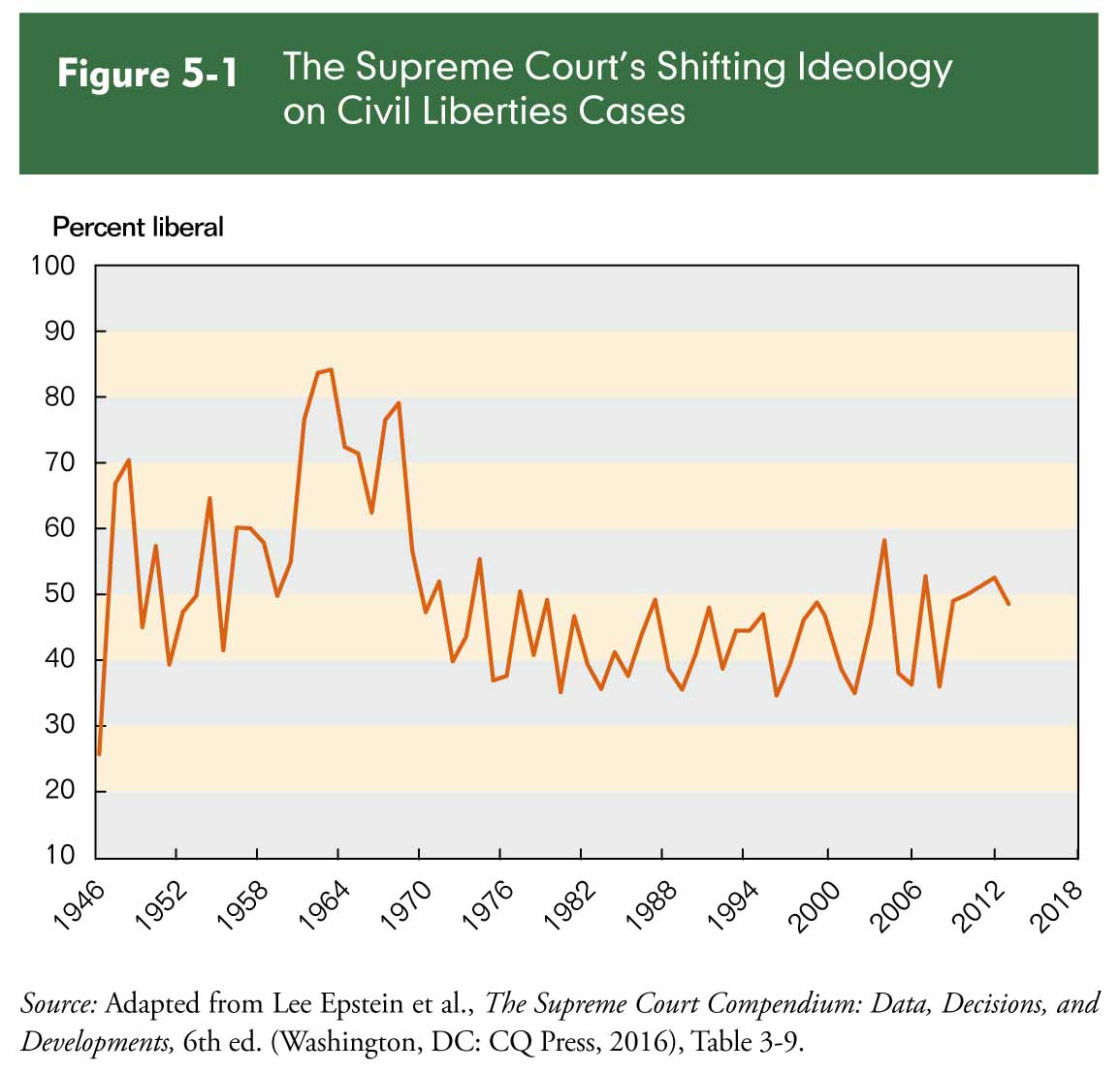
*The Logic of American Politics*, 7th Edition

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Data Literacy Exercises: Chapter 5

Table 5-1:



**Learning Objective:**  5.9 Discuss the historical evolution of civil liberties and contemporary debates related to them.

