Pages Per Term in the United States Reports and Converting Supreme Court Citations to Term Announced: A Statistical Research Tool

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ABSTRACT

This short article presents a valuable statistical research tool for those involved in analysis of U.S. Supreme Court opinions. Researchers are made available the data regarding the number of pages that the Supreme Court has written each term and provides an easier basis for identifying this page count with the term announced, which is not otherwise immediately evident from the volume number of the U.S. Reports.
PAGES PER TERM IN THE UNITED STATES REPORTS
AND CONVERTING SUPREME COURT CITATIONS
TO TERM ANNOUNCED: A STATISTICAL
RESEARCH TOOL

Donald J. Kocan*

INTRODUCTION

Supreme Court data is important for understanding both trends in the law
and the operation of the most important legal institution in the United States.¹
The table in this Article provides two useful and otherwise unavailable tools,
helping fill the gap in available statistical information on the Supreme Court.

First, the table provides a tabulation of the number of pages in which full
opinions of the Court appear, divided by reporter volume and easily converted
to pages per Term—information that, combined with data on the number of
opinions per Term, can also be reduced to average pages per decision. This
information is useful in two ways. One might analyze this information itself
to determine how prolific the Court has been over the years and perhaps to
isolate potential explanations for variations in the number of pages printed per
Term. One analyzing some other phenomenon at the Court may wish to use
this information in a multiple regression as one of many explanatory variables.
In this manner, the number of pages per Term is a useful data set for almost
anyone conducting a statistical analysis of Supreme Court decision making.

Second, the table facilitates the conversion of each decision in a list of
Supreme Court citations to the Term in which that decision was announced.
While much of the data available on the Supreme Court is tabulated by Term,
the accepted method of citation to Supreme Court decisions reveals only the
year in which a decision was announced. Thus, one confronting a case
published in “1996” will not immediately be aware whether that case was
decided in the October Term 1995 or the October Term 1996. This
information may be critical if one wishes to compare a group of citations to
Term-tabulated data, such as the number of opinions per Term. Because of

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I appreciate the helpful comments I received on early drafts of this article from Sharon Feldman,
Jonathan Macey, and Fred McChesney.

¹ Too often, however, the compilation of data on the Supreme Court involves high
transaction costs. As one set of authors noted, “the absence of reliable data makes it hard to
understand the Court, the justices, and case decisions.” LEE EPSTEIN ET AL., THE SUPREME
the nature of the Supreme Court calendar, comparative statistical analysis across variables is more easily, and in most cases more appropriately, accomplished in relation to Terms.

If one's analysis is limited to a small number of citations, determining individually the actual Term does not entail a high cost. However, when faced with a categorized list of hundreds of citations, the thought of converting each citation by flipping through the pages of the *U.S. Reports* is not an appealing prospect. Additionally, neither Westlaw nor LEXIS provide Term information in the opinions published on their services. Though they do provide decision dates which might help one determine the Term, cost (in time and money) can be reduced by using the appended table instead of searching for each citation. With this Article's table, one need only scan for the applicable volume number and convert citations to the Term announced.

I. THE CONVERSION FUNCTION

As previously stated, the usefulness of Supreme Court citation compilations is hampered by the fact that citations indicate only the calendar year in which a decision is announced, not the Term. A citation list cannot be reduced to numerical data by Term without somehow converting each citation to the Term in which it was announced. This is where this Article's table becomes useful. Tens of potential explanatory variables, including those on Supreme Court caseload, are already tabulated by Term in various sources. Thus, tabulating from a citation list by year of publication will not always produce true comparisons across variables. Although one might wish to convert the other information to calendar years, this is a much more difficult task. First, so much information is already tabulated by Term that changing only the citation list is preferable. Additionally, some information, such as budgets, salaries, or number of clerks, is almost impossible to reduce to calendar year data. Thus, truly accurate research requires that the citations be converted to Terms.

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Often, citation lists exist and are useful to statisticians. For example, suppose one wishes to test the hypothesis that the number of acts of Congress ruled unconstitutional is a function of the size of congressional budget appropriations to the Court. While a citation list exists for acts of Congress ruled unconstitutional, it is only a list. To test the hypothesis, one must reduce the list of acts of Congress ruled unconstitutional to numerical data calculated by Term so as to compare it to appropriations per Term.

