DENNIS BRACK

AN ASSESSMENT OF TENURE ON THE U.S. SUPREME COURT

by KEVIN T. MCGUIRE

The image of Chief Justice William Rehnquist, encumbered by illness, tentatively making his way down the west steps of the Capitol to administer the oath of office to the newly re-elected President George W. Bush offered a vivid illustration of the humanity of the Supreme Court. Virtually all of the justices are now well into the autumn of their careers; the entire Court, save Justice Clarence Thomas, is age 65 or older. Despite their age, the current justices have shown little sign of turnover. Justice Sandra Day O'Connor's recently announced departure is the first in over a decade. Indeed, no group of justices has served together this long since John Marshall was sitting on the Court.

In light of these facts, numerous observers of the Court have concluded that it is time to reconsider life tenure for the justices. Reviving proposals that have been in circulation since the 1990s, observers have begun to make various suggestions to transform the Court's membership—imposing term limits or elevating justices to senior status after a certain number of years, for example[1]—but these proposals presuppose that the current Court constitutes a deviation from the historical norm so substantial as to require legislative reform. Centering on such problems as judicial incapacitation and entrenched power, strategic retirements from the Court, and presidential incentives to select young nominees unseasoned for service, critics charge that lifetime appointments to the Court should be replaced with a system that secures more regular turnover and reduces the age of the justices.

> Seen in historical perspective, the tenure of the justices of the Supreme Court is not dramatically at odds with the patterns of Courts past.

But is reform actually warranted? Are the justices, in fact, too elderly, too stubbornly fixed, or serving too long? This article examines some of the historical trends in the length of service on the Court and concludes that, contrary to current assertions, the tenure of the justices has been quite stable over time. While the age of the justices is presently higher than the historical mean, it is not substantially so.

1. *See, e.g.*, Amar and Calabresi, *Term Limits for the High Court*, Washington Post, August 9, 2002, at.A23; Carrington and Cramton, *The Supreme Court Renewal Act: A Return to Basic Principles* March 5, 2005 (paulcarrington.com/Supreme Court Renewal Act.htm); DiTullio and Schochet, *Saving this Honorable Court: A Proposal to Replace Life Tenure on the Supreme Court with Staggered Nonrenewable Eighteen-Year Terms*, 90 VA. L. REV. 1093 (2004); Lazarus, *Life Tenure for Federal Judges: Should It Be Abolished?*, Findlaw's Writ, December 9, 2004 (writ.news.findlaw.com/lazarus/20041209.html). Some of the earlier proposals can be found in Easterbrook, *Geritol Justice: Is the Supreme Court Senile?*, NEW REPUBLIC Aug. 19, 1991, at 17; Oliver, *Systematic Justice: A Proposed Constitutional Amendment to Establish Fixed, Staggered Terms for Members of the United States Supreme Court*, 47 OHIO ST. L. J. 799 (1986).

Moreover, by some measures, the justices are spending no more time on the Court than their brethren who have served over the past 150 years. In fact, when viewing their tenure in light of changing life expectancies, the modern justices are actually controlling judicial policy for less time than the justices in any previous period. Given these historical trends, natural attrition will almost surely correct any perceived problems with the present set of justices.

Overview of the current Court

Judging by the Court's current composition, it is not difficult to discern the cause for concern. Two of the justices, William Rehnquist and John Paul Stevens, are octogenarians, having served longer than all but a handful of the jurists ever to sit on the Court. Chief Justice Rehnquist's 33 years—a record of service equal to that of William Brennan, Joseph Story, and the elder John Harlan—is among the 10 longest in history, and Justice Stevens' time on the Court—only four years less—places him among the top 15 longest serving. Following close on their heels at age 75 is Justice Sandra Day O'Connor. Even with a decade less service on the Court than the chief justice, she will retire one of the longest serving justices in history.[2]

As Table 1 illustrates, the balance of the Court is scarcely any less mature. Quite notably, there is relatively little variation in the ages of the remaining six justices; leaving aside Justice Thomas, only seven years separates the eldest, Justice Ruth Bader Ginsburg, from the youngest, Justice David Souter. Furthermore, two of these justices, Antonin Scalia and Anthony Kennedy, have been sitting on the Court for nearly 20 years.

Perhaps not surprisingly, several members of the Court have suffered serious health complications. Most recently, Chief Justice Rehnquist was diagnosed with cancer of the thyroid. In the 1990s, Justice Ginsburg underwent surgery for colon cancer, and Justice Stevens was treated for prostate cancer. In the late 1980s, Justice O'Connor suffered from breast cancer.[3]

In light of these considerations, it is not difficult to fathom why critics of life tenure would voice concerns: Unchanged for 10 years, the Court is a group consisting almost entirely of senior citizens, several of whom have battled serious health problems. Compounding these concerns is the fact that the responsibility for determining when a member of the Court may no longer be fully fit for the job is left to the discretion of the individual justice, who obviously may not be in the best position to render an objective judgment about his or her capacities.[4] One reformer, Cornell law professor Roger Cramton, sums up what seems to be a widely shared sentiment: "These guys are simply hanging on too long."[5]

What constitutes "too long," of course, is a relative question. To assess whether the current Court is truly anomalous—and thus sufficiently problematic to warrant changing how the Court is composed—I examine data on both the age and length of service of the justices over time.

