

Networks of Supreme Court Overturning Decisions

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Supreme Court Decisions

- Many decisions are unanimous: Some are signed by Justices while others are *per curiam* (unsigned).
- Most often, there is a majority opinion written by one Justice which others can join.
- There can be concurring opinions (which can be joined).
- There are dissenting opinions (which can be joined).
- There can be concurring and dissenting opinions. (These are seldom joined by other Justices.)
- Some decisions overturn earlier decisions, either completely or in part.
- The huge majority of Supreme Court decisions cite earlier decisions.

Sources of Negative ties

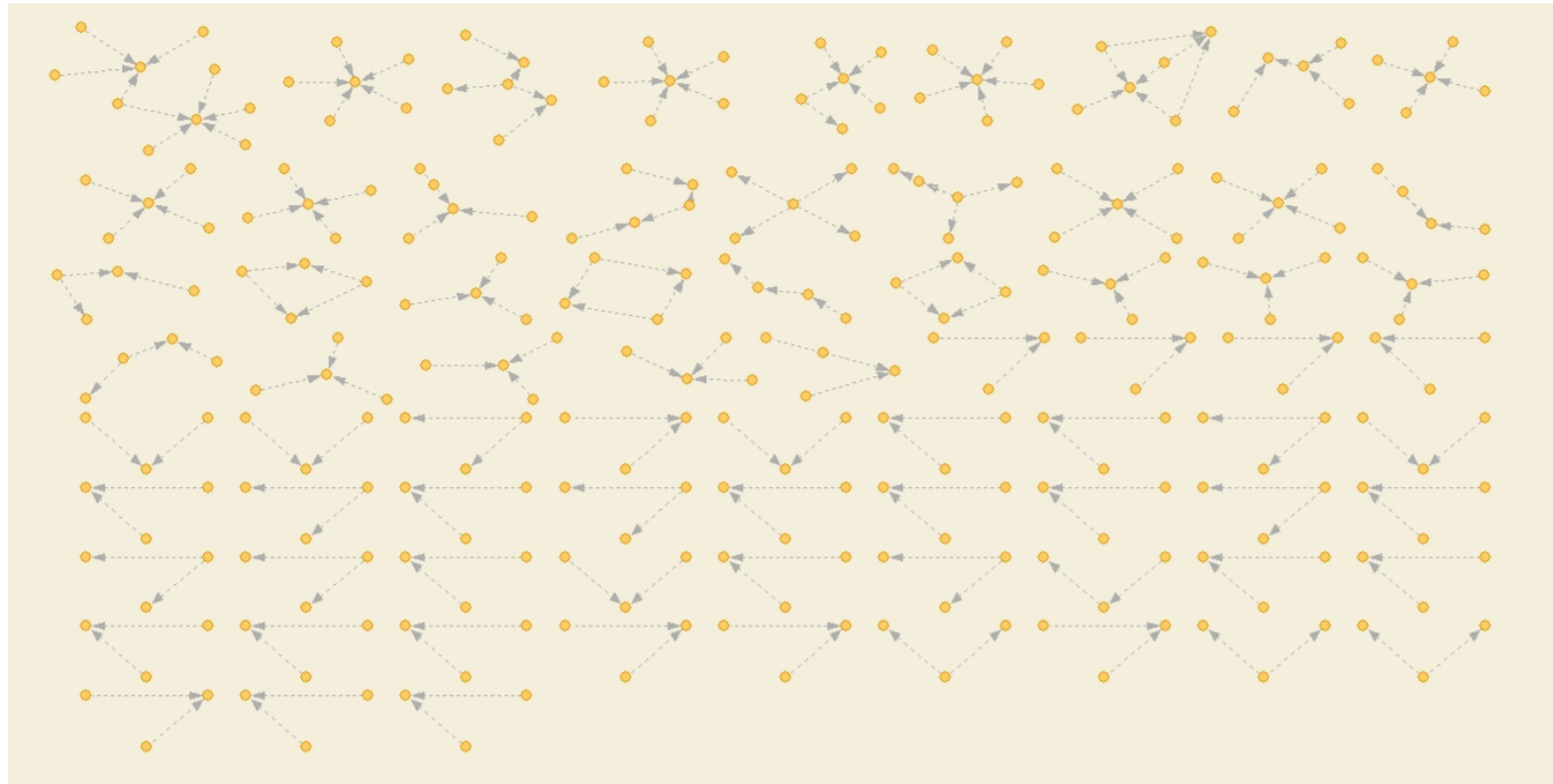
Most studies of the SC citation network links treat them solely as positive ties. But

- Decisions overturning earlier decisions either completely or partially do repudiate them. As such, they **must** be treated as negative ties.
- Statements in dissenting opinions
 - They can be negative about the decision from which a Justice dissents.
 - Also, they can be negative about some of the prior decisions on which the majority opinion rested.
- Collections of statements taken from both majority or dissenting decisions about a specific topic (e.g. the Dred Scott decision).