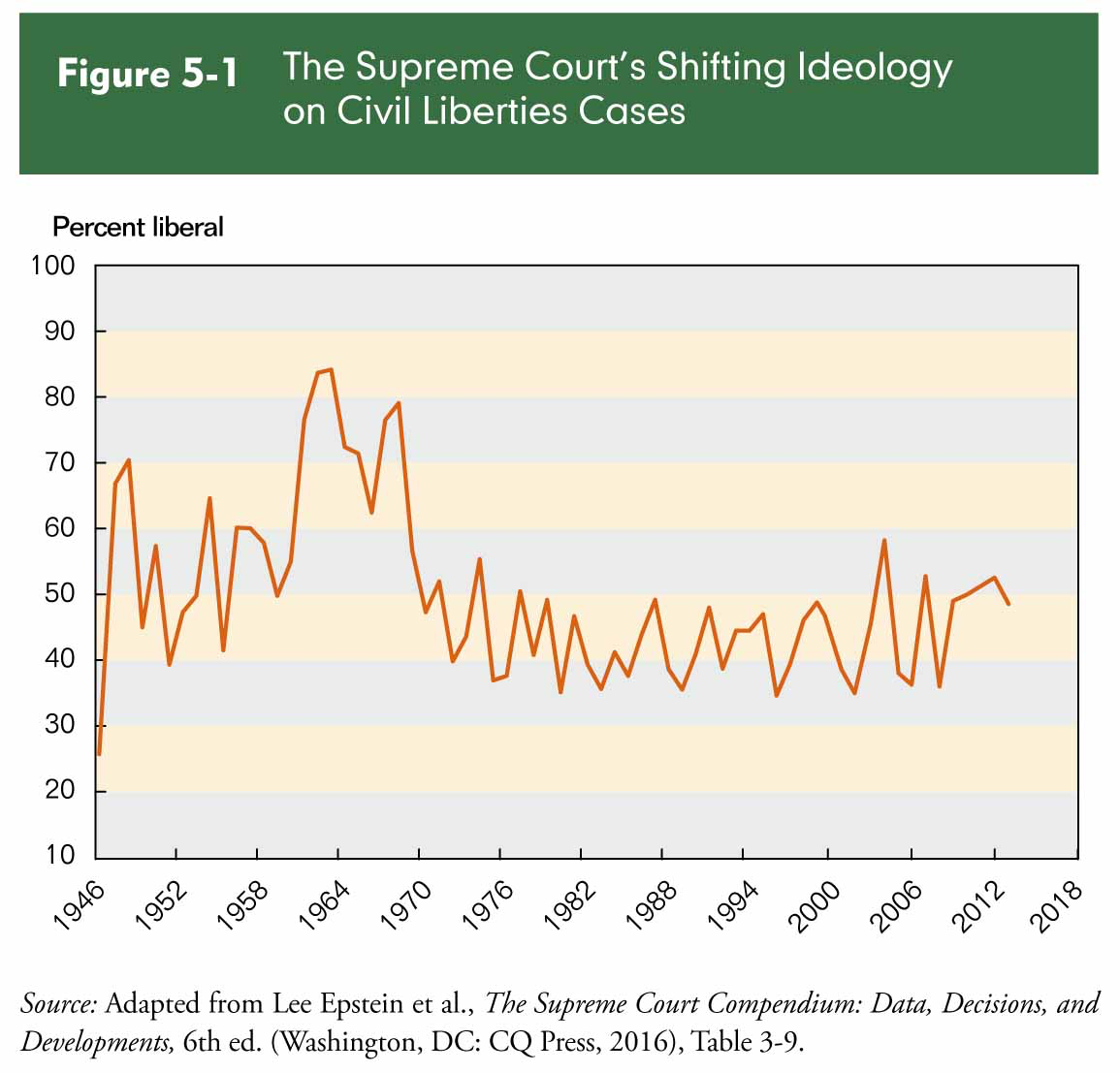
Notice from this figure that the U.S. Supreme Court heard more civil liberties decisions in most years between 1960 and 1985 (1965 doesn’t follow this trend) than during any other time in the post-war period. On the other hand, as a percentage of all decisions that it decided, the percentage of civil liberties cases remained fairly high after that period, reaching its highest level in 2005. Why the difference?

