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The Political Evolution of Promissory Estoppel

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Abstract

In this paper, we examine the adoption of promissory estoppel among the fifty United States, with particular attention to political ideology of state court judges (liberal versus conservative) and the political responsiveness of state courts as measured by the selection mechanisms for state court judges (appointment versus election). We focus on the development of doctrine by the highest courts of each state (rather than case-by-case application by trial or appellate court judges) and consider whether and to what degree political ideology and electoral responsiveness drive the development of common law contract doctrine (promissory estoppel, in particular).

I. Introduction

The emergence of promissory estoppel is arguably the most important innovation, or evolution, in contract law in the last century.[1] Promissory estoppel allows one party to enforce a promise made by another party even when the classical requirements of contract formation (e.g., offer and acceptance, bargained-for consideration) are absent, or the doctrines against the enforcement of unwritten or stale promises (e.g., statute of frauds, parol evidence rule, statute of limitations) suggest non-enforcement of the promise.[2] The doctrine, embodied in the authoritative Restatement (Second) of Contracts, engages the principle of "reliance" as an essential feature of this contract alternative -- that is to say, a person who receives a promise (the promissee) and relies on that promise, even if that promise does not meet the classical requirements of contract formation, may be entitled to enforcement of that promise if an injustice would be avoided by doing so. Most American states have adopted some form of promissory estoppel, although such has not been uniform in timing or nature and state courts routinely differ on whether the doctrine applies at all in specific contexts (e.g., enforcement of a subcontractor's bid, unwritten promises of long-term employment, promises made outside of a written contract, etc.).[3] Noticeably, the characterization of a general tort-like reliance requirement in promissory estoppel by many courts has

[1]

[2] The standard first year contract law course example of promissory estoppel comes in the seminal 1898 case of *Ricketts v. Scothorn.* 57 Neb. 51, 77 N.W. 365 (1898) (cited in the Reporter's Note to Restatement (Second) Section 90. There, a grandfather made a non-bargained-for promise (a promised gift) of $2000 to induce his granddaughter to quit work and enjoy a more leisurely lifestyle. Although the granddaughter made no return promise that she would quit her work, near the time of her grandfather's death she quit work in reliance upon the expected $2000 payment (allegedly owed by the grandfather's estate after the grandfather's death). The Nebraska Supreme Court held that grandfather's estate was "estopped" from using the defense of "lack of consideration" by the granddaughter (that is, the argument that the classical contract requirement of "bargained-for consideration" was missing because there was no mutuality of obligation). The Court held that the estate was obligated to pay the $2000 based on the granddaughter's detrimental reliance on the promise (that is, she gave up her employment).

[3] While primarily a common law development, some state legislatures have mandated the doctrine by statute. Georgia, Louisiana, ...

impacted favorably groups traditionally weaker in their bargaining relationships with others (e.g., employees and pensioners with employers, insureds with insurance companies, customers with company sellers, borrowers with bank lenders). As the adoption and use of promissory estoppel has direct implications for distributive justice, potentially opening up the franchise of contract to groups in traditionally weaker bargaining positions, we consider the influence of judicial political ideology and the political (electoral) responsiveness of state courts on the adoption of the promissory estoppel doctrine by states. Specifically, we ask (1) whether the adoption (and timing of adoption) of promissory estoppel by state high courts is influenced by the political make-up of the state high court (liberal vs. conservative), and (2) does the method of selection to state high courts (appointment vs. election) impact the adoption (and timing of adoption) of promissory estoppel. If a connection between state high court political ideology (or court political responsiveness) and the adoption of promissory estoppel by state courts exists, a more comprehensive narrative about the evolution of contract law must be told.

II. Promissory Estoppel -- The Doctrine(s)

There are a number of histories told by scholars about the arrival and evolution of promissory estoppel in American courts. [detail out 2 or 3 of these versions]. Professor Eric Mills Holmes, for example, breaks down the common law development of promissory estoppel into four historic periods over the last century -- estoppel, contract, tort, and equity.[4] Notable is the transition from contract phase to tort phase where the underlying principle of liability flips from traditional notions of promise-based liability (as one would find in a classical bargain contract) to reliance-based liability (something more akin to a tort). The four stages are outlined in the table below.

Estoppel Phase	Contract Phase	Tort Phase	Equity Phase
Defensive Equitable Estoppel to estop contract defenses such as statute of frauds, statute of limitations, and parol evidence rule. *Offensive Promissory Estoppel* extending estoppel doctrine from representations of facts to representations of promises.	Promissory estoppel viewed as consideration substitute to validate contract-like promises and award traditional contract expectation damages.	Promisee's right to rely and promisor's duty to prevent foreseeable detrimental reliance. Promissory estoppel as independent offensive theory independent from contract.	Assimilation of earlier three phases rectifying wrongs and awarding corrective relief using full range of remedies as justice requires (expectation, reliance, restitution, specific performance)

Another history often told connects the leading figures in the field of contract theory to the various principles that have driven the evolution of promissory estoppel. That story begins with Professor Williston, the first reporter for the Restatement of Contracts, who arguably mainstreamed the doctrine of promissory estoppel by

[4] Eric Mills Holmes, Restatement of Promissory Estoppel, 32 Willamette Law Review 263 (1996)

introducing the concept (with apparently little case law to support it) as Section 90 in the first Restatement of Contracts.[5] While Section 35 of the Restatement laid out the basic "consideration" doctrine of classical bargain-for contract,[6] Section 90 arguably introduced a whole new concept of promissory liability based on the reliance of a promisee on a promise made by a promisor. Professor Williston resisted the notion that Section 90 varied greatly from the promise-based version of classical bargain contract, even arguing that the remedy for a typical promissory estoppel claim would be the expectation damages remedy generally used for bargain contract breach. For Williston, promissory estoppel was mainly about the promise and the need to enforce the commitment that created an expectation in the promisee -- the same type of expectation that would be created in normal bargain contracts.

In the decades after the publication of the first Restatement, however, scholars focused largely on the reliance element of this new doctrine (cites), claiming it to be a significant departure from classical contract bargain theories. The epiphany of the reliance perspective came in 1974 with Yale Law School professor Grant Gilmore's seminal book, *The Death of Contract,* which argued that promissory estoppel, as a reliance-based tort-like doctrine, would swallow up bargain contract. Gilmore contrasted consideration doctrine of bargain contracts and the reliance principle of promissory estoppel as "matter and anti-matter," "Restatement and anti-Restatement," and "Contract and anti-Contract."[7] The subsequent publication of the Restatement (Second) of Contracts in 1981 appeared to move promissory doctrine in the direction that Gilmore had suggested -- farther from bargain contract and towards tort-like reliance-based doctrine for promise enforcement. Indeed the intent of the drafters of Section 90 in the second Restatement was to make promissory estoppel "more available, the role of reliance more prominent, and the remedies awarded to successful litigants more flexible."[8]

Restatement (First) of Contracts	Restatement (Second) of Contracts
Section 90: Promise Reasonably Inducing Definite and Substantial Action	Section 90: Promise Reasonably Inducing Action or Forbearance
A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.	(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires. (2) A charitable subscription or a marriage settlement is binding under Subsection (1) without proof that the promise induced action or forbearance.

[5] Although Section 90 does not mention the term "promissory estoppel," courts generally refer to this section of the Restatement in setting out the core requirements of the doctrine, which include: a promise, reasonably foreseeable reliance, actual reliance that was induced by the promise, and enforcement of the promise if such avoids an injustice to the promisee.