This type of conversion is precisely what was required for my current research on the Seventeenth Amendment. I argue that prior to the adoption of the Seventeenth Amendment when United States Senators were elected by state legislatures, these legislatures were in an agency relationship with Senators, complete with access to a variety of control mechanisms capable of disciplining the federal courts. After the Seventeenth Amendment eliminated the direct relationship between state legislatures and Congress by mandating the direct election of Senators, state legislatures lost the institutional ability to use the United States Senate for disciplining the federal courts. The Supreme Court, as a result, might be less fearful of discipline from state legislatures in the post-Seventeenth Amendment world, and Congress might be less interested in preserving the aspects of the independent judiciary in relation to cases reviewing state legislative acts. Thus, one might expect that the judiciary will be less likely to enforce legislative bargains struck at the state level, with the number of cases finding state laws unconstitutional.

6. For information on budget appropriations to the Court between 1930 and 1996, see Epstein et. al., * supra* note 1, at 39-41.
evidence of that tendency. To test this hypothesis, therefore, my project statistically analyzes whether the Seventeenth Amendment had a significant effect on the number of state laws ruled unconstitutional by the Supreme Court. In order to construct the data set, conversion to the Term of each citation in the list of cases ruling state legislative acts unconstitutional was required. Only after this was accomplished could these cases be compared to thirty-nine potential explanatory variables already tabulated by Term.

Opportunities for research by citation seem endless. Citation lists exist for a number of other phenomena that may be used as either dependent or explanatory variables in a statistical analysis, including prior Supreme Court decisions overruled by the Court, major decisions of the Court, and citations to The Federalist in Court opinions. One could analyze cases citing prominent treatises or cases citing the works of a particular scholar or group of scholars. One could study cases citing opinions by a particular Justice or other judge to examine his influence over time. One might also examine cases citing a particular judicial decision, a list of which could be constructed using Shephard's Citations or some other method. As Shapiro put it when describing the utility of analyzing citations of law review articles:

Citation analysis can . . . provide grist for the intellectual history of law. On one level, "the historical development of areas of legal thought could be charted by means of network diagrams showing citation connections between recent and older writings, or time series of co-citation maps." Such charts could be converted into narrative accounts of specific landmark scholarship, of specific patterns of influence, or of the development of specific scholarly movements.

With today's computerized research services, complete with databases that include the full population of Supreme Court decisions, one might easily construct a search that will create one's own useful citation list that may not immediately include Term information.

7. See id. at 148-74 (listing citations of the cases holding state and municipal laws unconstitutional).
8. See id. at 175-89.
9. See id. at 94-142. For another source listing major decisions of the Court, see Biskupic & Witt, supra note 5, at 1114-59.
To use the table, one must identify the *U.S. Reports* volume in a citation and find the corresponding Term. The decision's starting page number is normally irrelevant, for most volumes report decisions from only one Term. However, the page number will be relevant when the table indicates that a volume reports decisions from more than one Term. One can easily identify these split reports in the table by the presence of a "_" in the citation line directly below the first instance of the volume number.

Reporting in the *U.S. Reports* has normally been Term-consecutive. Most non-consecutive reporting oddities are included in the table. Because very few anomalies exist, the likelihood of one of these anomalies occurring in any given citation list is extremely low.

II. THE PAGE LENGTH FUNCTION

In addition to converting Supreme Court citations to Terms, this Article's table provides full opinion page totals per *U.S. Reports* volume. This page information is a useful data set for facilitating future research involving the number of pages per Term, both as a dependent variable and a potential explanatory variable in the statistical analysis of almost any other Supreme Court phenomenon.

The number of pages can be used to test a variety of hypotheses. An examination of whether the number of pages per Term is a function of the

14. Both the *Supreme Court Reporter* and the *Supreme Court Reports Lawyers' Edition* have parallel citation charts to convert citations to one of these reporters into a *U.S. Reports* citation.

15. Using the chart only for conversion will be less hampered by the presence of page numbers for all volumes. If a "_" does not appear, one can ignore the page numbers and assume that the entire volume covers the corresponding Term.

16. If one conducts a conversion according to the chart, but the year of the decision in the citation is more than a year away from the Term year, the table may be uninformative. This is not a result one should anticipate. Yet awareness of the possibility allows one to correct for the unlikely, but potential, imperfection in the conversion chart due to an undiscovered non-consecutive publication anomaly.

17. Given the extensive annotation accompanying decisions in both the *Supreme Court Reporter* and the *Supreme Court Reports Lawyers' Edition*, the length of full opinions by pages per Term is much more difficult to isolate when calculating from these reporters.

number of separate opinions, the number of narrow margin decisions, the number of citations in opinions, or one of a number of other variables is the subject of one of my current research projects. I consider, for example, Richard Posner’s views that the number of law clerks per justice has had a negative effect on the quality of Supreme Court decision-making. Assuming brevity is a virtue Posner means to implicate, one can test the hypothesis that the number of pages per Term is a function of the number of law clerks at the Court.