Or

The number of cases decided by SCOTUS on all areas of jurisdiction went down after the 1980s. Fewer civil liberties decisions, however, could still constitute a *higher* percentage of a *lower* number of overall decisions. For example, only 34 decisions were made in 2005, but that constituted almost half (46%) of all decisions made. In comparison, the 69 civil liberties cases decided in 1985, over twice the 2005 number, constituted 45%. In this context, the drop in the number of civil liberties cases since the 1980s might have less to do with the Court’s willingness to take on some issues than it does with the justices making a conscious decision to reduce their total work load, civil liberties included.

In statistics, we refer to this as standardization. The actual number of cases is important as it informs us about how many times our interpretation of civil liberties might change in any given year, but, if we want to have a common base (100% of all cases), we need to divide the number of civil liberty cases in any year by the total number of cases decided.

Figure 5-1:



**Learning Objective:** 5.9 Discuss the historical evolution of civil liberties and contemporary debates related to them.

Although we expect our U.S. Supreme Court justices to make decisions without regard to their own political or ideological preferences, it is obviously difficult if not impossible to divorce one’s own views from one’s decision making process. There have been justices in the past who have defied this logic. Earl Warren (Chief Justice, 1953-1969) was a Republican Governor (California) appointed by a Republican president (Eisenhower) who wound up presiding over and voting along with the majority in a series of cases that liberalized the interpretation of civil, voting and criminal rights. Most justices, however, chosen by presidents and confirmed by senators because of their ideological proclivities, tend to vote in accordance with expectations. Given the longevity of many justices, this can result in an ideological court focus that long outlives its political backing. Associate Justices Antonin Scalia (appointed and confirmed 1986) and Clarence Thomas (appointed and confirmed 1991) continue to anchor the socially conservative wing of the high court, even though public sentiment on many cultural issues has moved dramatically leftward. More liberal judges appointed by Presidents Clinton and Obama will continue to leave their mark on the court in future decades. Of course, the federal court was never intended to be an institution that followed changes in political sentiment and the Framers’ decision to grant them life appointments enforced this sentiment.

Also note that, in the data for this figure, “civil liberties” includes first amendment freedoms as well as civil rights, issues on which justices often take views not consistent with a set ideological framework. Justices like Scalia have generally been adamantly “liberal” on most privacy and, especially, freedom of speech cases (consider campaign finance as speech decisions). If we excluded these issue areas from our analysis, the shift away from “liberal” decision-making would show an increase after the 1980s.

**Questions to Consider:**

1. The shift away from a liberal decision on all civil liberties cases was not a function of the membership of the court as personal ideologies should not influence individual justice’s decision-making logic.

a. True

\*b. False

@ Feedback: Clearly, after appointments by Richard Nixon and the passing of Chief Justice Earl Warren, the court moved in a conservative direction. Continuing members, such as Thurgood Marshall, still maintained their liberal interpretations.

2. Unlike elected bodies, the ideological leanings of the federal courts can outlive popular preferences.

\*a. True

b. False

@ Feedback: Federal justices, short of retirement or impeachment, enjoy life tenures. Unless their interpretation of the Constitution and laws change, their ideological proclivities will continue throughout their lifetime. Additionally, the federal courts were never seen as conduits of public opinion but rather a branch of government immune from the constant changes in that opinion. This does not guarantee that decisions will always go against majority preferences, just that they should be majority neutral.