[6] Describe bargain theory consideration doctrine and recite Section 35 of first Restatement.

[7] Grant Gilmore, The Death of Contract 61 (1974).

[8] Jiminez (2010), at 669.

Other scholars focused on the broad shift in judicial method, from the formalities of classical contract law to a more flexible regime, that promissory estoppel came to represent. Indeed, promissory estoppel stands in contrast to classical contract law which stresses bright-line legal rules and rigid contract formation categories over flexible standards and more fact-based reasoning. Classical contract law emphasizes clearly defined principles and doctrines such as bargained-for exchange, the statute of frauds, the parol evidence rule, and the plain meaning rule.[9] Whereas classical contract law trumpets definitions, categories, and syllogistic logic,[10] promissory estoppel is said to present a more flexible decision instrument with greater emphasis on the merits of individual cases. Professors Metzger and Phillips have argued that reliance-based promises made contract law less formalistic and more flexible, contextual and relational.[11]

For many of these scholars, the extent of the dissimilarity between promissory estoppel and classical bargain contract depends much on which underlying principle -- promise or reliance -- drives the court's perspective and analysis. Although Section 90 of the Restatement identifies reliance ("*induce[s] action* … on the part of the promisee") as a central feature of promissory estoppel, scholars have been divided on whether reliance or promise ("A *promise* which the promisor should reasonably expect to induce action") should be, or has been, the underlying principle of the promissory estoppel doctrine in cases decided by the courts. The early scholarship played to the language of the Restatement and concluded that reliance was the source of promissory estoppel doctrine. (cite) And those advocating the reliance-based approach to liability concluded that reliance damages should be the appropriate remedy (cite). Moreover, as promissory estoppel was imagined more as a tort than a contract, the defenses against contract formation and enforcement -- in particular, the statute of frauds and the parol evidence rule -- would not apply in the promissory estoppel context. Indeed, a number of states have ruled that statute of frauds and the parol evidence rule are inapplicable to promissory estoppel claims. (cite)

In empirical studies, Professors Farber and Matheson (1985) and Professors Yorio and Thel (1991) concluded that promise, not reliance, was again the underlying source of the promissory estoppel doctrine for the courts by the late 1970s and throughout the 1980s, meaning that promissory estoppel was a mere extension of the promise principle from classical bargain-for consideration contract. Professor Juliet Kostritsky also argued that promissory estoppel was similar to promise-based assent of the bargain contract theory, stating that "promissory estoppel, along with other orthodox doctrines, are merely substitute doctrinal methods for showing the assent required for an enforceable consensual exchange."[12] Similarly, Professor Charles Knapp calls promissory estoppel a contract doctrine, arguing that "it rightfully belongs in the domain of promise-

[9] Mooney
[10] Cite Mooney, *The New Conceptualism in Contract Law*, Oregon Law Review (1995)
[11] Michael B. Betzger & Michael Phillips, Promissory Estoppel and the Evolution of Contract Law, 18 Am. Bus. L.J. 139 (1980).
[12] Juliet Kostritsky, A New Theory of Assent Based Liability Emerging Under the Guise of Promissory Estoppel: An Explanation and Defense, 33 Wayne State L. Rev. 895, 903-904 (1987).

enforcement, which we conventionally call contract law; it should neither be exiled nor shanghaied across the border." Randy Barnett and Mary Becker note that many of the commercial transaction case decisions invoking on Section 90 of the Restatement (Second) of Contracts emphasize the similarity of the situation to bargain-for consideration cases. They conclude that "promissory estoppel is used to enforce commercial promises apparently intended as legally binding, though the absence of a bargain or some other formal flaw would bar enforcement on the basis of traditional contract doctrines."[13]

Consistent with the promise-based version of promissory estoppel, these scholars likewise concluded that the typical measure of damages for a valid promissory estoppel claim would be primarily expectation damages (the typical measure of damages for breach of a bargain contract) rather than reliance damages. A number of empirical studies support this.[14] Moreover, the the statute of frauds and the parol evidence rule defenses against contract formation and enforcement should continue to apply in the promissory estoppel context, just as they would for traditional bargain contracts. And a number of state courts have so concluded. (cite)

Other scholars have argued that promissory estoppel is essentially a tort doctrine, wholly different from assent-based bargain contract.[15] Reliance rather than promise, they stress, is the dominant principle of promissory estoppel. Along this line, Justice Holmes once stated that reliance-based promissory estoppel would "cut up the doctrine of consideration by the roots, if a promissee could make a gratuitous promise binding by subsequently acting on it."[16] Randy Barnett has added that "[p]romissory estoppel was a different beast altogether and one that, if properly fed and nurtured, could grow to supplant the bargain theory of consideration entirely."[17] Some scholars point out, although contested by others, that courts in promissory estoppel cases routinely protect the reliance interest by awarding aggrieved parties the reliance loss (generally a tort remedy) rather than the expectation damage (the presumed contract breach remedy). Moreover, the classical defenses against promised-based bargain contract formation -- in particular, the statute of frauds and the parole evidence rule -- could be cut out in favor of the more flexible and fairness-related concerns embodied in the reliance-based approach.

[expand this section on reliance]

III. Political Economy of Promissory Estoppel

[13] Randy E. Barnett & Mary E. Becker, Beyond Reliance: Promissory Estoppel, Contract Formalities, and Misrepresentations, 15 Hofstra L. Rev. 443, 449-50 (1987).
[14] Mary E. Beker, Promissory Estoppel Damages, 16 Hofstra L. Rev. 131, 134 (1987); Farber and Matheson, p. 909; Robert A. Hillman, Questioning the "New Consensus" on Promissory Estoppel: An Empirical and Theoretical Study, 98 Colum. L. Rev. 580, 601 (1998); Michael B. Kelly, The Phantom Reliance Interest in Contract Damages, 1992 Wis. L. Rev. 1755, 1758 (1992); Yorio & Thel, at 129-55.
[15] See, for example, Randy E. Barnet, Is Reliance Still Dead?, 38 San Diego L. Rev. 1 (2001).
[16] Commonwealth v. Scituate Sav. Bank, 137 Mass. 301, 302 (1884).
[17] See Randy E. Barnett, Is Reliance Still Dead?, 38 San Diego L. Rev. 1 (2001) at 4-5.

The evolution of common law generally has been described as a process fostering the efficient allocation of resources in a market economy. Underlying legal rules evolve through a system of case law (private law/common law) development in a way that incentivizes people to move resources to their most efficient use. This evolution of legal rules results in part from the incentives judges have to make efficient legal rules (Posner 1973). Scholars have shown that legal rules that produce inefficient outcomes are more susceptible to legal challenge (Rubin 1977; Priest 1977) and consequently are driven out in favor of rules that promote more efficient outcomes. If common law is efficient, one would expect it to evolve towards convergence among the states and exhibit stability over time (Niblett, Posner and Shleifer 2008).