Comments on the Overturning Network of Citation Links

1. Most discussions of the Supreme Court overturning prior decisions focus primarily on single pairs of decisions.
 - The discussions include the substantive issues involved;
 - The constitutional issues (sometimes); and
 - The Justices involved with regard to their opinions for prior *relevant* decisions.
2. While quite useful, this is strictly a *dyadic* approach, one seemingly far too narrow.
3. There are *subnetworks* of decisions connected by negative ties!
4. It makes more sense to consider these *configurations* of linked dyads as forming larger networks in a broader context.

The Network of Overturning (*Negative*) Links with its Weak Components

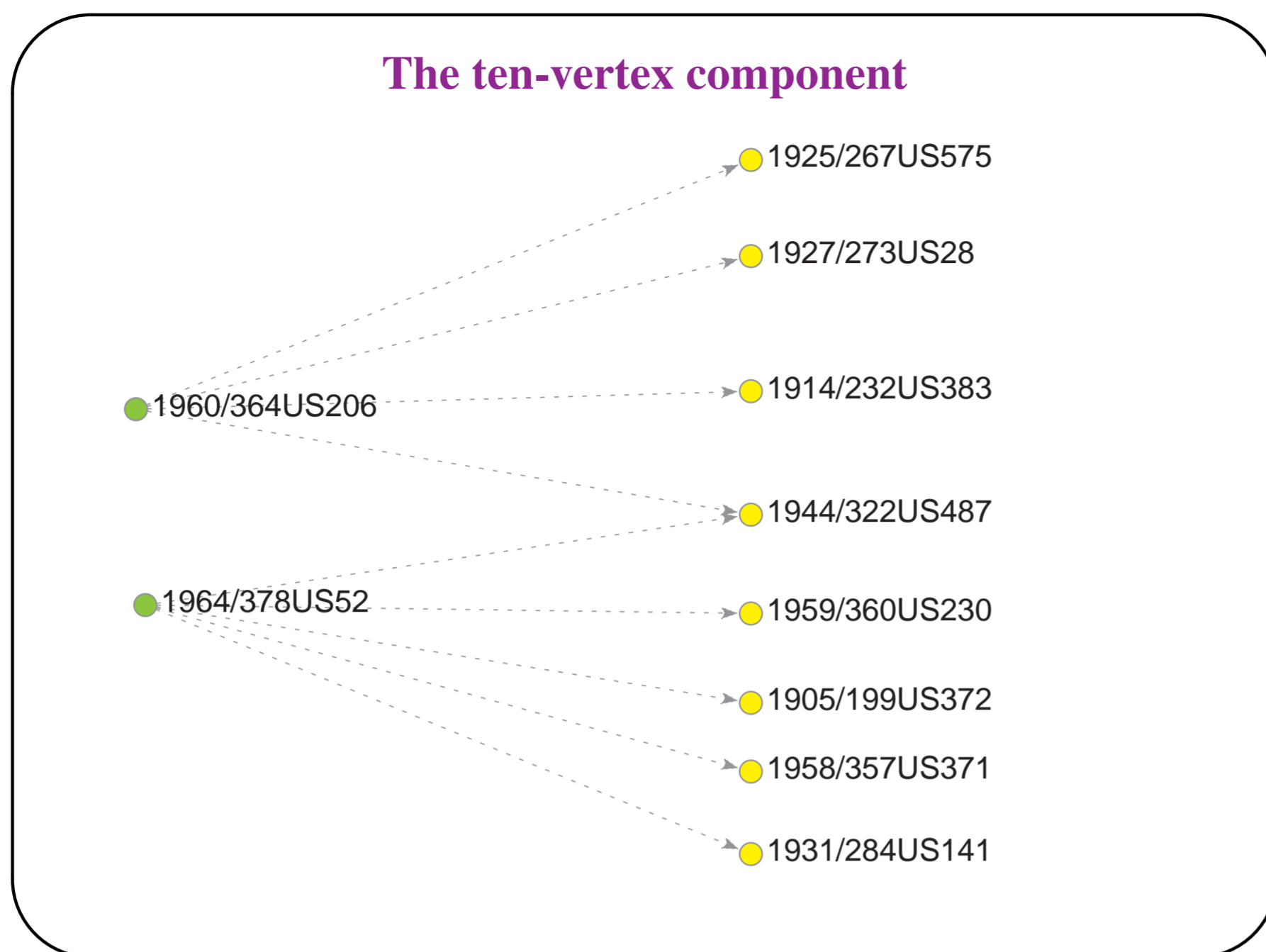


The Distribution of Weak Components

1. Having 10 decisions: 1
2. Having 6 decisions: 6
3. Having 5 decisions: 10
4. Having 4 decisions: 15
5. Having 3 decisions: 42
6. Having 2 decisions: 164

All of these components will have to be considered but we started with those having at least three decisions.

Some examples follow.

