

## **Agenda Setting on the Vinson Court**

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The paper that follows is one of a series of papers I wrote regarding agenda setting on the Vinson Court. As each paper was completed updates and corrections may have changed some of the specific numbers presented in earlier papers, but the general results did not change. The papers were eventually combined into a book titled, *Supreme Court Agenda Setting: The Vinson Court* (available on [Amazon.com](https://www.amazon.com)). The individual papers became chapters in the book and the updated numbers were used for that version.

Again, the paper that follows is the original version. Some numbers may have been updated for the version included as a chapter in the book version, but the changes were usually minor and did not affect the overall results.

**Agenda Setting on the Vinson Court  
Paper 15: Case Types and Issue Areas**

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## **Agenda Setting on the Vinson Court Paper 15: Case Types and Issue Areas**

### **Abstract**

Prior papers in this series focused specifically on the Court's decision to grant review. Although some of those factors were related to the substantive issues presented in the cases, this paper takes a closer look at case types and issue areas in the cases filed.

Drawing from an ongoing database project this paper examines the case types and substantive issue areas of all cases during the Vinson Court (1946 to 1952 Terms) on its appellate docket. The examination is descriptive, meaning no statistical tests are performed. The results show the filings of the 1946 Term to be much larger than the number of filings for the other six terms. Nevertheless, when examining the issue areas certain relatively stable patterns emerge regarding the size of particular categories of issues from one term to the next. A closer examination of the cases involving economic activity shows stable patterns as well. A consideration of the types and issues of the cases granted review shows differences from the patterns of cases filed.

Examination of case type and issue distribution of the Vinson Court's appellate docket provides background and context for prior examinations of the factors related to agenda setting on the Vinson Court as well as for later examination of the Warren and Burger Court agendas.

## **Agenda Setting on the Vinson Court Paper 15: Case Types and Issue Areas**

This is the fifteenth paper in a series examining agenda setting on the Vinson Court. The examinations are largely empirical, but with a general grounding in familiar aspects of behavioral judicial politics. Although part of a series, I would like each paper to stand on its own. Thus, some explanatory material will be repeated from one paper to the next to provide background or context.

Most of the prior 14 papers in the series examined whether a particular factor or set of factors was related to the Court's decision to grant review. As such, those papers contained information on the basic theoretical framework underlying that type of examination. A few of those papers dealt with particular issue areas either directly or indirectly by looking at particular types of parties. For example, the eighth paper in the series examined whether law enforcement parties were a factor in the Court's review decision.<sup>1</sup> Correspondingly, the ninth paper examined the extent to which criminal defendants were a factor in the Court's review decision.<sup>2</sup> Not surprisingly, most of the cases in which law enforcement or criminal defendants were parties were cases involving criminal justice issues. Similarly, in the tenth and eleventh papers I examined whether administrative parties or administrative action were factors in the Court's

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<sup>1</sup> The paper is titled, "Agenda Setting on the Vinson Court Paper 8: Law Enforcement Parties as a Factor."

<sup>2</sup> The paper is titled, "Agenda Setting on the Vinson Court Paper 9: Criminal Defendants as a Factor."

review decision.<sup>3</sup> The administrative focus of these papers meant that many issues concerned economic activity.

In this paper I take a closer look at certain case types and issue areas as part of the pool of cases from which the Court made its review decisions each term. This examination will be purely descriptive, which means that unlike prior papers I will not perform statistical tests. Although there are times when one could reasonably argue that certain issues are of greater interest to the Court, for some issue areas such interest can be short-lived rather than enduring.

### **Data**

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket from the 1946 Term on. Data are complete for the Vinson Court (1946 through 1952 Terms) and provide a relatively stable period in which to examine the Court's docket.

Information on the cases in the database was drawn from several sources including the *United States Law Week*, various reporters for the state and federal courts, LEXIS, and other online sources. Every case that received an appellate docket number during the 1946-1952 Terms is included in the database. This results in 5,905 cases. Included in this number are 156 cases originally filed before the 1946 Term (the first term of the Vinson Court). Given that this paper will examine filings for the seven

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<sup>3</sup> The papers are titled, "Agenda Setting on the Vinson Court Paper 10: Administrative Parties as a Factor" and "Agenda Setting on the Vinson Court Paper 11: Administrative Action as a Factor."

terms of the Vinson Court, those 156 cases will not be included in the results that follow. At the end of the Vinson Court 121 cases eventually received a 1953 Term (the first term of the Warren Court) or later docket number.<sup>4</sup> The review decisions for 72 of these 121 cases were made after the 1952 Term but are included in the dataset given that those cases were initially filed during the Vinson Court. Also, included in the dataset are 67 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.<sup>5</sup> Because some of the analysis to follow simply looks at case type and issue area of the cases filed, some results will include the 64 cases that were dismissed on the motion of the petitioner prior to the review decision, 18 cases that were dismissed by a Supreme Court rule (e.g., late filing, failure to pay fees), and one case where no review decision could be found.<sup>6</sup> Because of the differing criteria used for the figures to follow, the number of cases included for any given comparison will vary.

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<sup>4</sup> Prior to the 1971 Term cases held over to the next term, before or after a review decision, were renumbered at the start of each term and there was no two-digit term indicator. For example, *Brown v. Board of Education* was initially filed during the Court's 1951 Term and given the docket number 436. It was held over to the 1952 Term with the new docket number 8, and again for the 1953 Term with the docket number 1.