The emphasis on economic efficiency by common law evolution theory is notably different than that described in recent theoretical and empirical studies of public law by scholars working from the attitudinal model (cite) or positive political theory (cite). Those frameworks emphasize the political nature, rather than the economic and evolutionary nature, of judicial decisions and the legal doctrines that emerge. From positive political theory, legal doctrine and decision instruments have been modeled as political control mechanisms, with higher courts, for example, choosing between doctrinal rules and standards to constrain or enable lower court activism (Jacobi and Tiller 2007), and lower courts choosing between fact-based and law-based decisionmaking to avoid or engage supervising higher courts (Tiller and Spiller 1998; Smith and Tiller 2002; Schanzenbach and Tiller 2007). Attitudinalists have amassed a considerable amount of empirical scholarship demonstrating that judges vote their political/policy preferences (Spaeth and Segal; Epstein et al, ***) with legal doctrine and precedent acting as little, if any, constraint. If political preferences drive, at least in part, the decisionmaking in private common law decisions (much like in public law judicial decisions), then efficiency-driven common law development may be modulated by political conditions (e.g., judicial ideology, responsiveness to the electorate), if efficiency is in fact a driver at all.

There is no shortage of scholarship describing classical contract law as politically conservative, advantaging "economically privileged parties such as banks, insurance companies, employers, and sellers."[18] Classical contract law has been labeled as the favored legal paradigm of conservative judges.[19] In *The Death of Contract*, Professor Gilmore noted that the classical vision of contract law works ultimately to the benefit of the already rich and powerful.[20] Other commentators have stated that in "virtually every [contract] formation dispute, it is a seller or employer who invokes the restrictive, conceptualist verities [of classical contract law]"[21] and "… twenty-five years of conservatism [1980s and 1990s] has filled many of our state courts and most of our

[18] Cite Mooney.
[19] Martha M. Ertman, "Contract Purgatory for Sexual Marginorities: Not Heaven, But Not Hell Either, 73 Denver University Law Review 1107, 1159-60 (1996) (describing classical contract law as a favored legal paradigm of conservative judges).
[20] Grant Gilmore, The Death of Contract (***)
[21]

federal courts with judges who are fond of classical contract law."[22] On this last point, Professor James Mooney and others have suggested the return to conservatism by judges in the 1980s resulted in a political tilt towards economically dominant parties.[23] Professor Orit Gan concluded that "this conservative trend has resulted in a weakening of promissory estoppel. Under formalistic and conservative contract law, promissory estoppel becomes a marginal or even dead doctrine."[24] Recently, other scholars have challenged any notion that promissory estoppel is in decline, noting use of it by courts is prevalent."[25]

Other scholars have noted that the political conservatism of classical contract law "has worked to the advantage of economically privileged parties such as banks, insurance companies, employers, and sellers"[26] and in the end works to the benefit of the already rich and powerful.[27] The promise-based version of promissory estoppel has been characterized as more restrictive on contract formation by weaker groups in that it (1) uses the reliance factor as a steep hurdle for promissory enforcement and (2) retains the traditional defenses to promissory enforcement from the bargain theory context. The reliance requirement under promise-based promissory estoppel is one of "definite and substantial character." This requirement works more as a substitute for return consideration in a bargain in that the definite and substantial nature of the reliance is likely measured as the return consideration sought by the original promisor. In that sense, promissory estoppel is merely an extension of bargain contract, not allowing the failure to meet a technical requirement (such as definiteness of return promise, or formal acceptance) to stop the full realization of expectations from promises of exchange that lack the formality of a classical bargain contract. *** With respect to defenses, as promissory estoppel is merely an extension of bargain contract, the conservative defenses of statute of frauds and the parol evidence rule need not be jettisoned.

The distinction between promise-based and reliance-based promissory estoppel is important for its implications for distributive justice -- in particular, the expansion of promise enforcement to traditionally weaker-bargaining parties. From the more liberal, reliance-based perspective, promissory estoppel removes the relevance of the promisor's defenses of the statute of frauds and the parol evidence rule -- defenses that would not recognize the formation or enforcement of an oral promise in many circumstances. As

[22] Peter Linzer, "'Implied,' 'Inferred,' and 'Imposed': Default Rules and Adhesion Contracts – The Need for Radical Surgery," 28 Pace Law Review 195, 214-215. Professor Linzer in various forums has described the origin and development of classical contract law as the conservative swing in contract jurisprudence. Wayne Barnes, ed, "Theory and Anti-theory in the Work of Allan Farnsworth," Texas Wesleyan Law Review 1, 9 (2006) (quoting panelist Peter Linzer). He states that the United States was in "a conservative, Republican and business-oriented cycle from the end of the Civil War until the Depression, the years of the birth and flowering of classical contract law." Peter Linzer, " 'Implied,' 'Inferred,' and 'Imposed': Default Rules and Adhesion Contracts – The Need for Radical Surgery," 28 Pace Law Review 195, 215.

[23] Ralph James Mooney, The New Conceptualism in Contract Law, 74 Or. L. Rev. 1131, 1133-34 (1995).

[24] Orit Gan, Promissory Estoppel: A Call for a More Inclusive Contract Law, J. Gender Race & Just. 47 (2013), at. 65-66.

[25] cite Kotritsky, Eric Mills Holmes, and Jimenez

[26] Mooney, p. 1134

[27] Mooney, p. 1134, and Gilmore, p. 95.

weaker parties are more likely to be in the position of not having a promise in writing, or to being orally promised something additional to a writing drafted by the other party (e.g., employees or potential employees orally promised jobs, raises, or pensions; borrowers promised lenient loan enforcement by bank, etc.), they gain by having judges circumvent the bargain or writing requirements to form a binding promise in their favor based on that weaker party's reliance on the alleged promise (reliance that was, or should have been, anticipated by the promisor). Moreover, the liberal version of promissory estoppel views reliance in a general way, often presuming that reliance took place by the promisee, rather than requiring reliance of a "definite and substantial character," thus making the case for promissory enforcement that much easier.

An important aspect of promissory estoppel is the willingness to enforce a remedy "as justice requires" rather than as "law requires." This leaves considerable discretion for a judge or jury to create a contractual obligation where one would not otherwise exist. Promissory estoppel's emphasis on fairness over the predictability and consistency of classical contract law has implications for what classes of plaintiffs and defendants will be advantaged in court. Scholars have generally noted that promissory estoppel advantages the weaker party, oftentimes consumers or employees, over better prepared and experienced contracting parties such as companies and employers who are less likely to fail in negotiating and crafting an enforceable agreement to their liking consistent with classical contract formalistic requirements.

Noting that the conventional view that courts rarely deviate from bargain theory principle, only seldom applying reliance-based promissory estoppel, Professor Orit Gan suggests that promissory estoppel should be (and occasionally is) used to expand and strengthen the right to contract to groups traditionally not able to meet the consideration requirement due to inequality of bargaining power or relations of trust between the parties (e.g., divorced wives and widows promised financial support by former or deceased husbands; potential employees and current employees promised a benefit from an employer; insurees promised unwritten benefits from an insurance company's agent; borrower orally promised relaxed repayment terms by a lender). "In such cases, promissory estoppel is immensely important, as it is the promisee's only way to enforce the promises made to them." (Gan, p. 51). More generally, Professor Gan argues that promissory estoppel should be viewed as a doctrine that "extends contract to more promisees," giving disadvantaged groups "access to contract."[28]

To sum up, the argument can be made, and has been made, that the various shades of the promissory estoppel doctrine differentially impact the powerful and the weak. Conservative bargain theory (promise-based) versions of promissory estoppel remain a tool of the stronger bargaining party (business management, in particular), while liberal reliance-based versions of promissory estoppel empower the weaker party (employees, customers, borrowers, and insured persons, for example). The ideological predilections of judges, whether consciously or unconsciously, may play into judicial choice of legal doctrine – that is, the choice of which version of promissory estoppel will be controlling in the instant case outcome and beyond as precedent.

[28] Gan (2013) at 79.