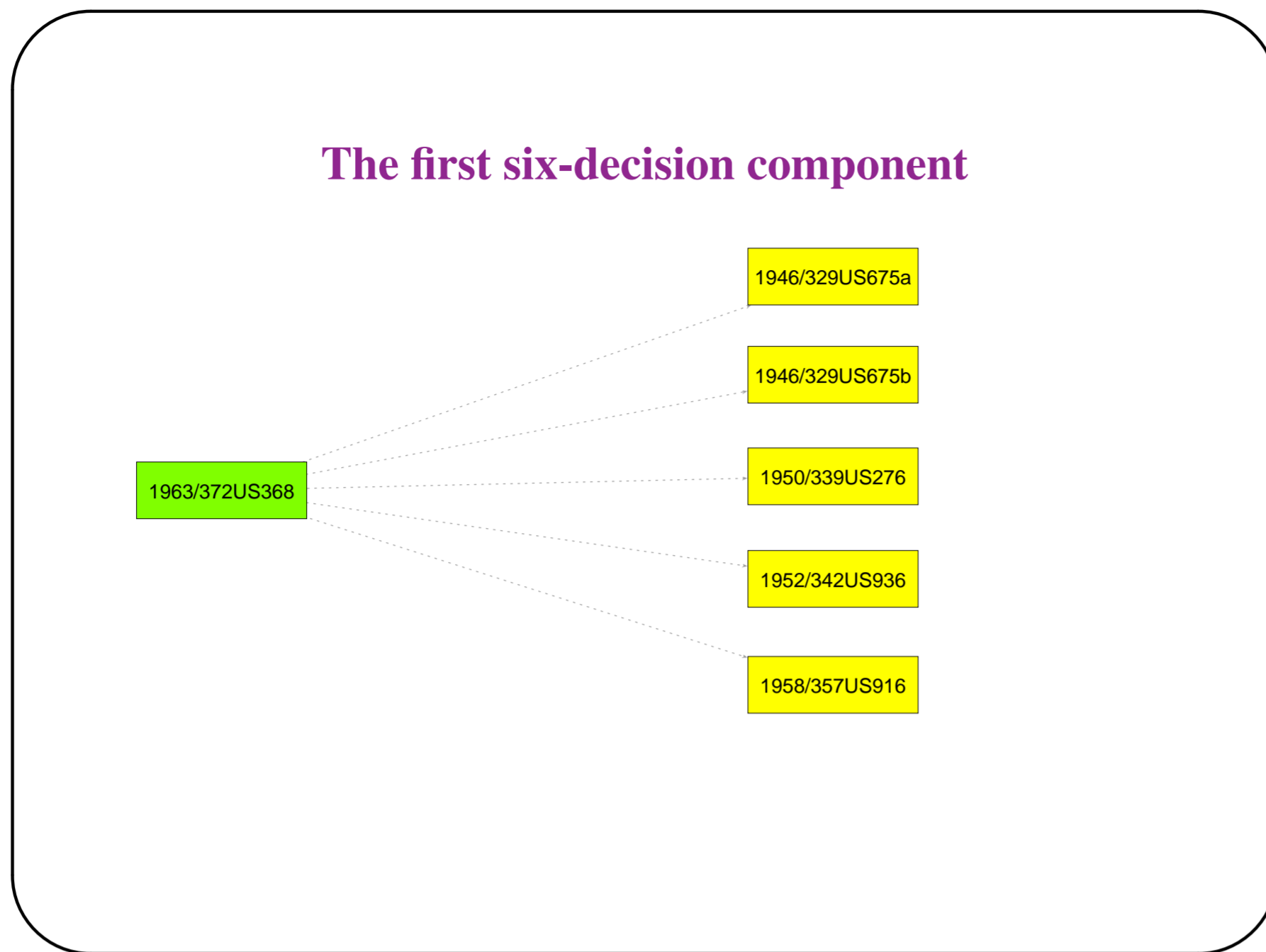


Substance and Constitutional Issues

The ten-decision component

The overturning decisions come from the Warren Court (with the overturned decisions made by the Fuller, White, Taft, Hughes, Stone and the Warren Courts).

- Substantive issues
 1. The immunity provision (against self-incrimination)
 2. The roles of the federal and state courts regarding immunity
- Constitutional issues
 1. Fifth Amendment through the Fourteenth Amendment (regarding due process)
 2. Fourth Amendment (nature of evidence gained from police searches without warrants)