<sup>5</sup> Through the Vinson and Warren Courts, cases originating on the miscellaneous docket (sometimes referred to as the "pauper's docket") that were granted review were usually moved to the appellate docket (sometimes referred to as the "paid docket") and given a new docket number. The Expanded United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 26 cases with a miscellaneous docket number (with an "M" in the DOCKET field, meaning they were not transferred to the appellate docket) during the 1946-1952 Terms. Of these, 17 were granted review (with eight of those disposed of in a short per curiam), but are not included here. On the other hand, this dataset includes 19 cases initially filed on the appellate docket for which the Court granted *in forma pauperis* status to one of the parties (only one of which was granted review). (This is an older version of the Supreme Court Database before it was moved online, which, as of this writing, can be viewed at <http://scdb.wustl.edu>.)

<sup>6</sup> Without going into great detail, it appears that the case in question was withdrawn shortly after filing and refiled a month later with a new docket number. The latter case, *Deena Products Co. v. National Labor Relations Board* (1952) is included in the database and was denied review.

As was the case for prior papers, an additional note on the coding for this examination is worthwhile before proceeding. The coding for issue areas primarily follows Spaeth's coding for the United States Supreme Court Judicial Database. Of course, Spaeth's database mainly consists of cases granted review by the Court. There are, however, many issues heard by the lower courts that the Supreme Court chooses not to review. In addition, there are some differences in what the lower court saw as the issue in a case and the issue on which the Supreme Court decided a case. A simple example here might be the Supreme Court deciding a case on a procedural issue (e.g., mootness) rather than the substantive one determined by the lower court.

In terms of coding, although Spaeth's database usually codes only one issue per case, the database I use allows for up to six issues to be coded for each case, though the average was around three or four. The initial issue coding was "generous" to allow for the ability to retrieve cases having even a remote connection to a particular issue. For example, if a railroad was involved in a bankruptcy case one of the six issues would still be coded for railroads to be able to retrieve all cases involving railroads even if the primary substantive issue did not involve railroad regulation.

One of the issues coded for a case was selected as the Primary Issue Code. This was the issue that seemed to dominate in terms of the lower court's decision or the issue the petitioner is seeking to have addressed by the Supreme Court. For example, a criminal case involving firearms and a questionable search might have codes for general criminal cases, firearms, and search and seizure. Based on the source materials for the

lower court decision and the filings before the Supreme Court, one of those three would be chosen and coded as the primary issue.

Given the complexity of many cases there were times when two issues seemed to be particularly important. When that occurred a second issue was identified as the Secondary Issue Code. Although still secondary to the primary issue, it was of sufficient importance to distinguish it from any other issues listed. In addition, the secondary issue became important for judicial power and federalism issues. Cases involving judicial power or federalism issues would often also involve a substantive issue. If the determination of whether the substantive issue or the judicial power or federalism issue was the more important, the substantive issue would usually be coded as primary and the judicial power or federalism issue as secondary.

## Results

The second paper in the series examined differences between cases filed as petitions for a writ of certiorari and those filed as appeals.<sup>7</sup> That paper only examined the Vinson Court as a whole and did not consider the distribution of certiorari and appeals cases for each term. For this paper I want to look at the distribution of cases each term. Thus, Figure 1 shows the distribution of cases on certiorari and appeal for each of the seven terms of the Vinson Court.<sup>8</sup>

FIGURE 1 ABOUT HERE

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<sup>7</sup> The paper is titled, "Certiorari and Appeal on the Vinson Court Agenda."

<sup>8</sup> Left out of this table are six cases certified to the Supreme Court during this period: one each for the 1946 and 1952 Terms and two each for the 1947 and 1951 Terms.



As noted in some prior papers in the series, there was an unusually large number of cases filed in the 1946 Term relative to the other terms of the Vinson Court. More specifically, there were 1356 cases filed during the 1946 Term, but the average for the next six terms was only 732.5 cases.<sup>9</sup> Although the number of cases filed in the 1946 Term was an outlier as far as the Vinson Court was concerned, that number was fairly consistent with the number of cases filed during the 1942 through 1945 Terms.<sup>10</sup>

Despite the much larger number of cases filed during the 1946 Term, the number of those that were appeals was not that much larger than most of the other six terms of the Vinson Court and was actually lower than the number of appeals for the 1951 Term. Thus, it was the much larger number of certiorari cases that accounted for the larger overall number of cases filed during the 1946 Term. Of course, another way of looking at this difference is that the number of certiorari filings dropped dramatically following the 1946 Term.

#### FIGURE 2 ABOUT HERE

Turning to a consideration of how many cases of each type the Court accepted for review, Figure 2 shows the distribution of each type of case, certiorari or appeal, and how many were accepted or denied review each term.<sup>11</sup> It is not particularly surprising that the Court granted review to more cases on certiorari in the 1946 Term (156 cases)

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<sup>9</sup> As a reminder, during the Vinson Court era cases that were not disposed of by the end of the term were held over and renumbered. Such held over cases are in addition to those filed during a particular term.

<sup>10</sup> The number of cases filed for the 1942 Term was 979, for the 1943 Term it was 995, for the 1944 Term it was 1,235, and for the 1945 Term it was 1,164.

<sup>11</sup> The total numbers here are a bit lower than those shown in Figure 1 as they do not include cases that were rule dismissals, including those dismissed on a motion by the petitioner, made before the Court made a review decision. For purposes of Figures 2, 4, and 6, “granted review” includes those cases initially granted review, those initially denied review but later granted review, and those granted review but then dismissed by rule, including those dismissed on a motion by petitioner.

than in any of the other six terms of the Vinson Court. On the other hand, the number of certiorari cases accepted in the 1946 Term was only 10 more than the 146 accepted in the 1948 Term. It is a bit interesting that although more cases on appeal were filed in the 1951 Term, the Court accepted a larger number of appeals for the 1946 Term.