IV. Empirics

A. Overview

The theoretical connection of doctrinal advantage to groups (reliance-based promissory estoppel favoring weaker groups, employees and consumers; promise-based promissory estoppel and classical contract law favoring business and elites) and the associated liberal/conservative political-ideologies of judges presents the basis for the general empirical propositions that we study here: (1) Judges appointed or elected by liberal (conservative) governors, legislators, and general electorates are more (less) likely to favor reliance-based promissory estoppel principles. (2) States where high court judges are elected are more likely to adopt reliance-based promissory estoppel doctrines than states where judges are appointed. With respect to the latter proposition, we assume that electorates are more likely to reflect employees and consumers and this may make judges more likely to choose doctrines favorable to them (including reliance-based promissory estoppel) than when there is no direct electoral connection between the electorate and the selection of judges on high courts.

We focus on the development of doctrine by the highest courts of each state (rather than tallying the prevalence of case-by-case applications by trial or lower appellate court judges). Unlike other empirical studies of promissory estoppel, we are less concerned with measuring how widespread is the use of the doctrine in state trial courts. We instead are interested in the appearance of promissory estoppel doctrinal precedents in high court decisions as these signal the state's general doctrinal position on the doctrine (and to which lower courts are supposedly bound).

B. Propositions.

Proposition 1: Democrat controlled courts are more likely than Republican-controlled courts to adopt the doctrine of promissory estoppel.

Proposition 2: Courts with elected judges are more likely than courts with non-elected judges to adopt the doctrine of promissory estoppel.

Proposition 3: Courts with elected judges are more likely to adopt the doctrine of promissory estoppel, when the median voter of the state is a democrat than republican.

C. Method.

We analyze the data in two ways. First, we employ a discrete time duration model to estimate the probability that a state adopts reliance-based promissory estoppel or the Restatement (Second) of Contracts in a given year. This modeling approach allows us to model directly the hazard function. We follow Carter and Signorino (2010), who suggest that the inclusion of a cubic polynomial is the best way to model the hazard shape while not overfitting the data. In these analyses, the data consist of state-year observations, and the outcome variable is whether

state *i* adopts the policy in question in year *t*. Because this outcome variable is dichotomous, we use logistic regression to model the data. Due to the availability of data (discussed below), we vary the time spans that we use to model the data, with some analyses beginning in the 1930s and other, more robustly specified, analyses, begin in 1970.

Second, we conduct a more traditional analysis of decisionmaking in those cases that implicate the doctrine of promissory estoppel since 1970. In this analysis, the dependent variable is whether a state uses reliance-based promissory estoppel to decide the case at hand. Because the dependent variable is dichotomous, we use logistic regression to model the data.

D. Data

The original dataset we analyze contains all state court decisions from a WESTLAW search containing either the terms "promissory estoppel", or "Section 90" within five words of "Restatement". [explain better] We removed cases that were not about promise enforcement. [explain more]

Measuring the Adoption of Promissory Estoppel in the United States

The following table displays the first year in which each state (a) adopted the case law promissory estoppel doctrine (not mentioning the Restatement), (b) adopted the Restatement (First) of Contracts, Section 90 (or cited to a case that relied upon the Restatement (First)), (c) adopted the Restatement (Second) of Contracts, Section 90 (or cited to a case that relied upon the Restatement (Second)), and (d) decided a case using reliance-based promissory estoppel.

State	Case Law P.E. Doctrine Accepted	Restatement (First), Section 90 Accepted	Restatement (Second), Section 90 Accepted	Reliance-Based P.E. Adopted
AK		1974	1984	1981
AL	1901	1965	1987	1901
AR	1881	1964	1996	1951
AZ		1949	1982	
CA	1908	1942	2000	1910
CO	1926		1982	1926
CT	1864	1961	1987	
DE	1954	1958	2000	1958
FL		1974	1989	1987
GA				1981
HI	1948	1968	1970	1948
IA	1942	1949	1974	1974
ID	1966	1964	1981	
IL	1997	1974		1974
IN		1957	1991	1957

KS	1974	1931	1999	
KY	1911	1943	1979	
LA				
MA	1933		1985	1992
MD		1930	1988	1996
ME	1929		1978	1968
MI	1873	1961	1977	
MN	1890	1971	1977	1925
MO	1959	1947		
MS	1999	1933	1984	
MT	1959	1949	1984	
NC		1949	1982	1982
ND	1937		1982	1976
NE	1898	1933	1976	1985
NH	1992		1993	1993
NJ	2008	1956		
NM		1966	1986	
NV	1962	1969	1989	1970
NY	1895		1977	
OH	1875		1976	1985
OK	1928		1997	1928
OR	1904	1949		1959
PA	1939	1938	1971	1973
RI	2001	1967	1985	1985
SC	1923	1951		1935
SD	1939	1943	1983	1966
TN		1963		
TX	1983	1965	1997	1965
UT	1950	1952	1985	1952
VA	1933			
VT		1967	1986	1984
WA	1983	1940	1981	1968
WI		1963	1979	1965
WV	1974		1984	1974
WY	1993	1938	1985	

The major take-away from this table is the very widespread variation in the year in which state supreme courts adopted both promissory estoppel and a reliance-based promissory estoppel doctrine. For example, the state of Ohio adopted promissory estoppel in 1875, and its northern neighbor, Michigan, adopted the doctrine two years prior. However, the state that borders Ohio and Michigan—Indiana—has still not

adopted the doctrine. Likewise, states as diverse as Minnesota and Alabama were early adopters of reliance-based promissory estoppel while other states waited an additional half-century before they adopted the policy (to say nothing of the states who have not yet adopted the policy). Clearly, there is wide variation in policy adoption for us to explain.

Second, though we do not use this data in the present empirical analysis, the following table displays the first year in which the state's supreme court held in favor of the following defenses for promissory estoppel: employment at will, the statute of frauds, the parol evidence rule, statute of limitations, and enforcement of a subcontractor's bid.

State	Employment at Will Not a Per Se Bar	Statute of Frauds not a Per Se Bar	Parol Evidence Rule not a Per Se Bar	Statute of Limitations not a per se bar	PE May be Used to Enforce Subcontractor's Bid
AK		1996	1997		1984
AL	1994				
AR					1964
AZ				1949	
CA		1910			1958
CO	1987	1983			
CT	1987				
DE	1967			2003	
FL					
GA		1986			
HI	1983	1970			
IA	1999	1954			
ID					
IL					
IN	1994	2001			
KS	1974	1976			
KY	1999	1999			1979
LA					
MA	1997				
MD					1996
ME		1978		1982	
MI	1989	1982		1997	
MN	1981			1942	1971
MO					
MS		1979	1933		1979
MT		1949			
NC					
ND		1976			
NE	1978				
NH	1994				

NJ						
NM		1986				
NV		1979				
NY						
OH	1989					
OK				1928		
OR						
PA						
RI						
SC		1935		1935		
SD		2001				1943
TN						
TX		1972				
UT	1986	1956				1984
VA						
VT	1992					
WA	1984	1980		1998		
WI	1967		1969			
WV	2002	1984				
WY	2002	1992				

Again, the predominant conclusion from this table is the widespread variation in both policy adoption practices and the timing of policy adoption for these defenses. In additional analyses yet to come, we plan to explain the adoption of these additional defenses to explore the possibility that partisanship has affected the adoption of these defenses, as we expect it to affect the adoption of reliance-based promissory estoppel.