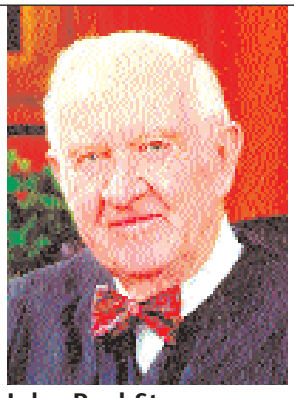
Too old?

Knowing the age of the justices is a good starting point, but absent other information it is not very useful. For example, the current average age of a U.S. senator is 60.[6] Is that older than the members of the Senate should be? Assessing whether the demographic characteristics of any national institution are at the appropriate level requires either some ideal standard against which to compare those characteristics or some longitudinal evalu-

TABLE 1. AGE AND LENGTH OF SERVICE AMONG CURRENT JUSTICES

Justice	Age	Service
William H. Rehnquist	80	33 years
John Paul Stevens	85	29 years
Sandra Day O'Connor	75	23 years
Antonin Scalia	69	18 years
Anthony Kennedy	69	17 years
David H. Souter	65	14 years
Clarence Thomas	57	13 years
Ruth Bader Ginsburg	72	12 years
Stephen G. Breyer	66	11 years

William Rehnquist (Appointed 1972)



John Paul Stevens (Appointed 1975)

Sandra Day O'Connor (Appointed 1981)

2. Epstein et al., The Supreme Court Compendium 336 (Washington, DC: Congressional Quarterly, 1996).

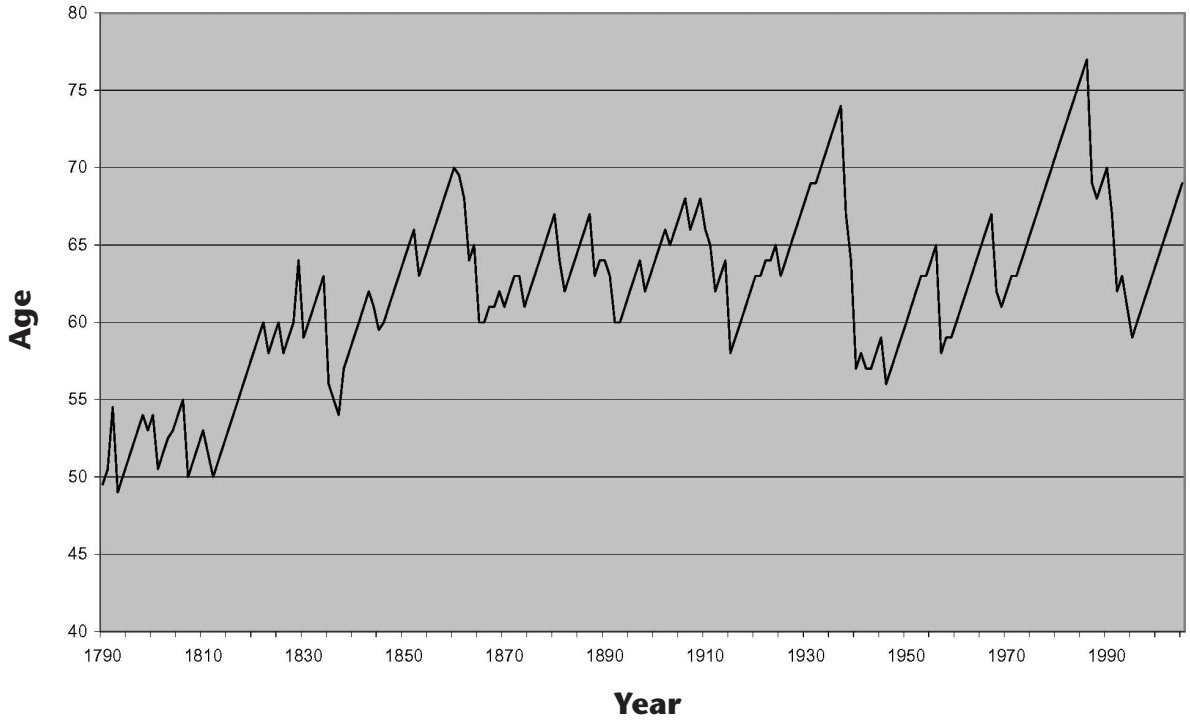
3. Greenhouse and Seelye, *Rehnquist Treated For Thyroid Cancer, Supreme Court Says*, N.Y. Times, October 26, 2004, at A1; Greenhouse, *Ruth Ginsburg Has Surgery For Cancer*, N.Y. Times, September 18, 1999, at A10.

