of the ideological revolution as their leading factor in Supreme Court nominations. Apart from the above-mentioned nomination of Benjamin N. Cardozo by Herbert Hoover, there are other examples of anti-ideological choices of candidates by the chief executives. On the one hand, republican presidents have nominated

[9] Hugo L. Black wrote a famous dissenting opinion in *Dennis v. United States* 341 U.S. 494 (1951), and William O. Douglas wrote a controversial majority opinion in *Griswold v. Connecticut* 381 U.S. 479 (1965).

[10] For more about Reagan nominations see Schwartz.

liberal Justices (i.e. Lincoln-Field, Harrison-Jackson, Harding-Butler, Eisenhower--Brennan, Nixon-Powell, Jr., Taft-Lurton, Taft-White, Taft-Lamar), and, on the other, democrats have chosen conservative candidates (Truman-Burton), (Goldinger 119). It is obvious that such situations are in the minority compared to the ideological nominations made by most of the presidents. In the words of Polish constitutionalist Leszek Garlicki,

> The general principle is nominating people whose political opinions are known and accepted by the President, people who guarantee support for the political program of the executive, and who will stay in the Court after the shift in governance to steer the adjudication in the proper direction (261).

Distinguishing factors

There are many distinguishing factors that have an impact on the President's choice of a concrete nominee. Generally, for most of the chief executives the main distinguishing and decisive factors have been the qualifications and ideology of a candidate. It is important to acknowledge individual features of nominees which have determined the President's choice, such as their gender, ethnicity, race, religion, or geographical region of activity. In most cases, these issues have been secondary, but there are some examples of candidates who were chosen due to a distinctive factor:

a) gender – the domination of men in the history of the U.S. Supreme Court is indisputable. Until 1981, not only had there ever been a female Justice, but there had never even been an official candidate for the office. This was broken by President Reagan, who nominated Sandra Day O'Connor for the post of Associate Justice, fulfilling his election promise (Reagan 596). The choice of O'Connor was the first step in the conservative revolution planned by the Republican administration, but it is hard to believe that the gender factor was not decisive. The next president who chose a female Justice was Bill Clinton, who nominated Ruth Bader Ginsburg in 1993. Despite the clear liberal ideology of the candidate, the gender factor was also significant in the chief executive's final decision;
b) ethnicity – the two above examples should not lead one to the conclusion that every time a woman is chosen for the Supreme Court it is only due to gender issues. Barack Obama chose Sonia Sotomayor mainly because of her ethnicity, not gender. Before Senate hearings Sotomayor was presented as an experienced candidate of Latin descent. Sotomayor herself often referred to her ethnicity, stating once that she "would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life" (Alcoff 123);
c) race – there is no doubt that racial issues have been at stake twice during the appointment of two African-Americans to the Court. In 1967, President Lyndon B. Johnson nominated Thurgood Marshall, basing his choice not only on his liberal ideology and great experience, but also on the racial factor. Marshall's candidacy fulfilled the tendency of the 1960s and the goals of Kennedy's and Johnson's administrations to equalize the chances of participation

of African-Americans in public institutions. Furthermore, it was Johnson who confirmed the importance of racial factors during his nominations of lower federal judges (*Biographical Directory of Federal Judges*). The nomination of Clarence Thomas can also serve as an example of racial impact on the appointment process to the Supreme Court. Although President George H. W. Bush, who presented the nominee, stated that his skin color and ethnicity were of no significance in his choice (*George H. W. Bush Press Conference*), it is hard to believe that qualifications were the strongest part of Thomas's candidacy. The fact is that Clarence Thomas was chosen for the vacancy after Thurgood Marshall, and the choice made by Bush was consistent with the necessity of maintaining an African-American seat in the Court;

d) religion – another important factor taken into consideration by some of the presidents is a candidate's creed. There are examples of chief executives who appointed concrete candidates in order to satisfy certain religious groups or voters. The decisive majority of Justices have been Protestants, including almost all of the members of the 19th-century Court. There have been, however, exceptions, such as in 1835 when President Jackson nominated Roger Taney, a Catholic, but his denomination was not a key factor in the presidential decision. The next few Catholic Justices, Edward D. White, Joseph McKenna, Pierce Butler and Frank Murphy, undoubtedly were also chosen due to reasons other than their creed. For the first time religion played an important role when William J. Brennan was nominated by Dwight Eisenhower in 1956, because it was just before the presidential campaign aimed at gaining a Catholic electorate of the Democrats (Goldinger 122). Candidates' denominations became even more crucial in the case among Antonin Scalia's and Anthony Kennedy's nomination by Ronald Reagan, since the values shared by them were to provide for successful conservative adjudication in the following years, especially with regards to abortion issues. On the other hand, there was a lot of discussion surrounding the Jewish Supreme Court nominees, such as Louis D. Brandeis and Benjamin N. Cardozo, despite the fact that their denomination did not influence the President's choice very much (Goldinger 122). However, when a "Jewish seat" was created, subsequent chief executives were willing to sustain this tradition until today. The domination of Protestants in the Court has not only been limited recently, but among contemporary members of the tribunal there are only Catholic and Jewish Justices;[11]