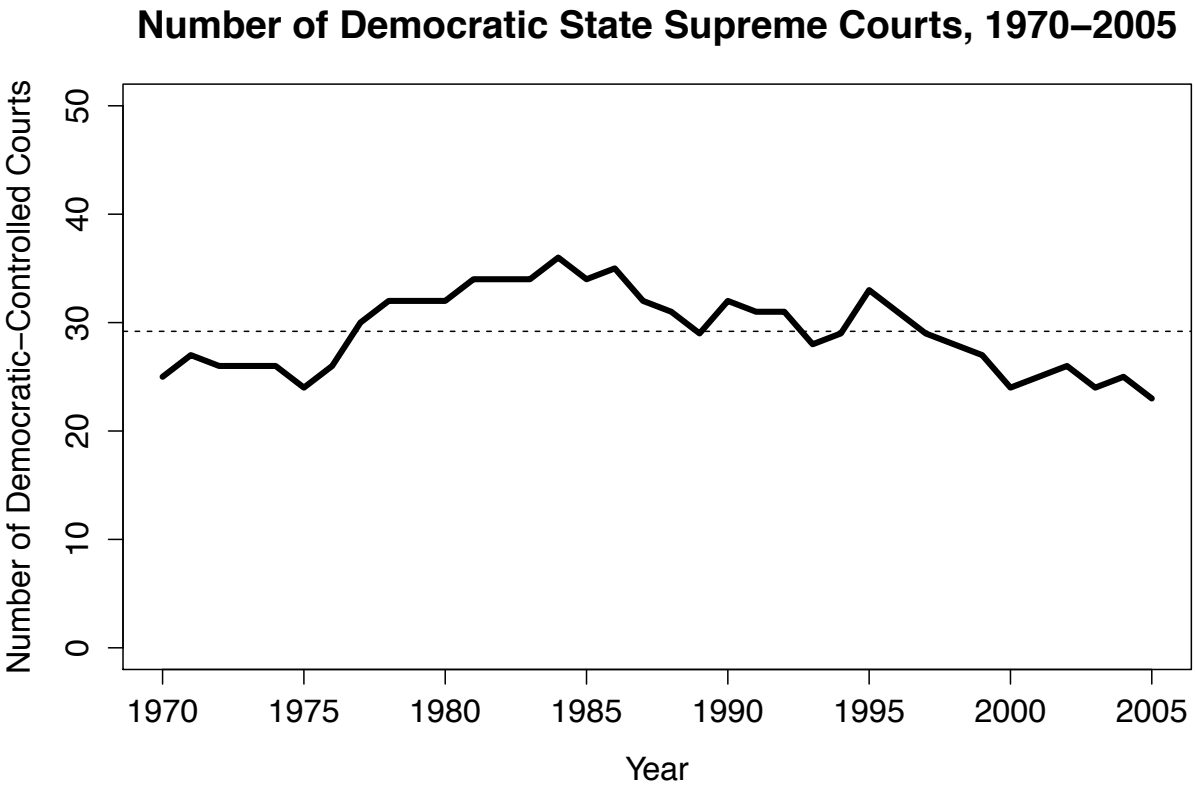
Measuring Partisan Control of State Government

Having explained the measurement of our dependent variables, we turn now to the measurement of our key independent variables. The previous tables show that adoption of reliance-based promissory estoppel grew steadily throughout the 20th century while many states adopted the Restatement (Second) of Contracts fairly quickly in the last quarter of that century. If, as hypothesized, a democratic presence on state supreme courts is associated with the adoption of liberal promissory estoppel doctrine, we might expect to see a corresponding shift in the partisanship of state supreme courts during this time.

The following figure displays the number of state supreme courts that had a majority of democratic members in every year between 1970 and 2005. These data were collected using the same procedure pioneered by Caldarone, Canes-Wrone, and Clark (2009), meaning that research assistants looked for either the partisanship of a judge or a proxy (such as the partisanship of the governor who appointed her to the bench) where necessary. While it would be ideal to collect data on the partisanship of state supreme courts before 1970 (especially since about half of states who adopted reliance-based

promissory estoppel did so before that year), the availability (and quality) of data deteriorates sharply as one moves earlier and earlier in time. Particularly with judges who face nonpartisan elections, it is very difficult to obtain valid information about judicial partisanship before these dates. As a result, we use this data where possible in further analyses, but, for analyses that predate 1970, we use other evidence of state partisanship or policy liberalism as substitutes for judicial ideology, acknowledging that such a substitution comes with a cost: measurement error.

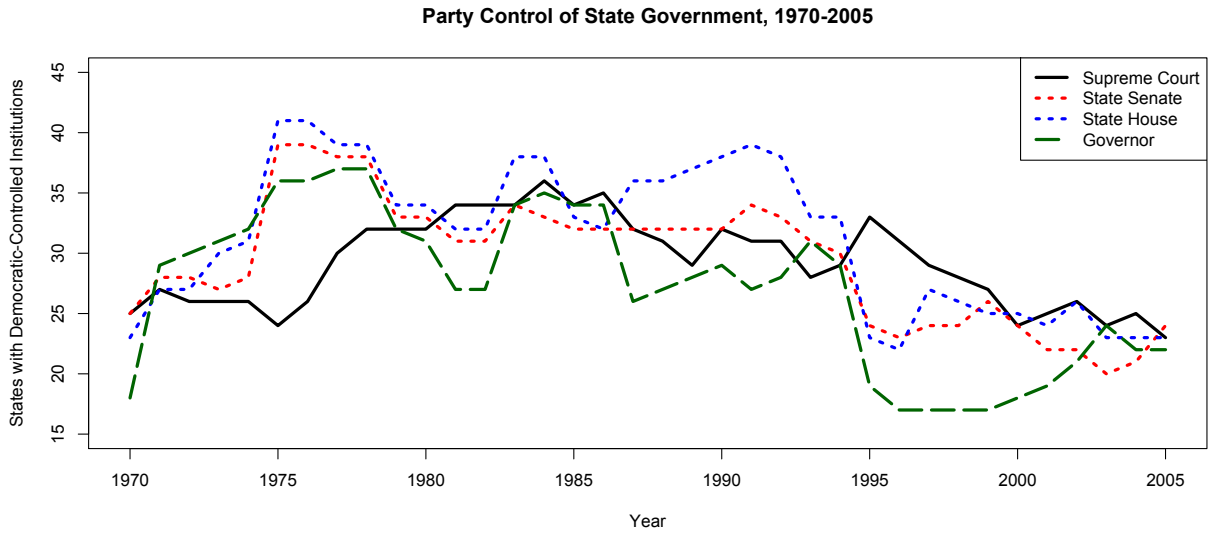
Overall, the number of state supreme courts controlled by Democrats has remained surprisingly stable over time. This lack of variation is especially surprising given macro-level changes in the political environment in the United States during this time. After all, it was during this time period (and a few years before the beginning of our data) that the South moved from one-party Democratic dominance toward Republican control of many state political institutions.



As mentioned above, our data on the partisanship on state supreme courts begins in 1970. To extend our analyses back in time, we rely on the partisanship of other institutions of state government, as recorded by Klarner (2014), as a proxy for the partisanship of the state judiciary.

Of course, such an approach would not be valid if the partisanship of state supreme courts differs markedly across institutions. Were this the case, then the amount

of measurement error induced by examining the partisanship of the governor and state legislature, rather than the courts, for the early 1900s would be questionable. To this end, the following plot shows the trend in the number of institutions of state government controlled by Democrats for each year. Overall, the lines are highly correlated, reaching a peak in the mid-1970s before declining in the mid-1990s. This provides some evidence that, while imperfect, there is some validity to our measurement approach in the long-term duration analyses.