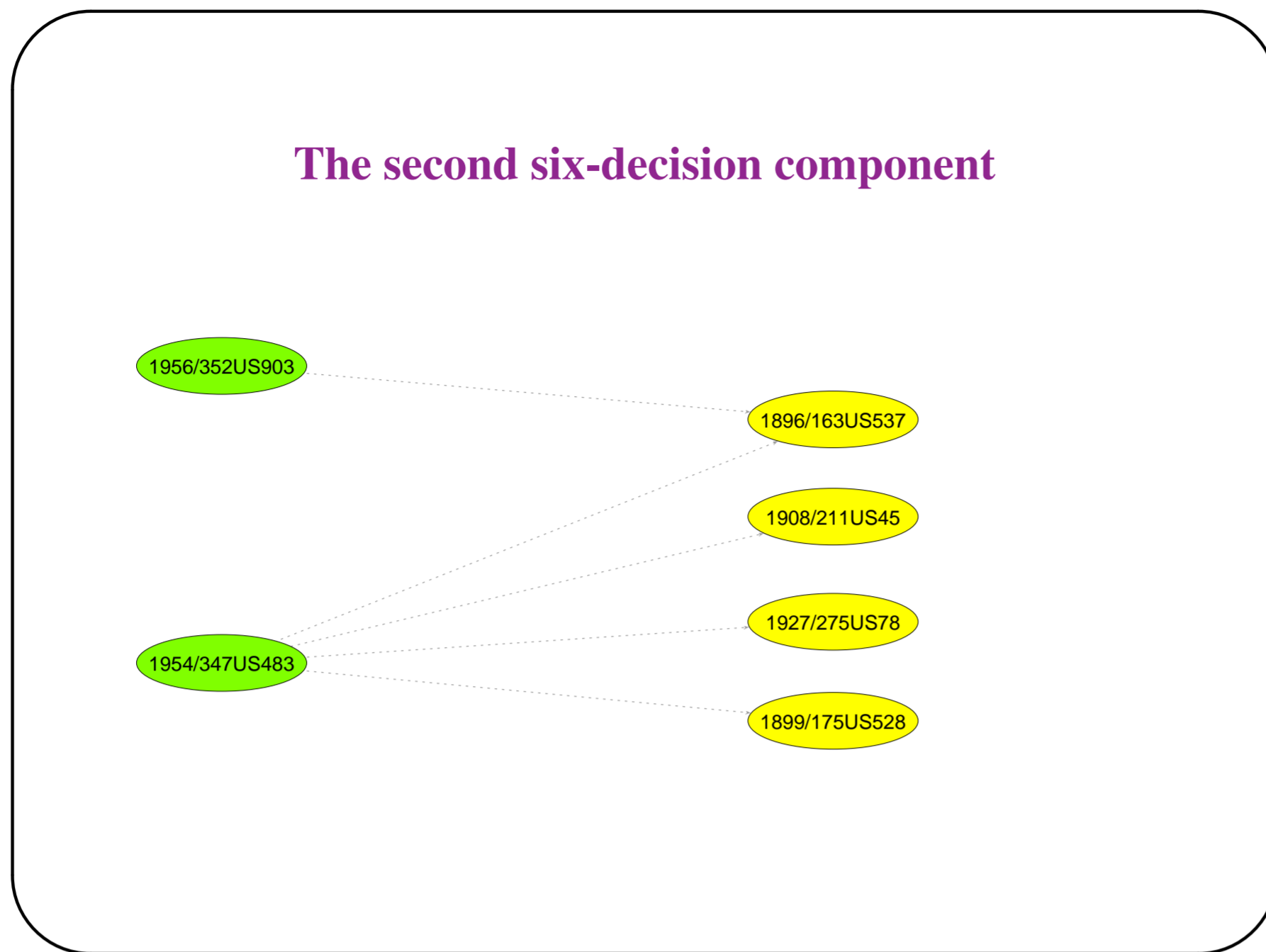
Substance and Constitutional Issues (continued)

The first six-decision component

The overturning decision comes from the Warren Court (with the overturned decisions made by the Stone and Vinson Courts).

- Substantive issues
 1. Using counties rather than number of votes cast (Georgia)
 2. Redistricting to make rural votes count more than urban votes (Tennessee)
- Constitutional issues
 1. Fourteenth Amendment (regarding equal protection)
 2. The ability of federal courts to intervene at the state level

The basic issue was the politically-motivated approach to reject the idea of “one person, one vote” holding in the Deep South.