e) geography – the last important factor directing the presidential choice of Supreme Court Justices is the willingness to satisfy inhabitants of concrete states/regions of the country, represented by certain nominees. Interestingly, at the very beginning of the Court's history, most presidents aimed at filling Court vacancies with candidates representing the same region as their predecessors. Geography played an important role during the Civil War period, as in 1860 there were five members of the tribunal who came

[11] Supreme Court Catholics: John Roberts, Jr, Samuel Alito, Anthony Kennedy, Antonin Scalia, Sonia Sotomayor and Clarence Thomas. Jewish Justices in the contemporary Court: Stephen G. Breyer, Ruth Bader Ginsburg and Elena Kagan.

from southern states supporting slavery. Furthermore, in 1897 geography was at stake when President William McKinley nominated Joseph McKenna of California solely in order to continue representation of that state in the Court (Goldinger 119-121). In the 20th century there were a few examples of the geographical factor affecting the presidential choice, two of which seem the most crucial. In 1969 and 1970 President Richard Nixon nominated two southerners, Clement Haynsworth and G. Harrold Carswell, to the Court, but both candidates were rejected by the Senate. The reason for Nixon's decisions was his desire to strengthen the political position of the Republican Party in the South, but the Senators opposed this and finally confirmed the next candidate who came from the North (Harry Blackmun of Minnesota) (Whittington 303).

The results of the analysis of 160 nominations are presented in the Appendix.[12] Most of the nominees received 2, which means a moderate result, with both legal and political factors having an impact on the President's choice of a concrete candidate. Most often candidates with 2 proved well-qualified for the office, but also were close friends or associates of the President and his Party, or shared similar ideology to the chief executive. This type of candidate dominates, comprising 58% of all nominations (93/160 cases). The second place belongs to candidates who received 1, meaning a higher influence of political than legal factors. 26% of nominations are such (41/160). Third place belongs to candidates with 3, for whom a legal career proved more important than political activity, making up 14% of all nominations (22/160). History also contains extreme examples of candidates who were either unqualified (1%, two cases) or highly qualified with no political or ideological connections (1%, two cases). To sum up, there are two main reasons motivating presidential nominations to the Supreme Court: politics (ideology) and law (qualifications).

It seems, however, that even if qualifications were at stake in many presidential choices of Court nominees (it is difficult to convince the Senate to approve of an unqualified candidate), the real reasons for concrete choices were the political and/or ideological factors which dominated in the majority of the cases. It is very difficult to find such nominees who were chosen only due to their legal knowledge and experience. Furthermore, careful analysis of the results shown in Table 4 proves that the most common pattern of the nominations was concurrence of the ideology represented by the President and his candidate to the Court (148/160 cases). This is followed by the high qualifications of the candidate (134/160), and then the political career of the candidate or friendship with the President (130/160). The least impact can be seen in cases concerning distinguishable factors (34/160), but still some of these factors have been decisive for the choices made by chief executives.

Ranking U.S. presidents from the perspective of their policies towards Supreme Court nominations may lead to two conclusions. Firstly, the vast majority of

[12] All information in italics concerns nominees who, due to various reasons, had not been formally appointed to the office. Biographical information about the Justices was collected from Urofsky and Supreme Court Web Pages (www.supremecourt.gov, www.oyez.org).

presidents have decided to nominate qualified candidates whose ideology was concurrent to their own in order to achieve long-lasting success: if one takes into consideration statistics proving that most Justices outlived the political careers of their appointers, it is obvious that for many chief executives the choice of an ideologically suitable Justice was a very important element of their policy. Such a situation is especially visible in the 20th century, when the evolution of the Court from a legal to a political institution occurred. The lawmaking ability of American courts combined with the possibility to review actions undertaken by other branches of government in order to declare their constitutionality gives the Justices a unique and often crucial power in shaping the policy of the state. Presidents who understood that power were determined to leave a legacy of their ideology in the hands (or minds) of their Supreme Court appointees. Secondly, there have been individual presidents for whom the mission of packing the Court with "proper" nominees became the foundation of their policy. Careful analysis of the history of presidential nominations of Justices presents a few chief executives as the most ideological appointers of all time. This does not only concern the number of nominations, but also the quality of concrete candidates: quality measured not in the years of experience gained in lower state or federal courts, but in the consistency and devotion to ideological attitudes referring to social, economic and political reality.