Although the acceptance rate for cases on appeal was much higher for the 1946 Term than the 1951 Term (63 of 87 cases for 72.4% versus 53 of 102 for 52.0%), the 63 cases on appeal accepted for the 1946 Term were only seven more than the 56 granted review in the 1952 Term which had an acceptance rate of 70.0%.

As shown in Figure 1, the number of case filings for the 1947 through 1952 Terms were relatively stable. In Figure 2 we see that there was some variation in the number of cases on certiorari and appeal that were granted review by the Court. The cases on certiorari accepted ranged from a low of 91 in the 1949 Term to a high of 146 in the 1948 Term. For the cases on appeal, the high was the previously mentioned 56 in the 1952 Term while the low was 32 in the 1947 Term. The 1947 Term was also the only term during this period when the Court accepted fewer cases on appeal for review than it denied.

As noted above, the second paper in the series took a closer look at the Court's treatment of cases on certiorari and appeal. From Figures 1 and 2 we see that although there were variations from term to term, there were not huge differences in the numbers of each type of case filed with the exception of certiorari cases for the 1946 Term. Given this consistency regarding case types, we can move on to an examination of issue areas.

FIGURE 3 ABOUT HERE

Figure 3 shows the cases divided into seven broad issue areas plus an Other group. Again, these categories follow the grouping noted in the United States Supreme Court Judicial Database. The cases are placed into one of the categories based on the primary issue for that case. The Criminal category includes a variety of statutory specific (e.g. Hobbs Act), constitutional (e.g., search and seizure), and procedural (e.g., Federal Rules of Criminal Procedure) issues. The Civil Rights category includes issues such as voting rights, discrimination, immigration, various First Amendment rights, and so on. Economic Activity is also broad in that it includes issues such as anti-trust, liability, transportation, public utilities, intellectual property, etc.

Judicial Power issues often fall into those concerning federal court reaction to state or state court actions or to the general willingness of federal courts to act. There is an element of federalism to many cases involving judicial power issues, but Federalism is a separate category. As one would expect, cases in the Federalism category usually involve situations where state and federal law seem to be in conflict.

The category Federal Taxation is fairly straightforward and mostly involves income taxes of individuals or businesses. As its label suggests, the Other category includes any cases not included in one of the other categories.

The most striking aspect of Figure 3 is the number of criminal cases filed in the 1946 Term compared with the other six terms. There were 638 criminal cases filed in the 1946 Term, but no more than 125 were filed in any of the other terms. Thus, there were more than five times as many criminal cases filed in the 1946 Term than in any of the next six terms. Again, we could reasonably expect a greater number of criminal

cases filed in the 1946 Term given the larger overall number of cases that term. It turns out, however, that even given the larger number of filings the number of criminal cases for the 1946 Term is unusual. The 638 criminal cases filed in the 1946 Term were 47.1% of the 1,356 total cases filed. In contrast, the average number of criminal cases filed for the 1947 through 1952 Terms was 107.2. Recall that the average number of cases filed for these six terms was 732.5, which means criminal cases were only 14.6% of the total filed.

Part of the explanation for the extraordinarily large number of criminal cases in the 1946 Term lies in a reaction to a ruling involving Illinois criminal procedure that resulted in a very large number of prisoners filing either state appeals to their convictions or federal habeas corpus petitions. At the very least, this provides an example of how a court decision can affect future filings.

Though not as dramatic as the Criminal category, the Economic Activity category for the 1946 Term was also substantially larger than the average for the other six terms. There were 403 cases involving economic activity filed in the 1946 Term, but the average for the remaining six terms was only 305. Interestingly, however, the larger number of cases involving economic activity in the 1946 Term was actually a lower percentage for that term than the average for the other six terms. The 403 economic cases for the 1946 Term was 29.7% of the total filed, but the 305 average was 41.6% of the average filings for the other six terms.

As for the remaining categories, the filings for the 1946 Term were not particularly different from those of the other terms. For the Civil Rights, Judicial Power, and

Federal Taxation categories there was at least one term from 1947 to 1952 that had more cases in the given category than the 1946 Term. The 51 cases in the Union/Labor category for the 1946 Term was larger than any of the other terms, but only by a single case given that there were 50 such cases in the 1952 Term.

Given these results, it seems that for most of the broad categories the filings for 1946 were on a par with the rest of the Vinson Court period and not necessarily larger just because of a larger number of cases filed. Of the two categories that were substantially larger, the Economic Activity category seemed to be larger just given the larger number of case filings, but the percentage for that term was nevertheless below that for the other six terms. The main difference of the 1946 Term with the other terms was in the Criminal category where the number of filings was much larger than the other terms and was a much larger percentage of the cases for that term. The next question is the extent to which the differences in the filings are reflected in the cases accepted for review by the Court.

#### FIGURE 4 ABOUT HERE

Figure 4 shows the distribution of cases granted review by the Court by the same broad issue areas as indicated in Figure 3. The number of cases filed is out of the Court's direct control, but we might expect a fair amount of consistency in how many cases they decide to review. That said, it is probably not surprising that the Court granted review to more cases in the 1946 Term than in any of the others given the much larger number of cases filed. When the number of cases filed dropped dramatically for the 1947 Term, so did the number granted review. The 1948 Term had the second

largest number of cases filed and we see that it also had the second largest number of cases granted review. The jump in the cases granted review over the 1947 Term, however, is more than we would expect from a simple percentage increase in the cases filed. There were 49 more cases filed in the 1948 Term over the 1947 Term, but the Court granted review to 44 more cases. The number of both cases filed and those granted review fall back for the 1949 and 1950 Terms, then begin to rise again for the final two terms of the Vinson Court.