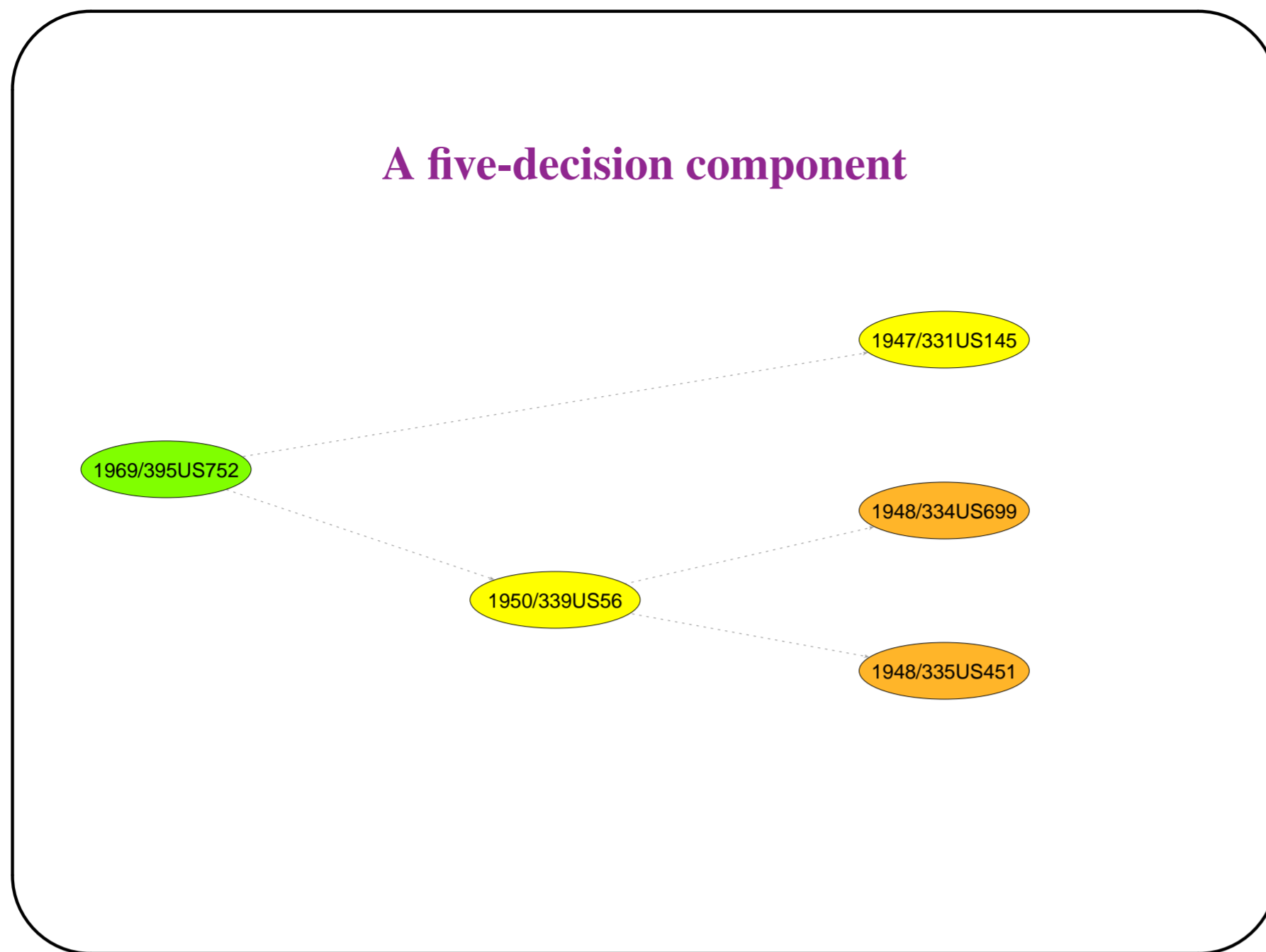
Substance and Constitutional Issues (cont)

The second six-decision component

Again, the overturning decision comes from the Warren Court (with the overturned decisions made by the Fuller and Taft Courts).

- Substantive issues
 1. Civil rights and segregation under the 'separate but equal' doctrine.
 2. Targeting minorities, especially blacks (but also Chinese people).
- Constitutional issues
 1. Fourteenth Amendment (regarding equal protection, Article IV)
 2. The ability of federal courts to intervene at the state level

The overturning decisions were hailed as a major victory for the Civil Rights Movement. But they set off a fire storm of both legal and illegal reactions as whites, especially in the South, objected to these rulings.



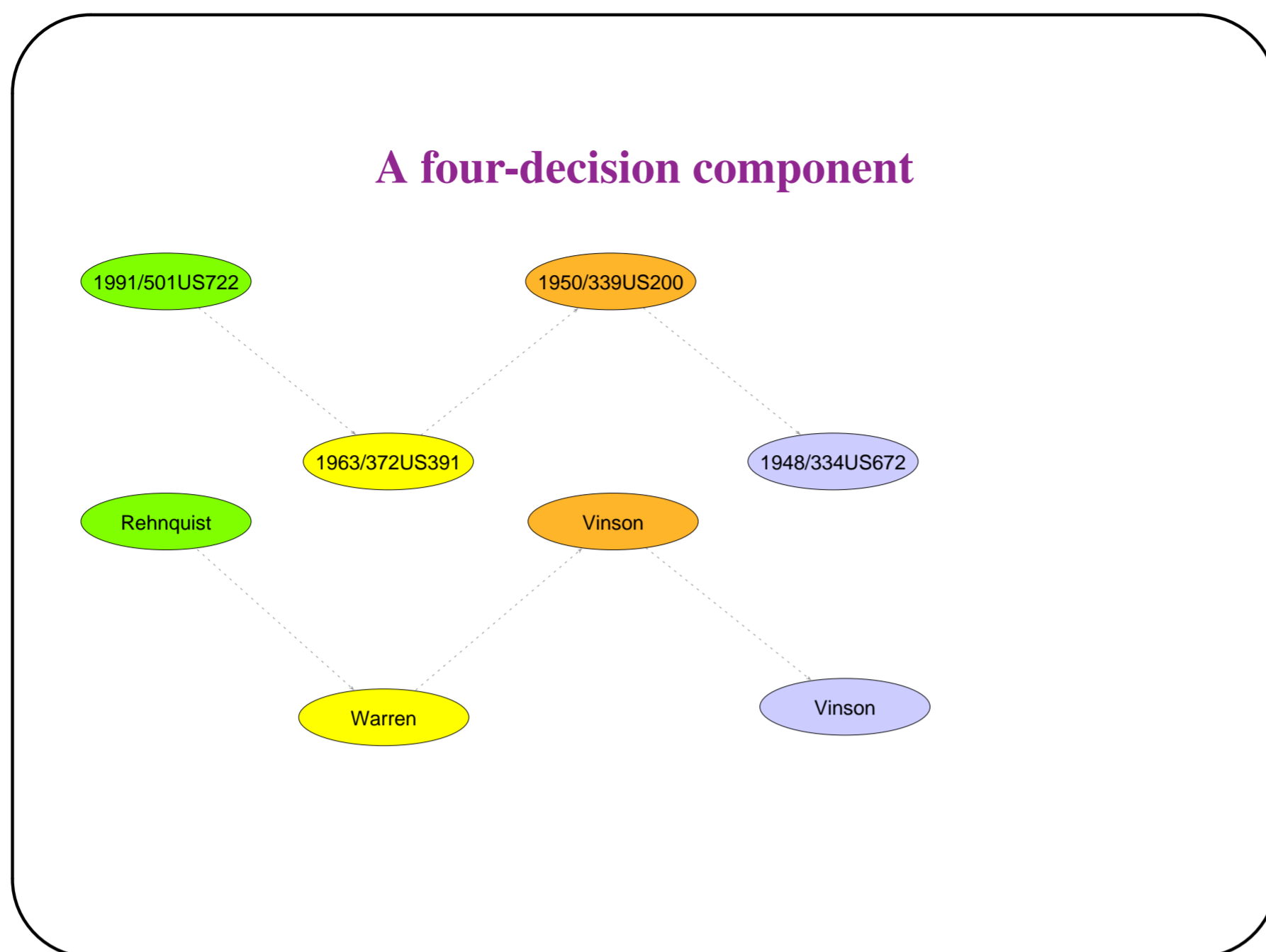
Substance and Constitutional Issues (cont)