4. *See*, for example, Okie, *Illness and Secrecy on the Supreme Court*, 351 New England J. Med. 2675-2678 (2004).

5. Quoted in Mauro, *Academic Group Proposes Term Limit of 18 Years on U.S. Supreme Court*, N.Y. Law Journal, January, 3, 2005, at 1.

6. Amer, *Membership of the 109th Congress: A Profile*, CRS Report for Congress, December 20, 2004, at 1.

FIGURE 1: MEDIAN AGE AMONG SITTING JUSTICES, 1790–2005



ation of how those characteristics ebb and flow over time. Absent any preexisting standard—unlike the president and members of Congress, the members of the Court have no constitutionally specified age minimum—it is likely to be more illuminating to compare the age of the justices over time.

To gauge changes in the age of the justices, I have calculated the median age on the Court from 1789 to 2005.[7] This time series, presented in Figure 1, is easy enough to interpret; when the membership remains constant, the median age increases by one with each successive year, while declines represent the appointment of new (and presumably younger) justices.[8]

The Court's early years are marked by a somewhat younger set of justices, but by 1830 the median age exceeded 60, a level it has rarely fallen below since. Of course, given increases in life expectancy (which is addressed below), one would naturally expect these data to trend upward over time to some degree. A closer look at these data, however, suggests that while the *variation* in age has certainly increased over time there has been no marked change in the *level* of the justices' age.[9] The median age across the entire time period is 63 years, and from the twentieth century forward, the median remains virtually unchanged at 64 years. Even the current Court, whose median age is 69, is not dramatically different from the historical norm.

Another way to consider possible changes in age is to aggregate the individual justices by the historical eras in which they were appointed to determine whether the ages at which they are elevated to and depart from the high court demonstrate substantial variation. Excluding the justices currently on the Court, Figure 2 presents the median arrival and departure ages of the justices appointed across five different intervals.[10] Like the data in Figure 1, these histograms suggest more similarity than difference over time.

Prior to 1850, the justices came to the Court at a slightly younger age, which again given increasing life expectancies is what one would anticipate. From 1851 to the present, however, the justices have generally been appointed in their mid-50s. With regard to the end of their careers, the historical norm seems to be to leave the Court—either willingly or unwillingly—at age 70 or older. For those appointed in the first half of the nineteenth century, the median justice exited at 75, and the members of the Court appointed over the next 100 years left the Court when they were roughly 70 years old.

Of the justices appointed since the 1950s, those who have subsequently left the Court did so at the somewhat

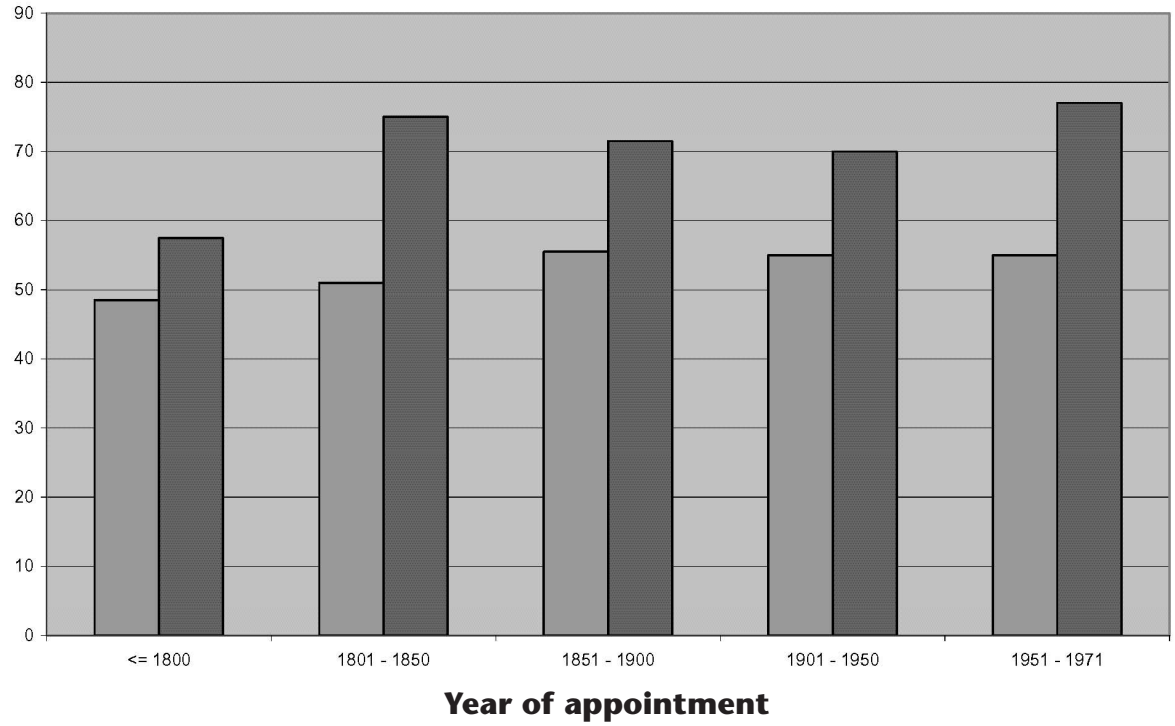
7. These data are taken from Epstein et al., *supra* n. 2, Table 4-11. If more than one justice occupied the same seat on the Court during a calendar year, I use the age of the justice who served longer during that year.