Turning to the broad issue areas we again see variations from term to term among the issue areas. Given the very large number of cases involving criminal issues filed in the 1946 Term it is not surprising that the Court accepted more cases with criminal issues that term than any other. Although the low was the 1949 Term which had only 15 criminal cases, the rest of the terms had between 20 and 31. It is interesting to note that although 30 more criminal cases were filed in the 1949 Term than in the 1950 Term, the Court granted review to 10 more criminal cases in the latter term (15 for the 1949 Term but 25 for the 1950 Term). Lest anyone think otherwise, this suggests the Court does not select its agenda based on a type of percentage basis of the cases filed.

The number of civil rights cases granted review is also fairly steady. Though fewer were selected, the federalism and federal taxation categories were also fairly steady across the terms. There was a bit more variation in the judicial power cases, which ranged from a low of 11 in the 1947 Term to a high of 34 in the 1949 Term.

In Figure 3 we saw that the number of cases filed involving economic activity was fairly consistent, and although the 1946 Term had more of them, it was not terribly out

of line with the other terms. In Figure 4 we see a bit less consistency in the number of cases granted review. Here the low is 39 for both the 1947 and 1949 Terms while the high is 87 for the 1946 Term. Although the economic activity category does not dominate the cases granted review as it did for the cases filed, the number in this category is still the largest for every term. As such, it is worth taking a closer look at this category.

#### FIGURE 5 ABOUT HERE

Figure 5 shows the number of cases filed in five select areas of economic activity plus an Other category for economic cases that did not fall into one of the five subareas. Again the subareas are basically grouped as indicated in the United States Supreme Court Judicial Database. The Transportation subarea includes cases involving railroads, shipping, airlines, trucking, and pipelines. The Intellectual Property subarea includes cases involving trademarks, patents, copyrights, and computer processes. The Public Utilities subarea includes cases involving gas, oil, electric, and nuclear regulation, but also media such as radio, television, and telephone regulation. The Liability subarea includes cases where an individual or entity, including the government, is being sued for injuries. The Liability subarea also includes issues involving the choice of remedies and punitive damages. Finally, the State Regulation subarea includes cases involving state taxes, state business regulation, or local zoning ordinances.

In looking at the distribution of the Economic cases it is interesting that although there is variation for any given subarea across the seven terms the subareas tend to maintain their size ordering. More specifically, the Liability subarea is consistently the

largest of the five. The State Regulation subarea has the second largest number of case filings for every term. The Public Utilities subarea consistently has the fewest number of cases filed. With the exception of the 1952 Term, the Intellectual Property subarea was consistently the third largest of the five and the Transportation subarea was consistently the fourth largest.

Again, although the 1946 Term had more economic cases than any of the other terms it did not always have the most cases in the subareas. For example, four of the six terms after the 1946 Term had a larger number of liability cases and a fifth the same number. In the State Regulation subarea five of the six terms after the 1946 Term had a larger number of cases filed. Overall, for each of the five subareas there was at least one term that had more cases filed than the 1946 Term and for four of the subareas there were at least three terms with more case filings.

Of note within the subareas, it is somewhat surprising how few cases were filed in the Transportation and Energy subareas. In later terms during the Warren and Burger Court it seems that there were many more cases filed involving these issue areas. The apparent increase could have to do with new legislation or a greater willingness on the part of the entities involved to use the courts to resolve conflicts. This will be something to investigate when later terms are examined. It is also interesting to see how the number of State Regulation cases seems to increase in the middle of the Vinson Court era then subsides again for the final two terms. It will be interesting to see what happens to this subarea during the Warren and Burger Courts.



The Other subarea is larger than any of the specified subareas for all seven terms. This is particularly so for the 1946 Term where it makes up a majority of the economic activity cases filed for that term. Although cases in the Other category were not in one of the specified subareas, many of these cases certainly include important areas of economic activity. These include issues such as anti-trust, mergers, bankruptcy, environmental protection, consumer protection, and so on.

#### FIGURE 6 ABOUT HERE

Figure 6 shows the distribution of cases accepted for review involving economic issues during the Vinson Court era. The first thing to note is the great variation in the total number of economic cases granted review. These numbers were included in Figure 4, but looking specifically at economic cases better shows the extent of the variation. Here we see how the Court accepted over twice as many cases involving economic issues in the 1946 Term than the 1947 or 1949 Terms, and almost twice as many for the 1950 Term. We also see how the 1948 Term seems to be an outlier as far as the 1947 through 1952 Terms are concerned given how many more economic cases were granted review.

Unlike the subareas in case filings shown in Figure 5, there was less consistency in the number of cases from each subarea accepted by the Court over the seven terms. For example, the Liability subarea had the largest number of cases filed for all seven terms, but has the largest number of cases granted review for only four of the seven terms. Similarly, although the State Regulation subarea had the second most cases filed for all seven terms, it had that rank (or higher) for only two of the seven terms. In addition,

there were two instances when no cases from particular subareas were granted review by the Court (Public Utilities for the 1950 Term and Intellectual Property for the 1952 Term).

Despite being “shutout” for the 1950 Term, the Public Utilities subarea actually does relatively well in terms of cases accepted given how few were filed each term. Overall, the Court granted review to 18.14% of the cases involving economic activity, but it accepted 33.96% of the cases in the Public Utilities subarea. Cases in the Transportation subarea did the best in terms of being accepted for review with a grant rate of 56.12%. The Liability, State Regulation, and Other subareas were all a bit lower than the overall grant rate at 14.95%, 15.89%, and 16.70%, respectively. The Intellectual Property subarea fared the worst with a grant rate of only 8.02%.