Control Variables

Beyond the partisanship of state government, a number of additional factors may also influence the decision of a state to adopt reliance-based promissory estoppel. To this end, we include a number of additional control variables in the analyses. First, scholars of state politics have long noted that states vary in the extent to which the policies they adopt have a liberal or conservative valence on average. This may happen for cultural, partisan, or ideological reasons (Erikson, Wright, and McIver 1993). To this end, we rely on new advances in the measurement of state policy liberalism, using Caughey and Warshaw's (2015) measure of state policy liberalism which begins in 1936. Briefly, Caughey and Warshaw use a dynamic Bayesian latent-variable model to combine information on policy domains as varied as social welfare to civil rights. The resulting variable thus summarizes the extent to which a state's policies are general liberal, with higher values indicating more liberal policies.

Second, a wealth of research on state politics (e.g. Springer 2014) has emphasized the different political culture in the American South, suggesting that the uniqueness of the South might confound empirical analyses of state policymaking. We thus include an indicator variable for the former confederate states in our analyses.

Third, the major conclusion from studies of policy diffusion in the American states (e.g. Boehmke and Winter 2004; Hinkle 2015) has been that states tend to adopt policies similar to those of their geographic neighbors. Though scholars disagree about the mechanism that underlies this contiguity effect, it is robust in most empirical analyses of policy diffusion. To this end, our analyses include the percent of a state's neighbors who had adopted the policy in question at year *t* throughout our duration analyses.

Fourth, we hypothesize that that policy adoption might differ in states that elect their state supreme courts and those whose justices do not stand for election. We thus control for whether or not a state supreme court is elected or not.

Fifth, we also expect that policy adoption will differ in states with a median voter who is Republican rather than one who is a Democrat. To this end, the models include Enns and Koch's estimate of the percentage of the electorate who are Republicans.

Finally, because cases involving promise enforcement are so closely entertwined with economic policies, we include two indicators of a state's economy: a state's population and its gross state product. Because we anticipate that these variables may have a nonlinear effect (as most similar studies do), we take the natural log of these variables for the analysis.

E. Multivariate Results

Assessing the Relationship Between Reliance-Based Promissory Estoppel and Democratic Control of State Government

Having examined the univariate trends in policy adoption and in the partisanship of state governments and described our control variables, a next step is to examine the bivariate relationship between the two. Looking at the post-1970 period, the data reveal that 12 of the 17 instances in which state supreme courts adopted reliance-based promissory estoppel were decisions made by Democratic-controlled state supreme courts. The relationship between the adoption of the Restatement (Second) of Contracts and Democratic-controlled state supreme courts during that same time period, however, is much more ambiguous: 20 of the 41 adoptions were by state supreme courts controlled by Democrats at the time of adoption. Notably, the trends appear to hold when one further considers judicial retention mechanisms, with exactly half of the elected state supreme courts who adopted the Restatement being under Democratic control at the time of the adoption.

Expanding the time span to the pre-1970 era, the relationship between partisanship and the adoption of reliance-based promissory estoppel are similarly mixed: a minority (11 of 27) of states who adopted reliance-based promissory estoppel did so under a Republican governor while a majority (15 of 27) states did so while the Democratic party controlled the state legislature.

Assessing the Determinants of Promissory Estoppel Adoption

Having examined the univariate and bivariate relationships between partisanship and the adoption of promissory estoppel, we now move to a series of regression models. Again, we test our hypotheses using a variety of different regression models: (1) a discrete time logistic duration model that examines the decision of states to adopt the Restatement (Second) of Contracts, (2) a discrete time logistic duration model that examines the decision of states (post-1970) to adopt reliance-based promissory estoppel for the first time, (3) a discrete time logistic duration model that examines the decision of states (post-1938, when data on the partisanship of state legislatures and governors become available) to adopt reliance-based promissory estoppel for the first time, and (4) a case-level analysis of state supreme court's decision to apply reliance-based promissory estoppel. We discuss the results of each model in turn.

The first model (marked #1 and shown in the table below) is a discrete time duration model examining the decision of state *i* to adopt the Restatement (Second) in year *t*. The data in this model are drawn from the post-1970 period. Overall, the model provides no evidence that the partisanship of state government—be it the courts, the governor, or the legislature—affected the decision of a state to adopt the Restatement in a given year.

However, there is some evidence that the partisanship of the mass public and the judicial retention method used in a state has an effect. Broadly speaking, for states that use judicial elections to retain their judges, an increase in the percentage of the public that are Republicans is associated with an *increase* in the probability that a state adopts the Restatement in a given year. The opposite is true for states that do not elect their judges, however. In these states, an increase in the percentage of Republicans is associated with a *decrease* in the probability of policy adoption.

	(1) Adoption of Restatement (Second)
% Dem. Justices	-0.00
	(0.01)
State Policy Liberalism	0.24
	(0.33)
Southern State	-0.27
	(0.79)
% Dem in Legislature	0.01
	(0.01)
Democratic Governor	0.05
	(0.36)
% Neighbors Adopted	1.79
	(0.93)
Population (Logged)	0.49
	(0.80)
Gross State Product (Logged)	-0.57
	(0.82)
Appointed SSC	3.71
	(2.25)
% Republican Voters	0.07*
	(0.04)
Appointed SSC x % Republican Voters	-0.17*
	(0.09)
t	0.21
	(0.22)
t^2	-0.00
	(0.01)
t^3	-0.00
	(0.00)
Intercept	-8.72
	(4.93)
N	956

The second model (shown in the table below) models the decision of state *i* to adopt reliance based promissory estoppel in year *t* since 1970. Because many states adopted reliance-based promissory estoppel before 1970, this model necessarily only includes those states who had not yet adopted the policy as of 1970. Given this fact, it is perhaps unsurprising that the results of the model are very weak, with no variable in the model achieving statistical significance. Neither judicial partisanship nor the partisanship of the other institutions of state government nor the partisanship of the electorate is associated with an increase or a decrease in the probability of policy adoption.

	(2) Adoption of Reliance-Based Promissory Estoppel (post-1970)
% Dem. Justices	0.02
	(0.01)
State Policy Liberalism	0.18
	(0.53)
Southern State	-0.18
	(1.27)
% Dem in Legislature	-0.01
	(0.02)
Democratic Governor	-1.13
	(0.58)
% Neighbors Adopted	-0.36
	(1.22)
Population (Logged)	-1.40
	(1.10)
Gross State Product (Logged)	1.29
	(1.17)
Appointed SSC	-1.62
	(3.77)
% Republican Voters	-0.01
	(0.06)
Appointed SSC x % Republican Voters	0.03
	(0.13)
t	-0.12
	(0.29)
t^2	0.01
	(0.02)
t^3	-0.00
	(0.00)
Intercept	5.05
	(6.73)
N	779

To remedy the truncation issue, we estimated an additional discrete time duration model which models the decision of a state to adopt reliance-based promissory estoppel. This model begins in 1938, the year Klarner begins recording the partisanship of the state legislature and the governor. Again, the model leaves much to be desired; the key

conclusion from the model is directly opposite our theory: states with Democratic governors were actually *less* likely to adopt reliance-based promissory estoppel.