8. Obviously, the appointment of a new justice who was older than the median-age justice (i.e., replacing a relatively older justice with another relatively older justice) would create the appearance of the Court's membership remaining, at least with respect to age, unchanged.

9. This can be verified statistically, and indeed it is a "stationary time series," which simply means that the average is constant over time.

10. The data in this figure exclude the current justices. So, the time period ends in 1971 since no justice appointed after that year has since left the Court.

FIGURE 2: JUSTICES' MEDIAN AGE AT APPOINTMENT AND DEPARTURE



more advanced median age of 77. This increase, at least on its face, might seem to validate the concerns expressed by some about the potential for physical and mental decline on the modern Court and the need to impose a mandatory retirement age.[11] Yet this age is scarcely different from the one proposed by reformers (75 years), who advocate fixing this maximum by constitutional amendment. Perhaps more telling, all of the justices appointed since 1950 who have left the Court have done so willingly.[12] These members of the Court stand in stark contrast to their antebellum brethren; of the justices appointed between 1801 and 1850, the vast majority—84 percent, in fact—were either unwilling or unable to step down; they died in office at more or less the same age at which more recent justices have voluntarily retired. Thus, the case for a mandatory retirement age would have been substantially stronger in the nineteenth century. Such a proposal carries less weight in more recent years when the justices, on average, seem perfectly willing to cede their seats without the prodding of constitutional policy.

Length of service

Whether the justices are "hanging on too long" can also be assessed by examining the number of years that they devote to serving on the Court. Length of service is conditioned by age, but the two are not interchangeable. Some justices may choose to leave the Court with potentially productive years still ahead of them; others may elect to remain, even past the point where they can contribute meaningfully to the Court's policy making. To evaluate how their length of service has changed over time, Figure 3 charts the median number of years served on the Court. This time series answers the following question: in any given year, how long have the justices been sitting on the Court?

Not surprisingly, prior to 1810, the Court was relatively inexperienced. In the early days of the republic, recruiting and retaining individuals to serve on what was then a position that carried little distinction and substantial personal sacrifice was quite problematic. Judges on state courts were held in far higher professional regard, which made the federal judiciary less enticing, and the rigors of circuit riding proved far too taxing for many of those who were willing to sit on the Court. As a consequence, turnover on the Court was high.[13]

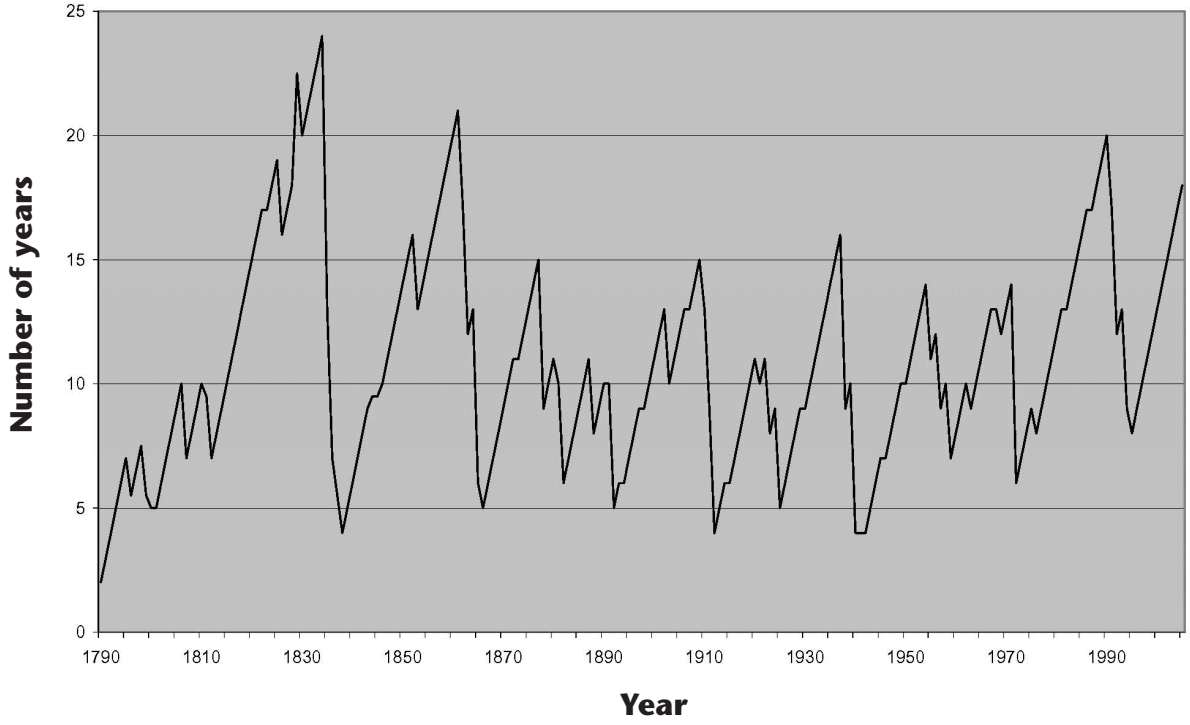
Once this volatility began to stabilize in the early 1800s, however, the median justice served increasingly longer, reaching historical peaks of 24 years in 1834 and 21 years in 1861. (The dramatic drop between these two years is principally due to Congress increasing the size of the Court; any new seat has the effect of lowering