The number of pages per Term might also be an important control variable in a variety of other statistical analyses. For example, one attempting to explain the number of citations to law review articles in Supreme Court opinions may need to control for not only the total number of all citations per Term but also the number of pages per Term. After all, increases in the number of law review citations might be merely a function of longer opinions.

One wishing to compare the number of pages across Terms should be aware that typeface, font size, page layouts, the length of syllabi, and the inclusion of counsel argument summaries have varied over time. For example, the Dallas and Peters reporters are in very small font, while the Wheaton reporter is quite large. The number of words may be a more accurate indication of decision length across Terms, but this information would be very difficult to compile. However, even with these variations, the number of pages should serve as a reasonably accurate proxy for the number of words.

Normally only full opinions are included in the table’s page calculations, although as of volume 355 of the U.S. Reports, the reporter began mixing per curiam opinions with full opinions and offsetting only orders in a separate

19. For data on the number of unanimous, concurring, and dissenting opinions per Term, see Epstein et al., supra note 1, at 193-204.
20. For the number of cases decided by a one-vote margin per term, see id. at 205-09.
22. See, e.g., Louis J. Sirico, Jr. & Jeffrey B. Margulies, The Citing of Law Reviews by the Supreme Court: An Empirical Study, 34 UCLA L. Rev. 131 (1986). For a list of additional scholarship on secondary source citations in Supreme Court opinions, see id. at n.2. Sirico and Margulies analyze citations across only a few years and also look only at a comparison between individual law reviews and their percentage of all citations. One could build on their work by analyzing both a larger number of years and by regressing the number of total citations on a variety of variables, including page length and the number of separate opinions, both of which could potentially explain trends in citations to law reviews at the Court.
Thus, the page calculations from the October Term 1957 forward include both full opinions and per curiam opinions. Determination of total pages cannot be accomplished by merely looking at the final page in any reporter. First, as a scan of the table will indicate, a few volumes start reporting opinions on a page other than the first page of the reporter. Second, often the *U.S. Reports* include appendices reporting orders and other material such as essays in memoria, transcripts of an address delivered by a Justice, or updates to Supreme Court rules, the bankruptcy code, the rules of civil procedure, or the rules of criminal procedure. Finally, these appendices do not always begin on the next consecutive page following the reporting of full opinions. Instead, so that they can be assigned a permanent citation, special opinions often begin at a specific page. For example, orders may begin on page 901, when the page immediately prior might be labeled 750. In such a situation, 150 page numbers are omitted. The table accounts for all of these conditions and reflects the actual pages in which full opinions are reported.

**CONCLUSION**

This Article’s table serves a dual function that can facilitate statistical research on the Supreme Court. Citation lists are a valuable research tool but require conversion to Terms for more sophisticated statistical analysis. And the number of opinion pages per Term could be an important variable in a wide range of analyses of the Supreme Court. This Article’s table seeks to facilitate the combination of research efforts in a manner that will fill the gaps in information on the Supreme Court and help to build even more reliable information and analyses of that critical institution.

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23. Omitting orders is especially important. Without doing so, comparison would be less accurate because the larger the docket, the larger the number of orders. Given that the number of per curiam opinions is small, their inclusion in page totals after 1957 is likely to have only a *de minimis* effect on cross-term comparison of average decision length.

24. For the conversion function, the volume number itself should be sufficient for most conversions of orders and per curiam opinions, even though those opinions may not appear within the pages included in the table.
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**SOURCE:** UNITED STATES REPORTS.
* Denotes Special Term
** Pages tabulated for these reporters reflect those used in the preliminary print editions of the U.S. Reports.
*** Forthcoming volumes of the *U.S. Reports* will print additional opinions from the October 1997 term.

NOTES: No United States Supreme Court decisions are reported in 1 U.S. (1 Dall.). Additionally, there were no opinions announced in the following Terms: Feb. 1790, Aug. 1790, Feb. 1791, Feb. 1792, Aug. 1792, and Aug. 1793.

Citations to the *Supreme Court Reporter* can also be separately converted. Although there may be anomalies within a volume, that reporter generally publishes one volume number per Term. For example, "19 S.Ct." generally covers the October Term 1898; volume 65 covers the October Term 1944; volume 105 covers the October Term 1984; and volume 118 covers the October Term 1997. Additionally the following information is useful for converting citations either not yet published in the *U.S. Reports* or only recently so published:

- 114 S.Ct. – Oct. 1993
- 115 S.Ct. – Oct. 1994
- 117 S.Ct. – Oct. 1996
- 119 S.Ct. – Oct. 1998