	(3) Adoption of Reliance-Based Promissory Estoppel (post-1938)
Appointed SSC	-0.51
	(0.60)
% Neighbors Adopted	-0.20
	(0.90)
State Policy Liberalism	0.04
	(0.31)
% Dem in Legislature	0.01
	(0.01)
Democratic Governor	-1.10*
	(0.45)
Southern State	-0.17
	(0.79)
t	0.14
	(0.20)
t^2	0.00
	(0.01)
t^3	-0.00
	(0.00)
Intercept	-7.29***
	(2.15)
N	2060

In short, none of the models provide evidence that Democratic judges (or more Democratic politicians generally) are related to states' adoption of reliance-based promissory estoppel or the liberal Restatement (Second) of contracts. Indeed, some evidence supports the contrary position. There is some evidence (in Model 1) that, in states with elected judges, adoption of the Restatement is more likely as states are more *Republican* (though the converse is likely true in states that do not elect their judges). Likewise, in Model 3, states with Democratic governors have been *less* likely to adopt reliance-based promissory estoppel since 1938.

Notably, these results are robust to additional analyses that both omit the southern states and include a variety of multiplicative interactive terms to account for the possibility that partisan realignment in the South that led the region away from one-party rule (thereby complicating the relationship between the Democratic party and liberalism) confounded the relationships in the data. Likewise, measuring partisanship as a count of

the number of democratic-controlled institutions of state government similarly yields a null result.

Evidence more in line with the theory is found in the case-level analysis, shown in Model 4 (below). Here, we see that courts are more likely to use reliance-based promissory estoppel when they have more Democratic members and when the governor of their state is a Democrat. These results are in line with the theory and suggest a possible relationship between the degree to which judges entrench the use of reliance-based promissory estoppel and the partisanship of a state.

	(4) Case-Level Analysis Use of Reliance-Based PE
% Dem. Justices	0.01*
	(0.01)
% Dem in Legislature	0.00
	(0.01)
Democratic Governor	0.77**
	(0.25)
Southern State	-1.26*
	(0.50)
Appointed SSC	-0.62
	(1.39)
% Republican Voters	-0.02
	(0.02)
Appointed SSC X % Republican Voters	0.04
	(0.05)
Population (Logged)	-0.34
	(0.25)
Gross State Product (Logged)	0.28
	(0.21)
Intercept	0.85
	(2.28)
N	360

A fuller version of this analysis might take into account a state's past decisions (e.g. whether—and for how long—a state has used reliance-based promissory estoppel in its jurisprudence prior to the decision). If a state has used reliance-based promissory estoppel in the past, precedent should bind the current court to use this policy. We plan to explore this possibility in future analyses.

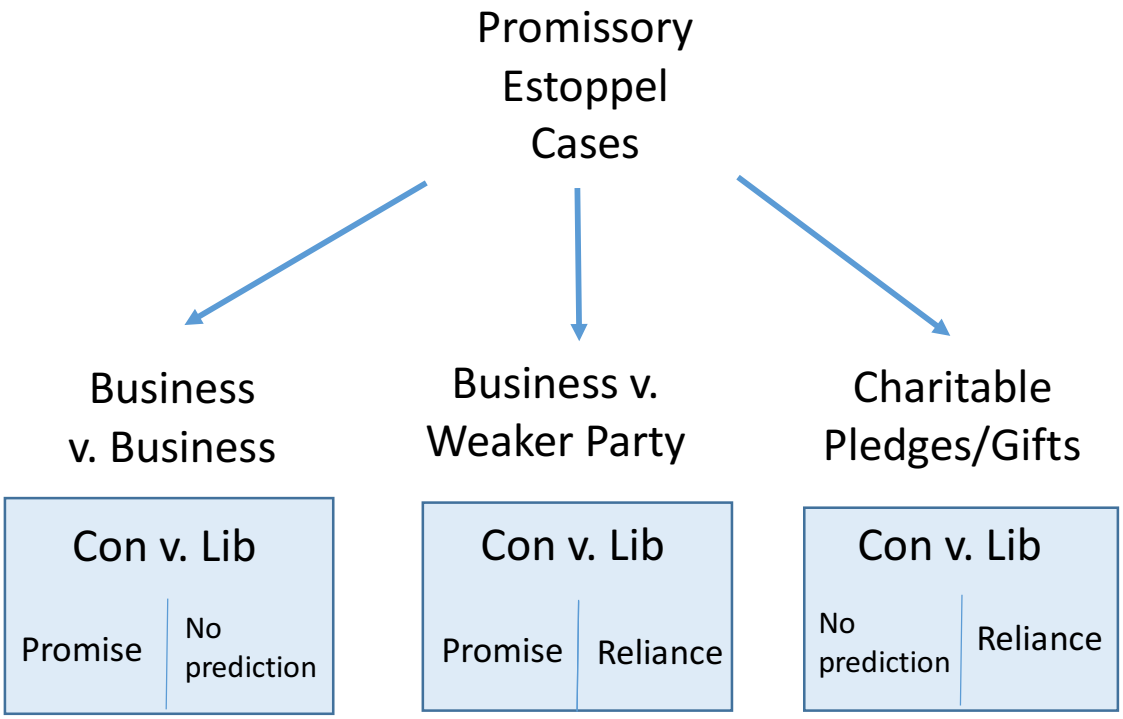
V. Going Forward

A. Do the parties to the case matter?

While there is a strong theoretical case for viewing promissory estoppel as an ideologically driven doctrine, the empirical results thus far have not been supportive. Our next steps are to refine the data along characteristics that calibrate better with theory. In particular, we will consider the party line-up in promissory cases rather than treating all case outcomes as independent from the parties in the actual case. Because state supreme cases are largely precedent-setting cases, we initially paid no attention to what interests (business, charities, employees, customer, banks, etc.) were represented in the instant case. Our thoughts were that the supreme courts were really more interested in broader doctrinal precedents that would cover the world of cases to follow; thus, they would not necessarily choose a doctrine based on the parties in the instant case as that may distort the doctrinal match to the expected distribution of cases to follow. Instead, the courts would choose doctrinal statements aimed at the broader set of expected cases on the horizon. That may have been too broad of a sweep. It may be that supreme courts are able to characterize the promissory estoppel doctrine chosen in a given case to be more closely tied to litigant types that arise in the promissory estoppel instant case. To be sure, cases involving gift promises among relatives and gifts to charitable institutions (donor v. charitable institution) are substantially different from those involving business v. employee or business v. business, for example. Indeed, the Restatement (Second) of Contracts, Section 90 even gives charitable subscriptions their own section in the promissory estoppel provision that lowers the standard for promissory enforcement of those types of promises. And some of the case law rationale is different for why reliance is important for family gift promises and situations involving donations to charitable institution situations. Judicial ideological bias may play less of a role in these cases than other concerns judges may have that do not divide conservatives and liberals. At a minimum, we should separate out those cases from the other more business-oriented cases.

There also are reasons to better refine the business-oriented cases. Many cases involve one business entity challenging another on a contract claim, and using promissory estoppel as a back-up argument. Those situations more typically mimic the classical bargain contract – "contract mode" – where parties have attempted, but failed, to come to a business agreement; it is in these situations that that promise-based promissory estoppel steps in as a logical remedy. Promises made by business to other typically weaker parties (employees, pensioners, mortgagors, borrowers, insured persons, customers) are often comfort promises that occur after a contract relationship has already emerged. The weaker parties do not necessarily see themselves as making new contractual terms but rather often times seeing themselves as being cared for by a larger institutional actor. Liberal and conservative judges may see the business to business failed contract dealings similarly, but see the role of business institutions with respect to weaker parties differently, with conservatives thinking in more free-market mode and liberals in economic justice mode.