11. *See*, for example, Garrow, *Mental Decrepitude on the U.S. Supreme Court: The Historical Case for a 28th Amendment*, 67 U. CHI. L. REV. 995-1087 (2000).

12. Epstein et al., *supra* n. 2, Table 5-7.

13. Ward, DECIDING TO LEAVE: THE POLITICS OF RETIREMENT FROM THE UNITED STATES SUPREME COURT (Albany, NY: State University of New York Press, 2003).

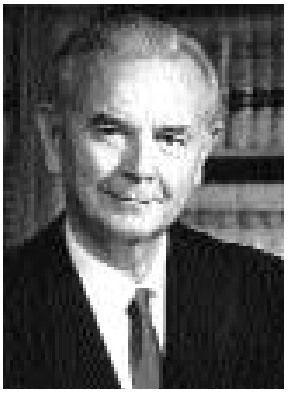
FIGURE 3: MEDIAN YEARS OF SUPREME COURT SERVICE AMONG SITTING JUSTICES, 1790–2005



the median.)[14] The justices during the first half of the nineteenth century served for such extended periods largely because Congress had not yet provided for their retirement. Without the security of benefits to see them through their later years, justices had little choice but to remain on the Court until death.[15] Since 1869, when Congress began offering some measure of financial support to retiring justices, the median amount of service on the Court has only rarely—say, for example, at the time of FDR's Court-packing plan—exceeded 15 years. In short, leaving aside the historic lows and highs, since the Civil War, the tendency has been for the justices to remain only one and a half decades.

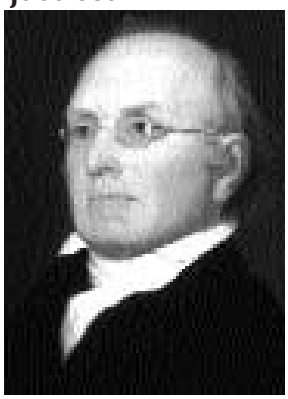
It is true, of course, that more recent years have seen increases in the amount of time spent on the Court. In 1990, the median service was 20 years, and in 2005 it has reached 18 years. But, the announced retirement of Justice O'Connor, combined with the departure of either the ailing Chief Justice Rehnquist or the Court's oldest member, Justice Stevens, would return the Court to its historical norm. Unless reformers wish to argue that this norm is itself "too long," then regular attrition, not legislative or constitutional intervention, will provide a solution.

The tenure of some previous justices



William J. Brennan, Jr (1956-1990)

John Marshall Harlan (1877-1911)



Joseph Story (1811-1845)

