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## Governor Sunshine's Court

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Joshua Groban, Gov. Jerry Brown's final appointment to the California Supreme Court, was confirmed by the Commission on Judicial Appointments on Dec. 21, 2018. We wondered how he will fit in with the existing justices. To figure that out, we established a baseline for comparison by analyzing 300 cases decided by the court's existing members since January 2015.

The takeaways are startling. The justices' ideological reputations are not the critical factor in their opinions and votes, and in fact ideological labels like liberal or conservative are only weakly applicable to the individual justices. While those are subjective terms, regardless how one reads them they neither accurately describe the justices nor predict their votes. And the justices do not vote in blocs; instead, the court is strongly consensus driven.

The justices' reputations are poor predictors of their votes. The common assumption is that the Brown appointees (Justices Goodwin Liu, Mariano-Florentino Cuéllar, and Leandra Kruger) are liberals and the "senior" members (Chief Justice Tani G. Cantil-Sakauye and Justices Ming Chin and Carol Corrigan, each appointed by Republican governors) are conservative. Not so — our research shows that those ideological labels are not good descriptors, and the common assumptions about the justices' ideological characteristics are mostly wrong.

The justices' votes do not match their reputations. The Chief Justice is quite conservative in criminal cases but equally as liberal in civil cases. Justice Corrigan is somewhat conservative in civil cases, but quite liberal in criminal cases. Justice Liu is reliably liberal in civil and non-capital criminal cases, but almost evenly balanced in capital cases. Justice Kruger is surprisingly conservative in capital cases, where she overwhelmingly favors the government, and her civil opinions divide almost evenly. Justice Cuéllar is somewhat liberal in civil cases, but conservative in capital cases. Only Justice Chin's results fit common reputational assumptions: he is quite conservative in nearly every category.

Our data are striking in how they contradict the justices' assumed ideological mindsets. Governor Brown appointed a liberal (Liu), a moderate (Cuéllar), and a conservative (Kruger). The Chief Justice (assumed conservative) and Justice Cuéllar (assumed liberal) score as almost equally moderate. Justice Kruger (assumed liberal) is to the Chief Justice's right in most categories. And the court has no ideological center or swing justice: No justice occupies the same center spot across all categories in our left to right rankings.

We recognize that relying solely on party designation is an imperfect proxy for ideology, and can obscure whether a justice has voted in a "conservative" or "liberal" direction. The plaintiff/defendant label sometimes tracks traditional liberal/conservative lines, but it does not always necessarily reflect ideology. Instead, the separate opinions are the best evidence of a justice's ideological bent. For example, Justice Chin has written separately many times to support a more conservative position (regardless of which party won). Similarly, Justice Liu wrote separately on Batson jury-selection issues in a host of criminal cases to support a traditionally liberal view.

That party designations are somewhat arbitrary, and that justices may concur in a judgment but write separately to urge a different result, obscures the more subtle truth: It is impossible to use reductive labels to predict how an individual justice or the court as a whole will rule. Even knowing a justice's ideological leaning is weak evidence of how they will vote, because most of the leans are by less than ten percentage points. This means that most of the justices are clustered around a midpoint, which helps explain the high justice-to-justice concurrence rates, the high number of unanimous decisions, and the low number of dissents. The bottom line: on such an apolitical consensus-driven court, the median result is strongly favored.

We also tested the assumption that senior and Brown justices align in reliable voting blocs. They do not: California's justices almost never divide neatly into senior-versus-Brown voting blocs. There were only twelve 4-3 decisions; in just one the senior and Brown justices divided between majority and dissent.

Rather than aligning into distinct blocs based on reductive ideological labels, these justices are all consensus-driven jurists. The most important factor in any given case is reaching consensus on the correct result, not a justice's politics or an appointing governor's party. The court has high consensus rates: 79 percent of the cases were unanimous, and only 11 percent of opinions had even one dissent. This reduces our ability to draw conclusions from majority opinions. Because the vast majority of cases are 7-0 or 6-1, a justice's authorship of a majority opinion does not necessarily reflect their personal ideological views; it only proves that a justice accepted an assignment to write an opinion that reflects the court's consensus. Those familiar with the court's calendar memorandum process (an adaptation to the requirement to issue an opinion 90 days after oral argument) will not be surprised that this pre-argument collaboration results in consensus so often. The court as an insti-

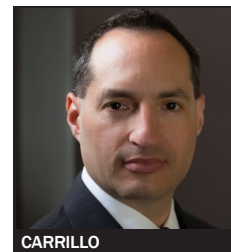


Daily Journal photo  
Joshua Groban, Gov. Jerry Brown's final pick to the California Supreme Court, once again establishing a full seven-member court.

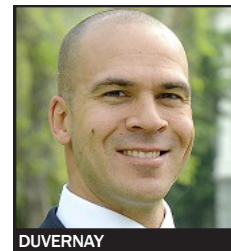
tution predominates over the justice as individual.

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The current California Supreme Court lineup achieves high consensus rates, displays shifting voting blocs, and we learn the justices' individual views only when they choose to write separately. This court does not have liberal or conservative members; instead, the six existing justices are independent thinkers unsuited to reductive categorization. It will take years to divine Justice Groban's judicial philosophy, from attempts like this to read the tea leaves of his opinions. But given the lack of align-



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ment among the existing justices, it is unlikely that a four-member majority will suddenly materialize. This may answer the question that shadowed every Jerry Brown appointment to this court: Whether Governor Moonbeam will install another Rose Bird court. It's fair to say at this point that Governor Sunshine has gone another direction.

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