To further distinguish the data, we will code for the various conflict types by party identity. The illustration below summarizes the breakdown.



B. What is the role of appellate court decisions?

The cases we have coded thus far are cases of the highest court in the state. Our initial belief was that those courts would be the best indicators of the controlling doctrine of that state. Lower courts, of course, operate in the shadow of the highest court, even when the highest court has yet to rule on a particular doctrine. Lower courts may be well aware of the higher court's likely preferences, and the lower courts would be expected to rule in a way that would likely avoid higher court reversal. Thus, there could be periods where the state judiciary (including the high court) has essentially adopted one of the forms of promissory estoppel even though there is no high court ruling. The lack of an appeal to (and decision by) the high state court may be indicative of the lower courts' and litigating parties' acquiescing in expected high court doctrinal positions. If so, then we may be able to treat appellate court decisions as indicating doctrinal regime adoption and positions. This may be especially true when the lower court ideologies are closely aligned with the higher courts. In the next stage of data refinement, we will collect appellate court decisions on promissory estoppel, evaluate political alignment between lower and higher court (although may be difficult at state level), and project a position for the high court.

Coding Key
STATE: AL – WY

YEAR

PE (Promissory Estoppel)
0 = Case law promissory estoppel doctrine accepted (Restatement not mentioned)
1 = Restatement (First) of Contracts, Section 90 accepted (or citation to case citing Restatement (First))
2 = Restatement (Second) of Contracts, Section 90 accepted (or citation to case citing Restatement (Second))
3 = PE doctrine rejected
4 = Court states that it has not determined validity of PE doctrine, but will consider facts to see if they would establish PE claim, if it were a valid doctrine.

TYPE (Type of Promissory Estoppel Accepted/Rejected):
0 = Promise/Consideration Substitute (Conservative)
1 = Reliance-based (Liberal)
2 = Cannot Determine

(Note that Promise/Consideration type usually requires that an actual promise be made, and favors expectation remedy)

ENFORCE
0 = promise not enforced
1 = promise could be enforced (possibly, issue remanded to lower court)

PROMISE REQUIRED
0 = Not mentioned
1 = Court holds that actual promise required for PE
2 = Court holds that actual promise not required for PE

EAW (Employment at will)
0 = Not mentioned
1 = Court holds that EAW applies to PE claim
2 = Court holds that EAW not a per se bar to PE claim

SOF (Statute of Frauds)
0 = Not mentioned
1 = Court holds that SOF applies to PE claim
2 = Court holds that SOF is not a per se bar to PE claim

PER (Parol Evidence Rule)

0 = Not mentioned
1 = Court holds that PER applies to PE claim
2 = Court holds that PER not a per se bar to PE claim

SOL (Statute of Limitations)
0 = Not mentioned
1 = Court holds that SOL applies to PE claim
2 = Court holds that SOL not a per se bar to PE claim

SUBCON (Subcontractor)
0 = Not mentioned
1 = Court holds that PE may not be used to enforce subcontractor's bid
2= Court holds that PE may be used to enforce subcontractor's bid

REMEDY:
0 = No Remedy Granted
1 = Expectation Damages Granted
2 = Reliance Damages Granted
3 = Other Remedy Granted

COLORADO

CASE NAME	STATE	YEAR	PE	TYPE OF PE	ENFORC	PROMISE REQ	EAW	SOF	PER	SOL	SUBCON
Robinson v. Colorado State Lottery Div., 179 P.3d 998, 2008 WL 755348, , Colo., March 24, 2008(No. 06SC385.)	CO	2008	2	1	0	1	0	0	0	0	0
Wheat Ridge Urban Renewal Authority v. Cornerstone Group XXIII, L.L.C., 176 P.3d 737, 2007 WL 4225821, , Colo., December 03, 2007(No. 06SC591.)	CO	2007	2	2	0	0	0	0	0	0	0
Cherokee Metropolitan Dist. v. Simpson, 148 P.3d 142, 2006 WL 3392754, , Colo., November 27, 2006(No. 06SA95.)	CO	2006	2	0	0	1	0	0	0	0	0
Crawford Rehabilitation Services, Inc. v. Weissman, 938 P.2d 540, 1997 WL 304917, 134 Lab.Cas. P 58,270, 12 IER Cases 1671, 21 Colorado Journal 799, , Colo., June 09, 1997(No. 95SC451.)	CO	1997	2	0	0	0	2	0	0	0	0
Berg v. State Bd. of Agriculture, 919 P.2d 254, 1996 WL 361200, , Colo., July 01, 1996(No. 94SC629.)	CO	1996	2	0	1	1	0	0	0	1	0
Board of County Com'rs of Summit County v. DeLozier, 917 P.2d 714, 1996 WL 278105, 11 IER Cases 1341, , Colo., May 28, 1996(No. 95SC305.)	CO	1996	2	1	1	1	0	0	0	0	0
Nelson v. Elway, 908 P.2d 102, 1995 WL 728254, , Colo., December 11, 1995(No. 94SC453.)	CO	1995	2	0	0	1	0	2	0	0	0
Kuta v. Joint Dist. No. 50(J) of Counties of Delta, Gunnison, Mesa and Montrose, 799 P.2d 379, 1990 WL 149773, 63 Ed. Law Rep. 1092, , Colo., October 09, 1990(No. 89SC328.)	CO	1990	2	1	0	1	0	0	0	0	0

Adams County School Dist. No. 50 v. Dickey, 791 P.2d 688, 1990 WL 61644, 60 Ed. Law Rep. 964 , Colo., May 14, 1990(No. 89SC103.)	CO	1990	2	0	0	2	0	0	0	0	0
Seeley v. Board of County Com'rs for La Plata County, 791 P.2d 696, 1990 WL 61645, , Colo., May 14, 1990(No. 89SC129.)	CO	1990	0	0	0	2	0	0	0	0	0
Churchey v. Adolph Coors Co., 759 P.2d 1336, 1988 WL 68488, 3 IER Cases 1032, , Colo., July 05, 1988(No. 86SC183.)	CO	1988	2	0	1	0	2	0	0	0	0
Continental Air Lines, Inc. v. Keenan, 731 P.2d 708, 55 USLW 2439, 105 Lab.Cas. P 55,671, 1 IER Cases 1361, , Colo., January 20, 1987(No. 84SC460.)	CO	1987	2	1	1	0	2	0	0	0	0
Kiely v. St. Germain, 670 P.2d 764, 37 UCC Rep.Serv. 878, , Colo., October 11, 1983(No. 82SC145.)	CO	1983	2	1	1	1	0	2	0	0	0
Vigoda v. Denver Urban Renewal Authority, 646 P.2d 900, , Colo., June 07, 1982(No. 80SC293.)	CO	1982	2	1	1	1	0	0	0	0	0
Van Pelt v. State Bd. for Community Colleges and Occupational Ed., 195 Colo. 316, 577 P.2d 765, , Colo., May 01, 1978(No. 27906.)	CO	1978	0	0	0	0	0	0	0	0	0
Chamberlain v. Poe, 127 Colo. 215, 256 P.2d 229, , Colo., February 16, 1953(No. 16849.)	CO	1953	0	1	1	0	0	0	0	0	0
Parry v. City and County of Denver, 117 Colo. 455, 189 P.2d 713, , Colo., February 02, 1948(No. 15965.)	CO	1948	0	1	0	0	0	0	0	0	0