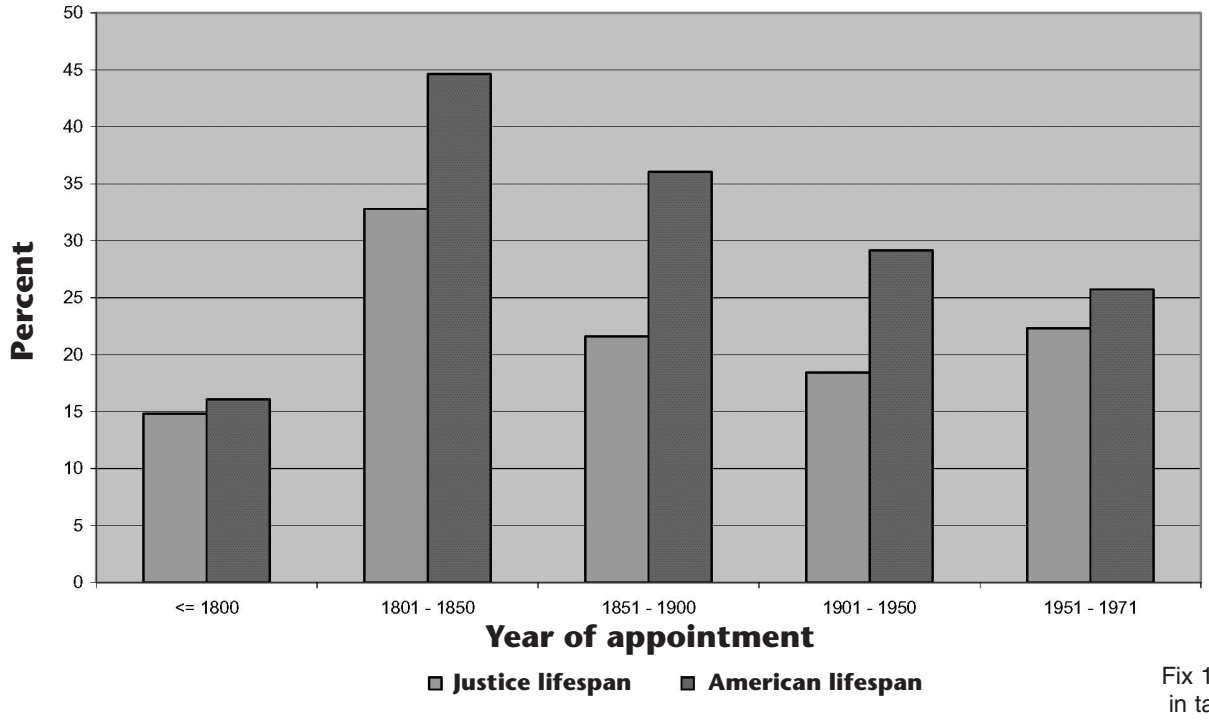
Increasing over time?

Still, one of the lingering anxieties is that the experience of more recent years is a harbinger of much lengthier tenures. As some critics explain, "The Founders, acting at a time

14. Between 1836 and 1838, the Court expanded from seven to nine justices.

15. Ward, *supra* n. 13, at 15-21.

FIGURE 4: MEDIAN TIME ON THE COURT AS A PERCENTAGE OF JUSTICE LIFESPAN AND AMERICAN LIFESPAN



Fix 1900 in table

when life expectancy at birth was less than 40 years, could not foresee that lifetime tenure would result in persons holding so powerful an office for a generation or more."[16] If life expectancy continues to increase, so too will the justices' tenure.

Regardless of whether the Founders expected that the justices would serve across multiple generations, they did anticipate that the members of the Court would serve life tenure. Assuming the Framers had some minimum set of life experiences—and thus some minimum age—in mind for nominees, those who wrote the Constitution made some rough estimate of what proportion of a justice's life would be spent on the Court. Has this percentage changed over time?

The answer to this question can be found in Figure 4, which aggregates the justices into historical cohorts, designated by the year in which they were appointed to the Court. For each justice, I divided that justice's total number of years on the Court by the justice's age at death and then calculated the median percentage for the justices in each cohort. This has the effect of controlling for their life expectancy, since justices who live longer can naturally be expected to serve longer.

These results, represented by the first set of histograms, are revealing. On the transitory Court of the late eighteenth century, the justices appointed in this period spent some 15 percent of their lives on the Court, but the justices appointed during the first half of the nineteenth century devoted twice as long—some 33 percent—of their years to sitting on the Supreme Court. Clearly, the lack of retirement provisions induced the justices to remain far longer than was practical. As noted earlier, these justices died on the Court in overwhelming numbers.

After Congress's post-Civil War provision of retirement benefits, the justices seem to have adopted a norm of retirement, and subsequent improvements in those benefits have only increased the number of justices who step down.[17] Since then, the justices have tended to spend about 20 percent of their lives sitting on the Supreme Court. Indeed, the most recently appointed justices who have since left the Court have devoted almost precisely the same amount of time (again, in relative terms) as the justices who were elevated to the Court more than a century ago. Simply stated, if the members of the Court are spending "too long" on the Court, they have been doing so fairly steadily for about 150 years.

Although the current Court is not included in Figure 4—those data are based on justices who are no longer

16. Carrington and Cramton, *supra* n. 1.
17. Ward, supra n. 13, at 8.

living—one might calculate a related figure for the present justices by simply dividing their number of years on the Court by their present ages. This exercise reveals that the median amount of life-to-date spent on the Court is 25 pecent, a figure fairly comparable to the percentage over the previous one and a half centuries. Without knowing what portion of their lives they will continue to devote to the Court, however, this figure is obviously difficult to interpret.

Perceptions of tenure

Whatever the percentage of their lives that is spent on the Court, the justices might still be seen as entrenched to the average citizen. How would Americans perceive turnover on the Court over time? To answer this question, one must know something of U.S. life expectancy at different periods. After all, John Marshall's time on the Court would have seemed much longer to most Americans than would have William Brennan's, even though both justices served virtually the same number of years.