Taking into consideration the results of the analysis shown in the Appendix, one should add up all numbers received by nominees/appointees and divide them by the total number of nominations/appointments made by each President. In this way one may determine an average number received by the presidential nominees and appointees. From this perspective one may make various lists of presidents that show which made the most political nominations (Table 2), the most political appointments (Table 3), the least political nominations (Table 4), and the least political appointments (Table 5). Ranking presidents from the perspective of the influence of politics on their nominations and appointments to the Supreme Court it is interesting to discover the top ten names in each of the above-mentioned groups:

Table 2. Top-ranked presidents with the most political nominations

	President	Average
1.	Abraham Lincoln	0.8
2.	Martin Van Buren	1
2.	John McKinley	1
4.	Lyndon B. Johnson	1.25
5.	George W. Bush	1.33
6.	Andrew Jackson	1.5
6.	Ulysses S. Grant	1.5
6.	John F. Kennedy	1.5
6.	George H. W. Bush	1.5
6.	Barack Obama	1.5

Table 3. Top-ranked presidents with the most political appointments

	President	Average
1.	Abraham Lincoln	0.8
2.	John Quincy Adams	1
2.	Martin Van Buren	1
2.	John McKinley	1
2.	Lyndon B. Johnson	1
6.	Grover Cleveland	1.5
6.	John F. Kennedy	1.5
6.	Ronald Reagan	1.5
6.	George H. W. Bush	1.5
6.	Barack Obama	1.5

Table 4. Top-ranked presidents with the least political nominations

	President	Average
1.	Gerald Ford	3
2.	Benjamin Harrison	2.75
2.	Herbert Hoover	2.75
4.	Chester Arthur	2.66
5.	William Howard Taft	2.5
5.	Bill Clinton	2.5
7.	Thomas Jefferson	2.33
7.	Theodore Roosevelt	2.33
9.	Millard Fillmore	2.25
10.	Dwight D. Eisenhower	2.16

Table 5. Top-ranked presidents with the least political appointments

	President	Average
1.	John Tyler	3
2.	Chester Arthur	3
2.	Herbert Hoover	3
4.	Gerald Ford	3
5.	Benjamin Harrison	2.75
6.	James Madison	2.5
6.	William Howard Taft	2.5
6.	Bill Clinton	2.5
6.	Thomas Jefferson	2.33
6.	Theodore Roosevelt	2.33

Despite the fact that some of the results of the analysis are surprising (one would not expect to see some of these names on particular lists), there are more important general remarks that should be made:

1. The most famous "Court-packers" – Ulysses Grant, Franklin D. Roosevelt and Ronald Reagan – do not top the most political nominations/appointments list. This is due to the large number of vacancies these presidents had the opportunity to fill, but also to the high qualifications of most of their candidates.
2. There are definitely more presidents ranking below the average (2) for their nominations/appointments, which means that politics played more of a role than bipartisanship in the filling of positions in the Supreme Court.
3. Not all of the presidents on the top ten lists had an equal impact on the Court's membership, as there are chief executives who nominated/appointed only one Justice, and those who nominated/appointed more than five candidates.
4. Even if on both lists concerning the most political nominations/appointments there are as many presidents from the 19th and 20thcenturies, it is obvious that the ideological factor of nominations/appointments has been playing a more and more vital role in recent decades than ever before. This is connected with the growing political role of the U.S. Supreme Court.
5. Abraham Lincoln, who heads the two top ten most political nominations/appointments lists with his 0.8 average seems the most ideologically-oriented president of all time. However, one must take into consideration the era in which Lincoln was making his appointments. The Civil War and the ideological dispute over the status of slavery determined his nominations/appointments, thus putting him at the top of both lists. Different political and social circumstances produce different nominations. This example may lead to the assumption that the level of ideologically-based nominations/appointments depends not only on the individual features of presidents and Justices, but also on the social, economic and political reality surrounding the changes in the membership of the Court.
6. Gerald Ford, who heads two top ten least political nomination/appointment lists with his average score of 3, seems the least ideologically-oriented president of all times. However, Ford had the chance to make a change in the Court only once. He made one very special appointment. His appointee John Paul Stevens proved not only less conservative than Republicans expected, but became one of the leading Justices in regards to legal argumentation, objectivity, and social esteem. Ford's position on the list is strengthened by his statement years after the end of his term, in which he confirmed the correctness of his choice.
7. The role of the Senate as a body limiting ideological nominations made by presidents can be observed in the case of John Tyler's nominations. The President made nine nominations, only one of which was approved by the Senate. If one compares the average number of Tyler's nominations (1.88) with the average number of his appointments (3), there is no doubt about the potential of the checks-and-balances tool of the Senate.
8. President Barack Obama still has a chance to move up on the list of the ten presidents with the most nominations/appointments, since by winning the 2012 elections he may continue to impose the ideological model of his choices for the Supreme Court.

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