3. The proportion of civil liberties cases that were decided in a liberal manner was highest during which decade?

a. the 1940s

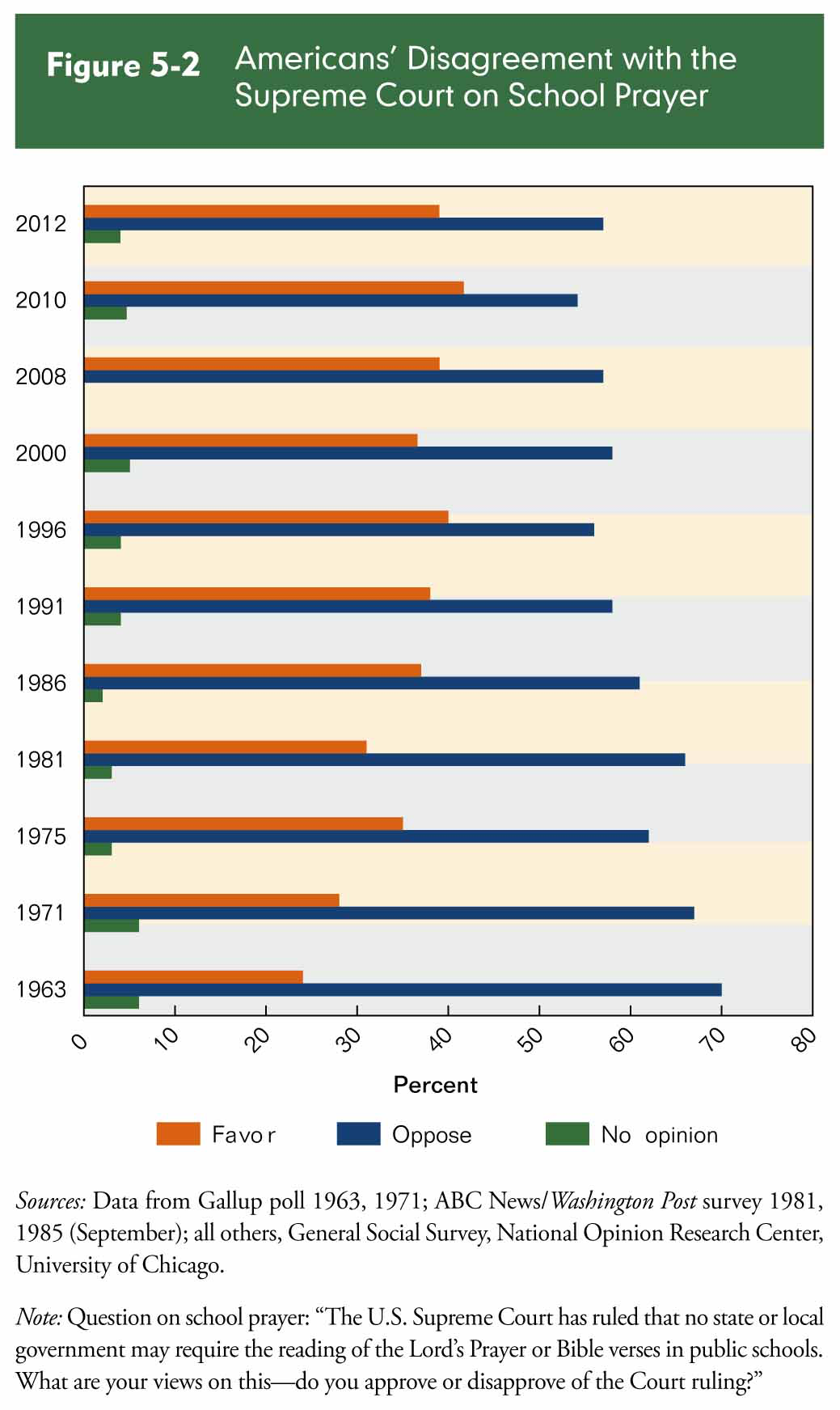
b. the 1950s

\*c. the 1960s

d. the 1970s

@ Feedback: The Warren Court of the 1960s was the most liberal on civil liberties decisions. Appointments by Richard Nixon, Ronald Reagan, and George H.W. Bush moved the court in a more conservative direction.