To take this into account, I have calculated for the justices appointed in each historical era the median number of years spent on the Court and then divided that number by U.S. life expectancy for that era.[18] These data, presented in the second set of histograms in Figure 4, place the justices' tenure in historical context by indicating—for Americans living at the time—the proportion of their lives spent under the same justices.

By this accounting, the tenure of the justices since 1801 has, in fact, gotten shorter, not longer. The justices appointed in the first half of the nineteenth century had an impressive median tenure of 25 years, a whopping 45 percent of an American lifetime. Thus, for many antebellum Americans, some of the faces on the Supreme Court would have remained unchanged for the better part of their lives! Following the decline in tenure after the Civil War, this percentage drops, but the justices were still serving for more than 35 percent of the expected U.S. lifespan. This proportion declines still further in the first half of the twentieth century, a period during which Americans lived under the same justices, on average, for less than 30 percent of their lives.

By 1950, life expectancy for Americans had increased substantially to nearly 70 years. So, even though the justices appointed after that date did not serve appreciably longer than their brethren over the previous 100 years, they sat on the Court for just a quarter of the average American's lifespan. As a consequence, the sense of turnover on the Court would have been noticeably greater than it had been at any time since 1790.

Stated simply, although the proportion of a *justice's lifetime* spent on the Court has remained fairly stable for at least 150 years, the proportion of the *average American's lifetime* that a justice spends on the Court has actually declined. Critics may well be concerned about citizens having to live under a Court controlled by justices who long outlast those responsible for appointing and confirming them, but over time this problem has become better, not worse. Seen in this way—that is, from the perspective of the average citizen—the justices have been spending less, not more time on the Court.

No support

Taken together, the evidence does not support the argument that, measured either by age or length of service, lifetime tenure on the Supreme Court needs to be modified or abolished. There do remain objections, of course, but on the whole they are either unsupported by experience or inconsistent with scholarly research. For example, systematic research has found no basis for the frequently voiced worry about strategically timed departures that enable presidents to fill vacancies with ideological allies.[19] Doubtless there are examples of justices who time their departures in just such a fashion, but statistical assessments that sort out the relative impact of the factors that might lead a justice to retire suggest that the justices have retired principally because

Robert Jackson, who in 1954 became the last justice to die in office.

of ill-health and the availability of pension benefits.[20] Likewise the potential problems of incapacitation have not proven to be major complications. To be sure, there are examples of aging justices evincing signs of physical decline and losses of mental acuity.[21] But these signs have inevitably been followed by retirements soon after manifesting themselves. Indeed, the assertion that life-tenured justices will remain on the Court past their ability to contribute meaningfully is belied by the fact that they no longer remain on the Court indefinitely. The last time a sitting justice died while on the bench, William Rehnquist was serving as a law clerk. Rehnquist clerked for Justice Robert Jackson, who in 1954 became the last justice to die in office.

Moreover, the length of service on the Court is not wholly at odds with the amount of time that many federal officials serve in elected office. There are, for instance, fully 10 U.S. senators who have served longer than the longest serving justice,

18. Data on life expectancy are taken from Fogel, THE ESCAPE FROM HUNGER AND PREMATURE DEATH, 1700-2100: EUROPE, AMERICA, AND THE THIRD WORLD (New York: Cambridge University Press), Table 1.1; Centers for Disease Control, *National Vital Statistics Reports, Vol.51, No.3*, December 19, 2002, Table 12. Life expectancy is measured at the year prior to the beginning of the time period, with the exception of those appointed before 1800, where it is measured at the year 1800.

19. *See* Amar and Calabresi, *supra* n. 1.

20. Zorn and Van Winkle, *A Competing Risks Model of U.S. Supreme Court Vacancies, 1789-1992*, 22 POL. BEHAV. 145-66 (2000).

21. *See* Garrow, *supra* n. 11.

22 These data can be found at "Longest Serving Senators," http://www.senate.gov/pagelayout/reference/four_column_table/Longest_Serving_Senators.htm and Ornstein, Mann, and Malbin, VITAL STATISTICS ON CONGRESS 1999-2000 (Washington, DC: American Enterprise Institute), Table 1-7.

William O. Douglas, and 3 of those 10 are presently in the Senate. Indeed, in recent years, the composition of the U.S. Senate has been just as unremitting as the lineup on the Court; in half of the years between 1991 and 2000, there were, on a percentage basis, more senators than justices who had been holding their offices for more than a dozen years.[22]

A simple reform

If, in spite of these facts, one still wants to generate regular turnover on the Court, there is a much simpler—and proven—solution. Whatever their commitment to public service and legal policy, the justices are surely concerned about their material well being. In the past, Congress has facilitated retirements from the Court by increasing the retirement benefit, and there is no reason to believe it would be any less effectual today. With a small strategic refinement, it could be employed to entice justices to retire on a regular basis.