### **Concluding Comments**

The purpose of this paper was purely descriptive. Although no statistical tests were performed the results nevertheless proved interesting and provided some additional context to the various factors examined in the prior papers in the series.

To the extent that the factors examined in prior papers provided cues or signals to the Court regarding the worthiness of reviewing a particular type of case, those cues are certainly not independent of the substantive aspects of the cases. Although not dealt with directly in this paper, clearly whether a case comes to the Court via a petition for a writ of certiorari or on an appeal makes a difference in whether it is granted review. Of course, the choice of whether to bring a case on certiorari or on appeal is not an

arbitrary one but is based on particular legal criteria of which the Court is well aware. Similarly, certain types of substantive cases are closely related to the factors previously examined. For example, in the Transportation subarea there were 58 cases dealing specifically with railroads. In 33 of those cases the lower court was a federal district court. The Court granted review to 31 of those 33 cases (93.9%). That percentage for the railroad cases accounts for the much higher percentage for the transportation cases and is consistent with the findings of the twelfth paper in the series.<sup>12</sup> Thus, one must take care to keep in mind the relationship between cues or signals and the substantive aspects of the cases.

On a related point, it was also interesting to see to what extent the distribution of the types of cases changed over even this short period in the Court's history, both in terms of the cases filed as well as those granted review. Court decisions as well as external factors (e.g., new legislation) can produce additional filings and new issues worthy of Supreme Court review. Even so, the results presented in the figures made it clear that there was no percentage requirement in terms of how many cases of any given type the Court accepted from its appellate docket.

Finally, with the exception of the 1946 Term, the Court's appellate docket was fairly stable in terms of the number of cases filed. The broad issue areas shown in Figure 3 were also fairly stable. The Vinson Court era thus provides a reasonable baseline or starting point for comparison with later terms. It will be interesting to see

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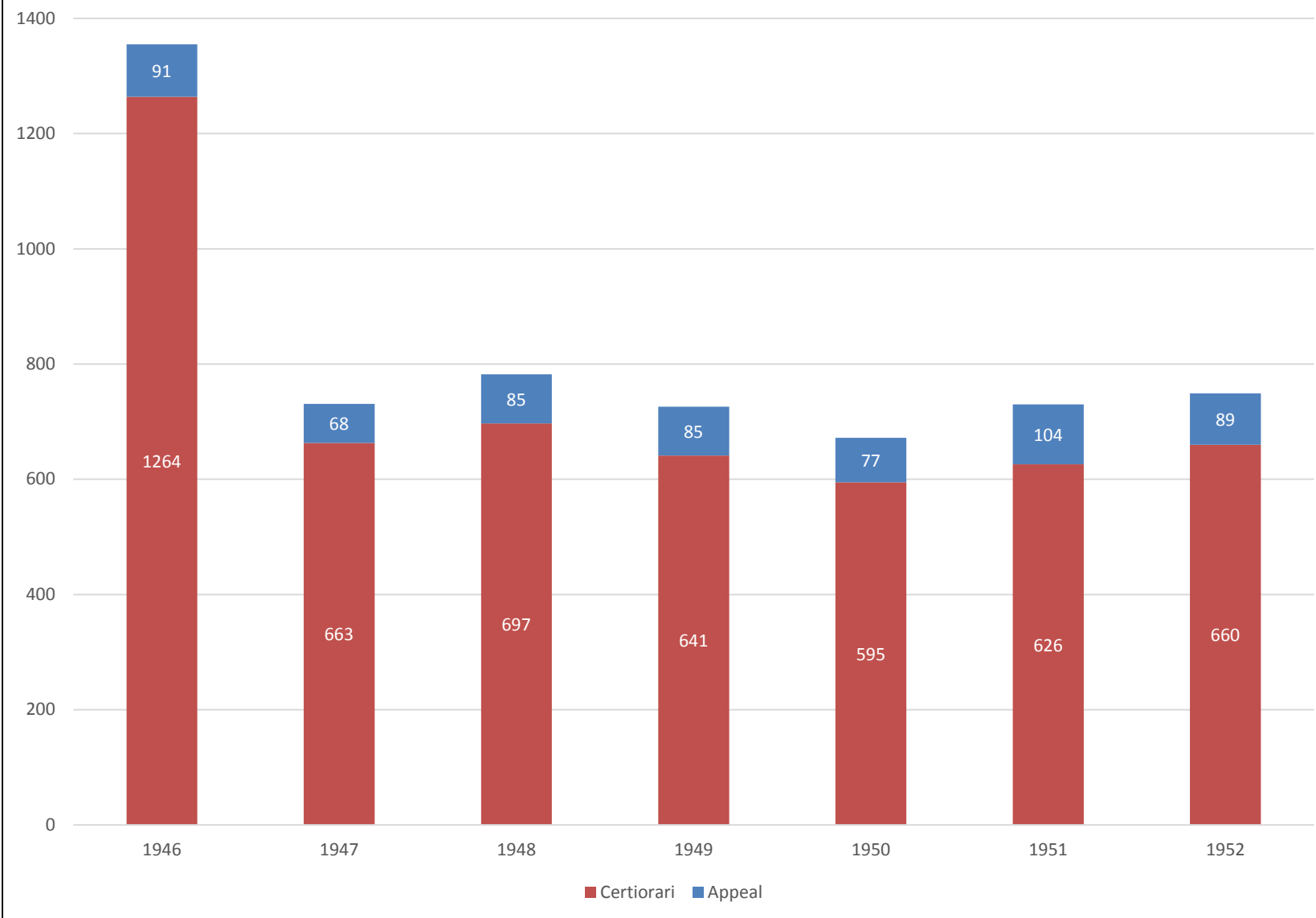
<sup>12</sup> The paper is titled, "Agenda Setting on the Vinson Court Paper 12: Only a Single Lower Court as a Factor."

whether the patterns change as the number of cases filed begins to increase during the Warren Court era.