A five-decision component

Note the overturning of a decision that overturned an earlier decision. (The Vinson Court overruled some of its own decisions and the Warren Court overruled Vinson Court decisions.)

- Substantive issues
 1. The admissibility of evidence collected without a warrant.
- Constitutional issues
 1. Fourth Amendment (regarding search and seizure)
 2. Fourteenth Amendment (Due Process)

There is some incoherence here, especially for the Vinson Court. The basic issue is what counts as legally acceptable information.



Substance and Constitutional Issues (cont)

A four-decision component

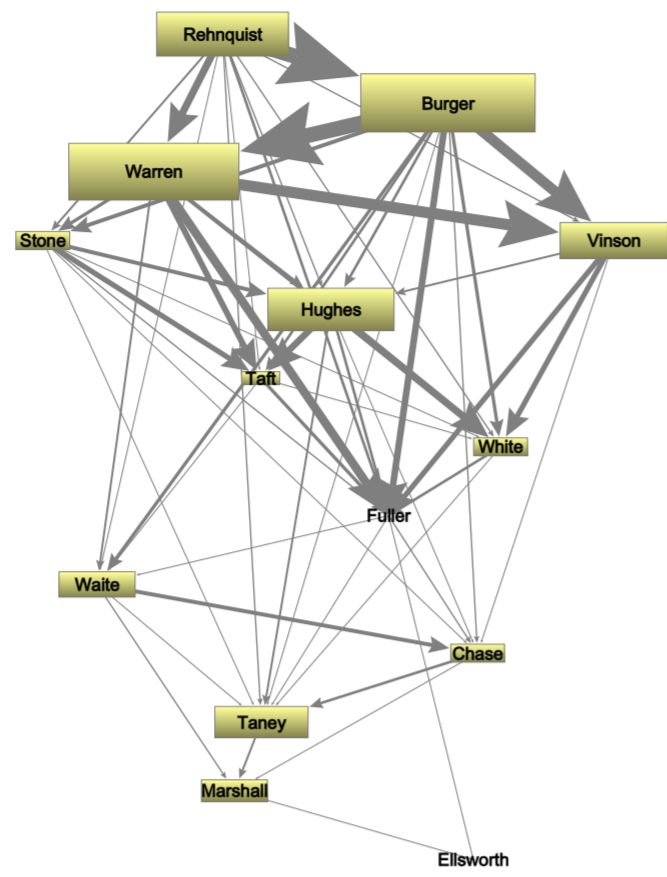
This component has a sequence of four decisions connected by three overturning links. This is a unique sequence in these data.

- Substantive issues
 1. Exhausting state-level remedies before going to federal courts.
 2. Preserving death sentences, especially with the Rehnquist Court.
- Constitutional issues
 1. *Habeas Corpus* (a writ requiring a person to be brought before a judge or court, especially one requiring a person under arrest to be brought before a judge or into court, to secure the person's release unless lawful grounds are shown for their detention).
 2. Articles I and II on the distinct and overlapping powers of courts.