Since 1984, the members of the Court have been serving under the "Rule of 80." Under the terms of the U.S. Code, a justice who, once having reached the age of 65, may retire with full salary anytime after the sum of his or her age and years of service as a federal judge equals or exceeds 80.[23] Generous though this may be, there is little incentive under this rule for qualifying justices to retire. As long as justices know that they can receive their full salary, those who are otherwise inclined to continue serving on the Court have no inducement to relinquish their seats. Congress could make it more tempting through the following policy—at any point *prior* to the age of 75 or 15 years service on the Court, whichever comes first, a justice may retire at 200 percent of that justice's current salary; at any point thereafter, a justice may retire at 100 percent of that justice's salary.

By this mechanism, appointees could be assured a lengthy tenure on the Court (at most, 15 years) during which they could step down and draw a handsome annuity. At the same time, presidents have no incentive to select younger (and thus presumably less qualified) nominees, nor would they be penalized for selecting older nominees who, even without extended service on the Court, would be assured of the same attractive retirement up to the age of 75. In either case, reverting to a 100 percent salary retirement would serve as a sword of Damocles for those justices inclined to remain.

This provides a highly attractive—and, one might argue, deserved—option for those who have chosen to forgo the more lucrative alternative of private practice for the sake of public service. After all, the justices are quite underpaid relative to the rest of the legal profession; associate justices currently earn $199,200, a figure not substantially greater than many first-year associates and several times less than the profits enjoyed by partners in major firms.[24]

At the same time, this alternative preserves the option of lifetime tenure. Those justices who are inclined to remain until a later retirement age may do so—but of course at a substantial financial loss.

Conclusion

The Supreme Court has experienced one of its longest periods without membership turnover, and some of the justices have exceeded what many consider to be an appropriate retirement age. Whether this means that the justices are serving "too long," however, is not obvious. Because there is no objectively clear standard against which to measure the justices' tenure, one's judgment about the age or infirmity of the Court's members is prone to be conditioned by one's subjective view of the desirability of its policies. Alexander Hamilton, aware of this danger, warned in Federalist No. 79 that "[a]n attempt to fix the boundary between the regions of ability and inability, would much oftener give scope to personal and party attachments and enmities than advance the interests of justice or the public good."

It is certainly easy to see how the current Court has shaped our perceptions. Yet recent calls for reforming tenure on the Supreme Court seem not to have considered some important historical context. It turns out that, contrary to some assertions, the justices are not dramatically older nor are they serving considerably longer than critics would have us believe. It seems dubious, therefore, to craft any reform that is designed to meet a set of circumstances that, at least statistically speaking, do not arise with a frequency sufficient to merit serious attention. Rather than adopting an arguably punitive policy that forces the justices off the Court, one might consider an alternative, such as the one I have sketched, which instead rewards the justices for their service on the Court.

Whatever method one might advocate, it bears emphasizing that the empirical case for modifying life tenure is not a strong one. Seen in historical perspective, the tenure of the justices of the Supreme Court is not dramatically at odds with the patterns of Courts past, and to the extent that the present Court is an outlier within that historical trend, natural attrition seems an inevitable cure.

KEVIN T. MCGUIRE
is an associate professor of political science at the University of North Carolina at Chapel Hill.
(kmcguire@unc.edu)

Photo Credits

CHIEF JUSTICE REHNQUIST. PHOTOGRAPHED BY DANE PENLAND, SMITHSONIAN INSTITUTION, COLLECTION, THE SUPREME COURT HISTORICAL SOCIETY.
JUSTICE STEVENS. PHOTOGRAPHED BY JOSEPH H. BAILEY, NATIONAL GEOGRAPHIC SOCIETY, COLLECTION, THE SUPREME COURT HISTORICAL SOCIETY.
JUSTICE O'CONNOR. PHOTOGRAPHED BY RICHARD STRAUSS, COLLECTION, THE SUPREME COURT HISTORICAL SOCIETY.
JUSTICE BRENNAN. PHOTOGRAPHED BY ROBERT OAKES, NATIONAL GEOGRAPHIC SOCIETY, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.
JUSTICE HARLAN I. PHOTOGRAPHED BY MATTHEW BRADY, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.
JUSTICE STORY. OFFICIAL PORTRAIT OF JUSTICE JOSEPH STORY, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.

23. 28 U.S.C. 371.

24. Executive Order 13368, Adjustment of Certain Rates of Pay, Office of Personnel Management (www.opm.gov/oca/compmemo/2005/executiveorder2005pay.asp); Fisk, *Staying the Court on Salary*, THE NATIONAL LAW JOURNAL, August 6, 2001, at 1; American Bar Association and Federal Bar Association, *Federal Judicial Pay Erosion: A Report on the Need for Reform*, August 2001 (www.fedbar.org/whitepaper.pdf).