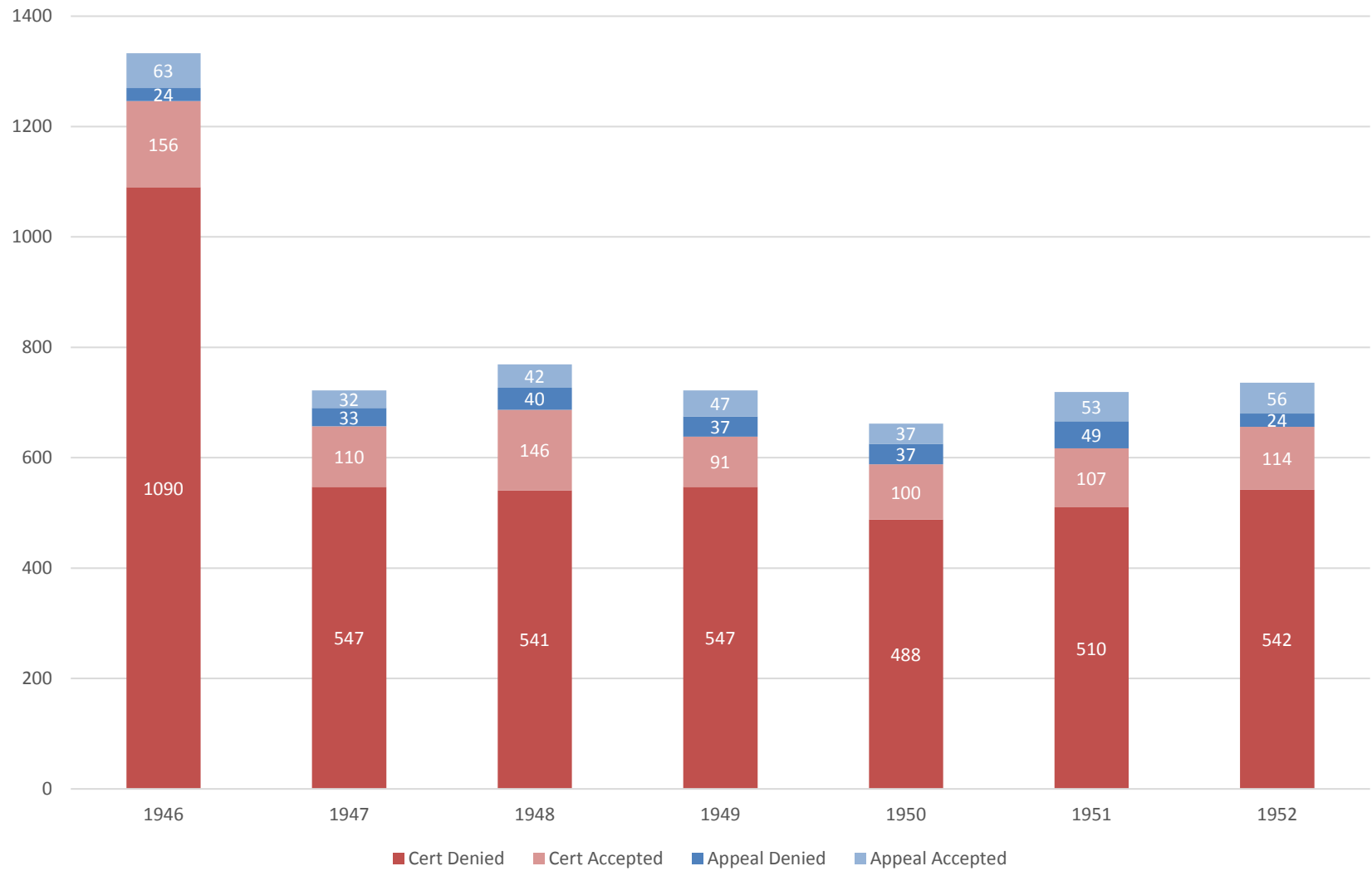
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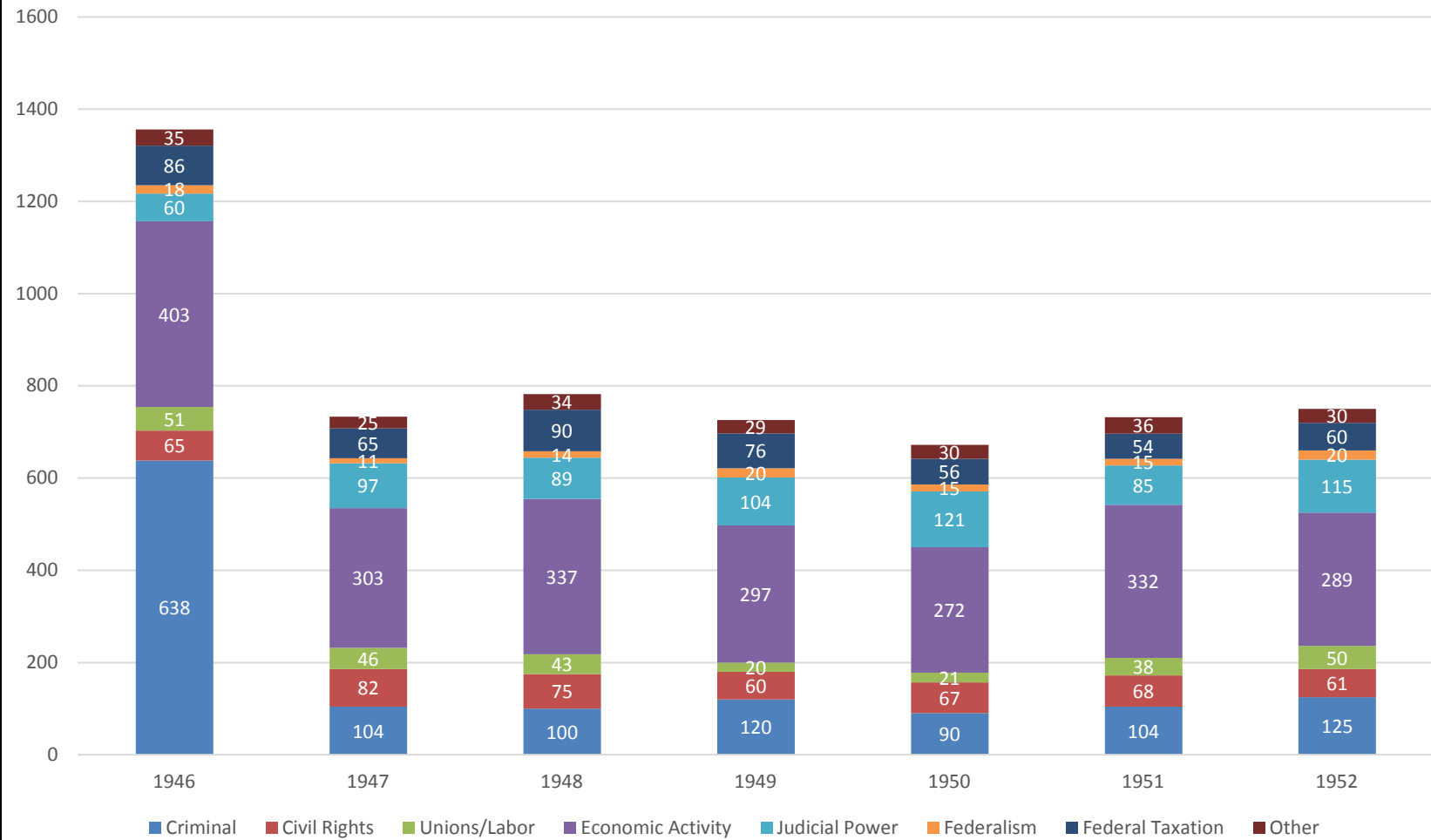
Figure 1: Cases Filed by Type and Term on the Vinson Court