Courts Overturning Earlier Decisions by Courts

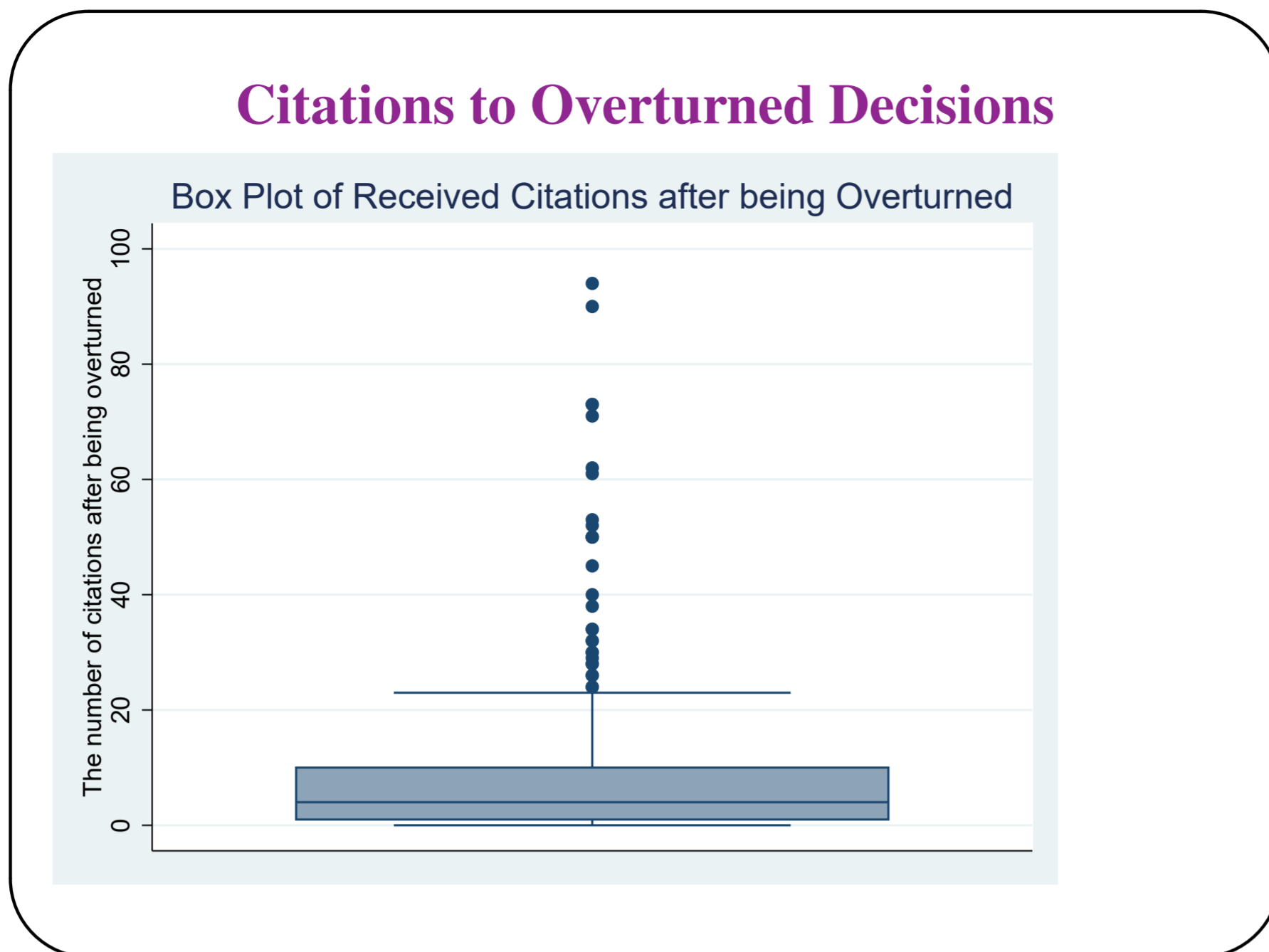
ID	Chief Justice	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	Ellsworth	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	Marshall	1	3	0	0	0	0	0	0	0	0	0	0	0	0
3	Taney	0	3	6	0	0	0	0	0	0	0	0	0	0	0
4	Chase	0	1	4	2	0	0	0	0	0	0	0	0	0	0
5	Waite	0	2	1	6	4	0	0	0	0	0	0	0	0	0
6	Fuller	1	0	1	2	1	0	0	0	0	0	0	0	0	0
7	White	0	0	1	0	0	4	2	0	0	0	0	0	0	0
8	Taft	0	0	0	0	1	5	1	1	0	0	0	0	0	0
9	Hughes	0	0	3	1	0	4	11	10	11	0	0	0	0	0
10	Stone	0	0	1	1	0	2	1	8	6	2	0	0	0	0
11	Vinson	0	0	0	1	0	8	8	0	3	0	8	0	0	0
12	Warren	0	0	0	0	3	13	6	9	4	5	17	20	0	0
13	Burger	0	0	1	2	5	10	5	4	4	6	16	23	21	0
14	Rehnquist	0	0	2	0	1	4	2	1	2	3	2	11	23	12