Figure 5-2



**Learning Objective:** 5.5 Summarize common issues raised regarding freedom of religion.

Although the ideological perspective of federal court justices often influences their decisions, many believe that these justices should attempt to look at the meaning of the Constitution with as much ideological neutrality as possible. In doing so, they might make decisions contrary to the majority views of the public. Perhaps in no area is this demonstrated more than in the 1962 decision of the U.S. Supreme Court on school prayer. In *Engel v. Vitale* (1962), the court deemed a non-denominational, but monotheistic prayer read in public schools to be in violation of the First Amendment’s establishment Clause (private institutions are not subject to this decision). As long as there was at least one student who believed in multiple deities or no deity at all (atheist), such a prayer would violate their equal protection under the law. As the chart shows, Constitutional logic does not always match popular preferences.

**Questions to Consider:**

1. Opposition to the court’s school prayer decision:

a. has moderated somewhat over time (1963-2012) and is now outweighed by support

b. has not moderated at all

\*c. has moderated somewhat over time but has continuously outweighed support

d. has increased continuously over time

@ Feedback: Surveys indicate that opposition to the court’s school prayer decision still constitutes the largest share of public opinion, but, with a few exceptions, has continued to decline.

2. Other than 1963 and 1971, opposition to the court’s school prayer decision was greatest in:

a. 1975

\*b. 1981

c. 1986

d. 2000

@ Feedback: Although we shouldn’t make too much of small differences in surveys conducted by different organizations, and cognizant of the fact that these differences may be a function of random sampling error (Chapter 10), the hart does show that opposition after 1971 was highest in 1981. In his successful run for president, Ronald Reagan rekindled opposition to the liberalization of American culture and the court’s role in it. This may have contributed to the slight increase.