**Figure 2: Cases Filed by Type, Whether Accepted for Review, and by Term on the Vinson Court**

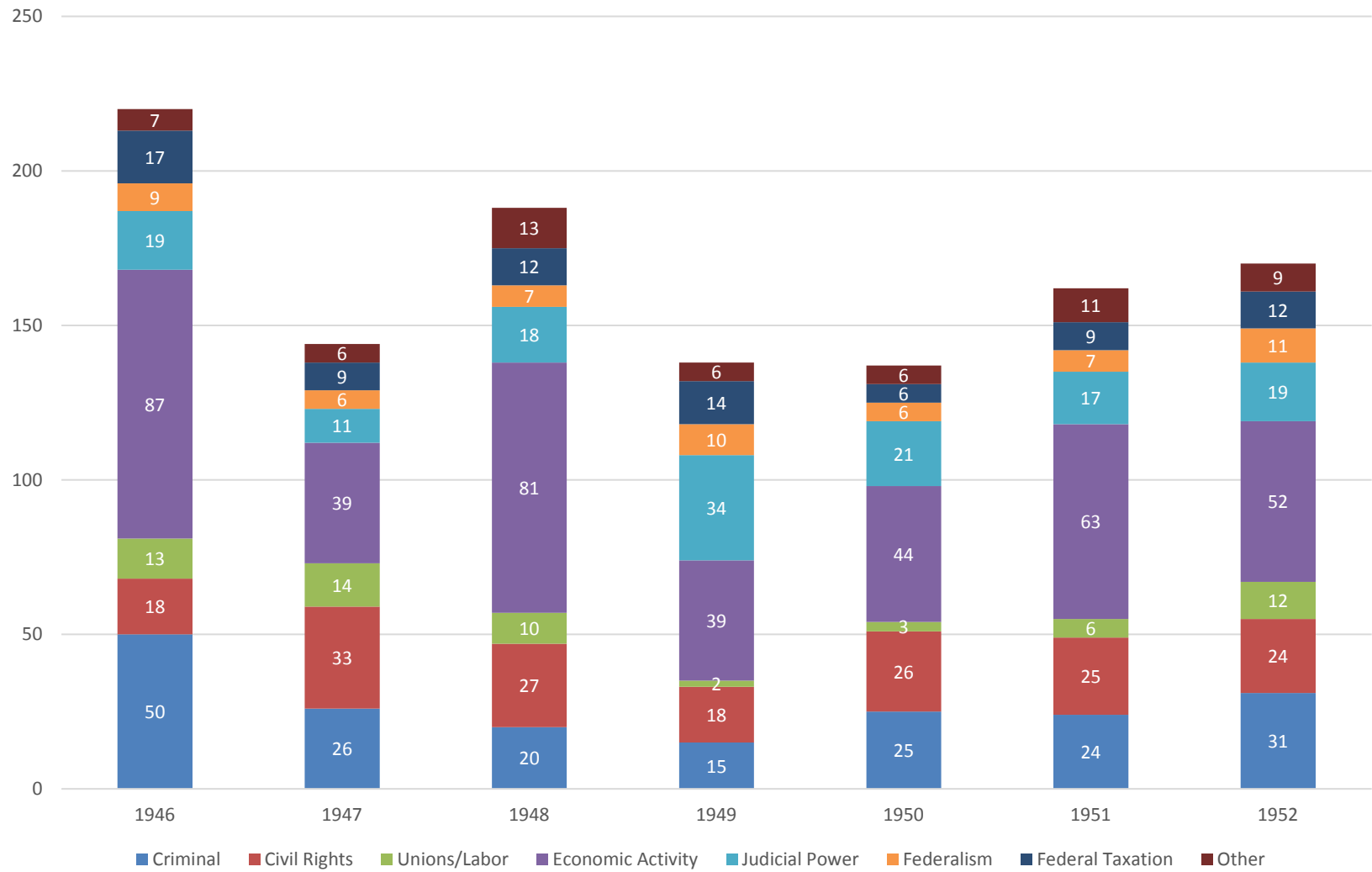


**Figure 3: Distribution of Cases Filed by Broad Issue Area and by Term on the Vinson Court**

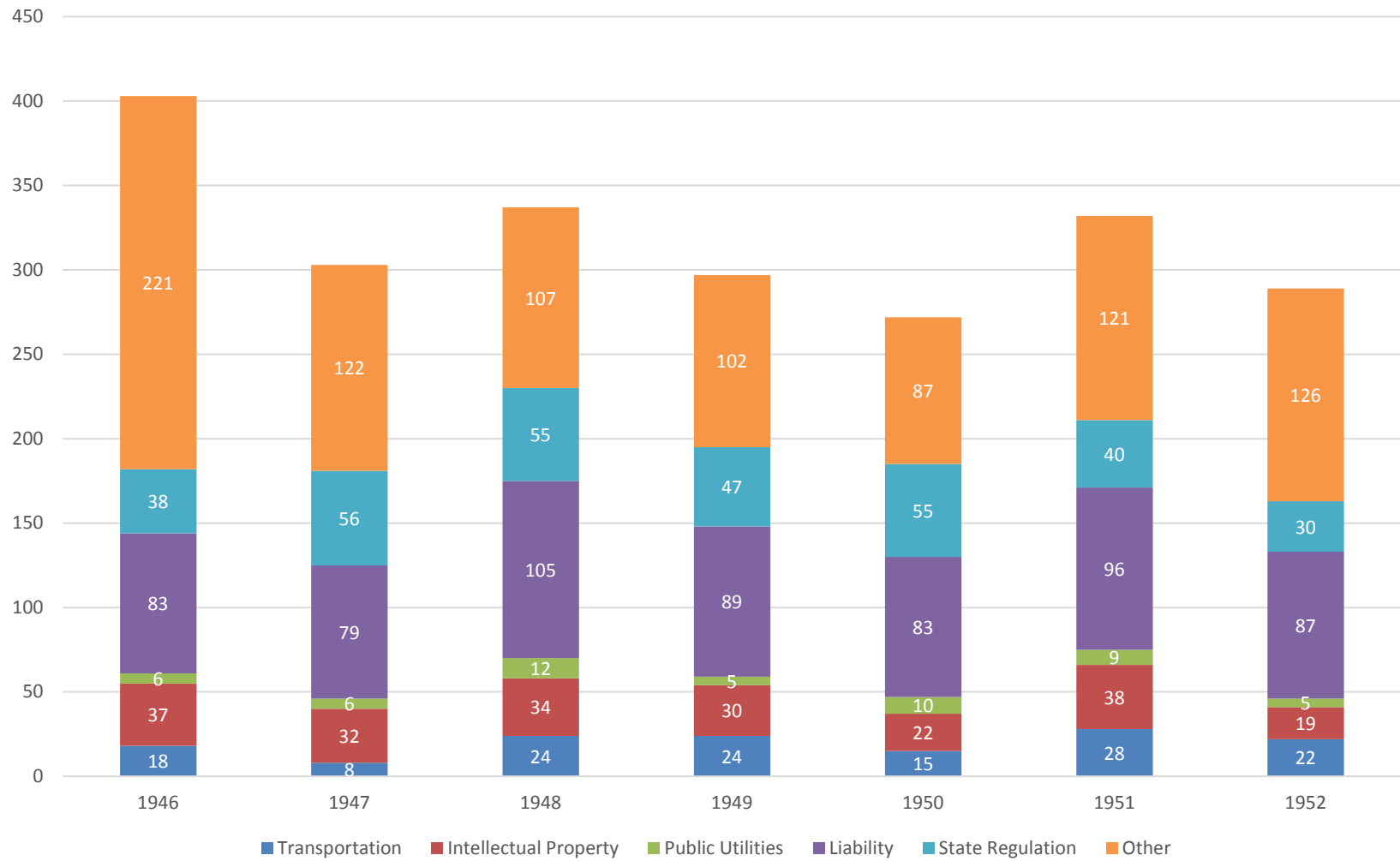




**Figure 4: Distribution of Cases Granted Review by Broad Issue Area and by Term on the Vinson Court**



**Figure 5: Distribution of Cases Filed in Select Economic Areas by Term on the Vinson Court**



**Figure 6: Distribution of Cases Granted Review in Select Economic Areas by Term on the Vinson Court**