Figure for Courts Overturning Earlier Decisions by Courts of Chief Justices



Issues Raised by These Results

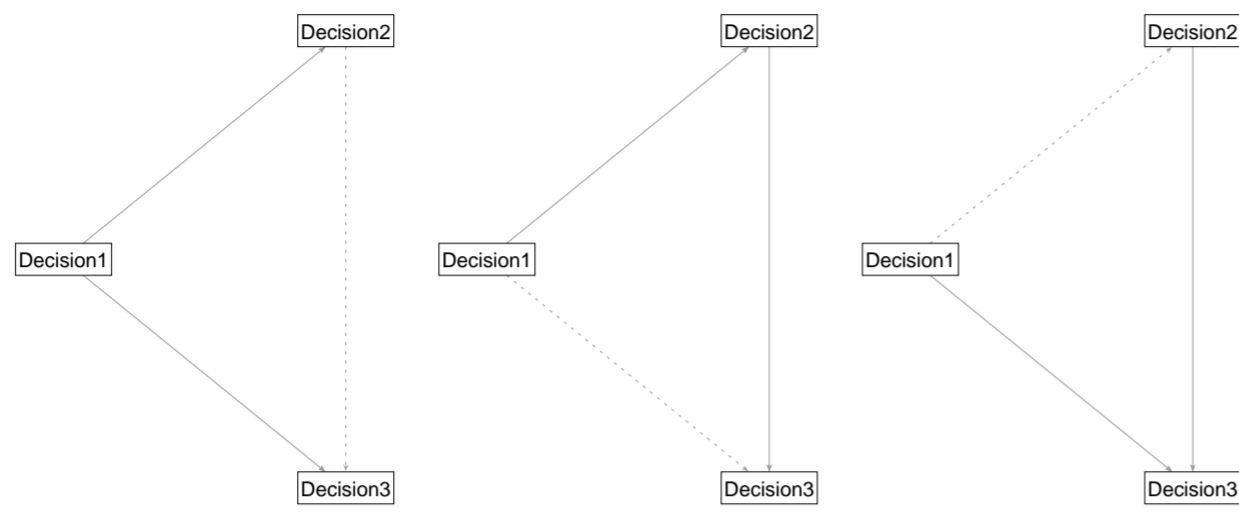
1. Clearly, the rate of overturning prior decisions has increased in recent years.
2. It seems Courts do 'go after' the decisions of prior Courts.
3. The simplest explanation: this is due to the ever-increasing number of accumulated decisions over time.
4. Also, the rate at which Courts overturn their own decisions has increased. This raises two critical issues:
 - (a) Does this reflect rethinking (genuinely) the issues involved?
 - (b) Or can this be accounted for by changes in the composition of the Court?
5. Hypothesis: Such changes are driven primarily by **changes in the composition of these Courts.**



Citations to Overturned Decisions

- This is a very distinctive skewed distribution.
- There are 21 decisions cited at least 30 times since being overturned.
- The decision cited the most after being overturned received 94 citations (after being overturned *completely!*)
- The next most frequently cited overturned decision was cited 90 times. However, this decision was overturned only in part.
- This implies counting the complete overturning and partial overturning decisions.
- And then examining the components for the partial overturning decisions.

Balanced and Imbalanced Triples



1. Type 1: Decision 1 cited positively both Decision 2 and Decision 3. Yet Decision 2 overturned Decision 3.
2. Type 2: Decision 1 cites Decision 2 which cites positively Decision 3. But Decision 1 overturned Decision 3.
3. Type 3: Decision 1 overturns Decision 2 which had cited Decision3 positively. Yet Decision 1 cited Decision 3 positively.

Counts of Balanced and Imbalanced Triples

Balanced	Triple Count	Imbalanced	Triple Count
All positive	247271	One negative-1	1578
One positive-1	90	One negative-2	1233
One positive-2	0	One negative-3	1413
One positive-3	29	All negative	0
Total	274152	Total	4224

- The number of decisions is 9297.
- First imbalance measure is 0.983.
- Second imbalance measure (ignoring all positive triples) is 0.027.

Courts by Inconsistent Triple Types

Chief Justice	Triples1	Triples2	Triples3	Sum
Ellsworth	0	0	0	0
Marshall	0	0	0	0
Taney	0	0	0	0
Chase	0	0	0	0
Waite	0	0	0	0
Fuller	2	0	0	2
White	0	1	1	2
Taft	4	0	0	4
Hughes	21	13	21	55
Stone	24	5	5	34
Vinson	14	17	14	45
Warren	76	103	57	236
Burger	57	37	32	126
Rehnquist	91	46	56	193

Question: What accounts for this amount of logical inconsistencies?

A Research Agenda

1. Examining the distribution of the overturning links alone in terms of the connected components formed by them. (Largely done)
2. Coupling overturning decisions to both the **substantive** issues and the **constitutional** grounds for making these decisions. (Well underway)
3. Examining the distribution of overturning ties between pairs of Courts defined by their Chief Justices. (Done)
4. Examining Courts overturning their own decisions. (Started)
5. Considering the structure of the *signed* network when the positive ties between decisions are included along with the positive ties. (Largely done)
6. Examining the meaning of *stare decisis* (respecting precedent). (A huge task!)
7. Examining why overturned decisions are still cited by subsequent decisions. (A huge task!)