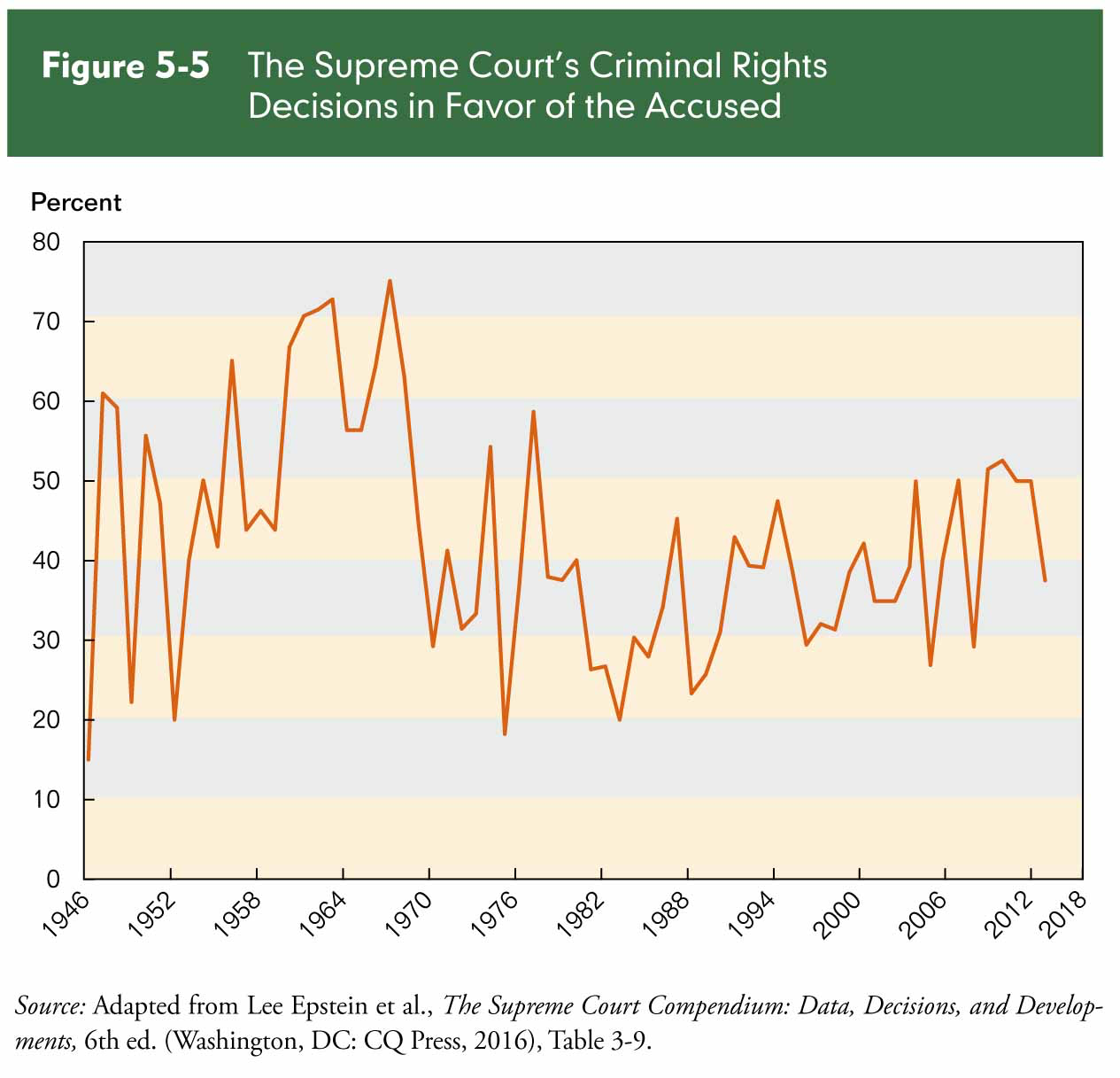
3. According to surveys, Americans don’t seem to have an opinion on the Supreme Court’s school prayer decision.

a. True

\*b. False

@ Feedback: Those with “no opinion” have never even reached ten percent.

Figure 5-5



**Learning Objective:** 5.7 Identify the four constitutional provisions for criminal rights.

As we saw in Figure 5-1 (civil liberties), the U.S. Supreme Court moved in a more conservative direction after the 1960s in deciding cases on the rights of the criminally accused. The post 1960s pattern has, however, been less consistent. Of course, “criminal rights” cases are part of the “civil liberties” cases. The following chart compares “criminal rights decisions” to all “civil liberties” ones. It’s also extremely important to note that major shifts in sentiment (e.g., 1974-1975-1976) do not necessarily imply a sea change in court sentiment but could rather merely be a function of one or two justices from the conservative to the liberal side based upon the specifics of the cases in question.

Notice greater variation in criminal decisions compared to all civil liberties decisions after the 1970s. In general, the difference between the two is a partially a function of the proportion of all civil liberties decisions that involve criminal rights. The higher the proportion, the more likely the two values will coincide. The following chart displays two variables. The first is the proportion of civil liberties cases involving criminal rights (horizontal axis). The second is the difference, displayed above, between the liberal proportions of civil liberties decisions-criminal decisions (vertical axis). In general, the higher the proportion of civil liberties cases involving criminal rights, the lower the difference between the two lines.

**Questions to Consider:**

1. The U.S. Supreme Court was most likely to make decisions in favor of criminal rights during which decade?

a. the 1950s

\*b. the 1960s

c. the 1970s

d. the 1980s

@ Feedback: Just as with all civil liberties cases, the Warren Court of the 1960s was the most liberal on the question of the rights of the criminally accused.

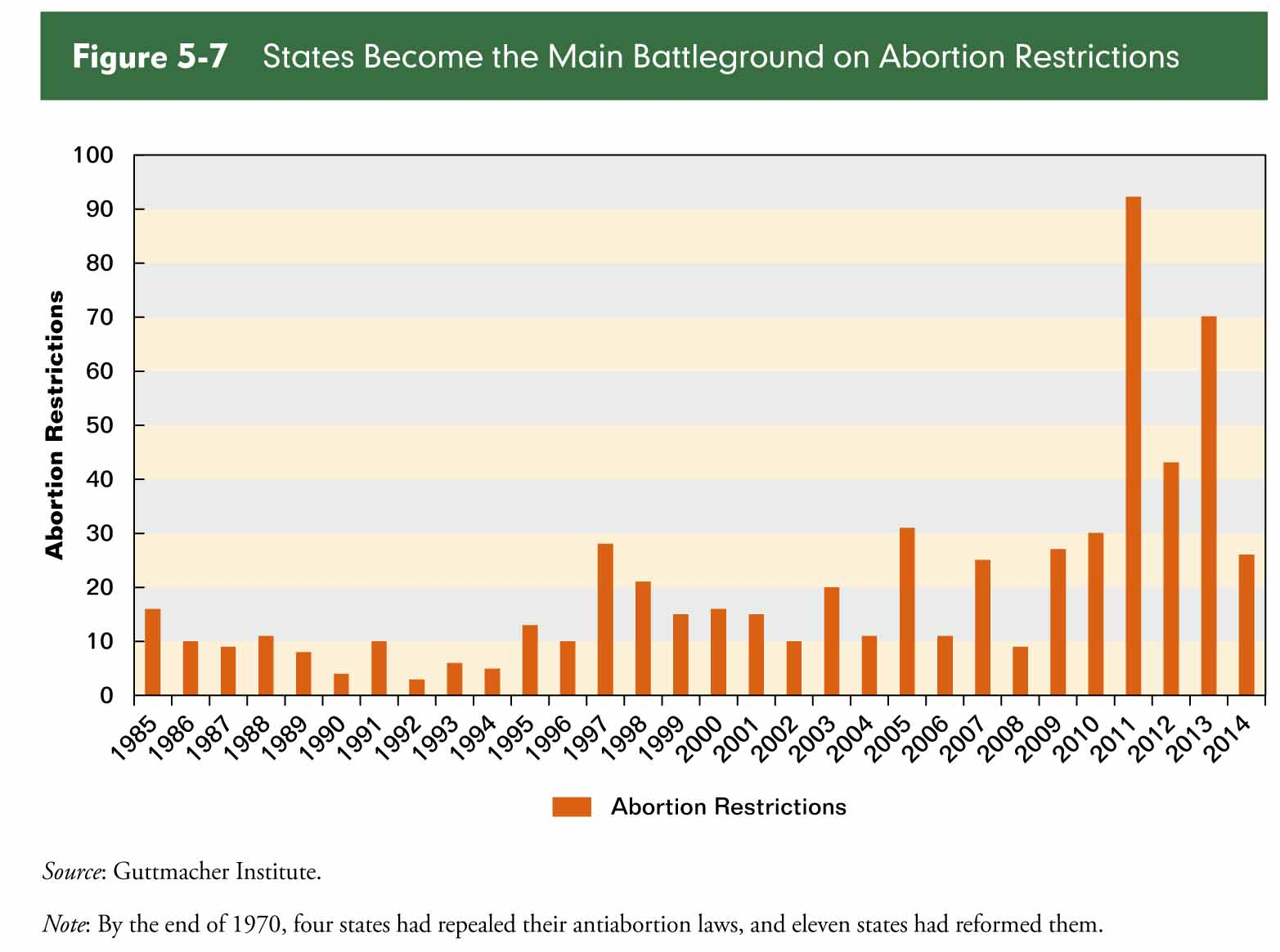
2. After 1946, the proportion of decisions in favor of the accused was lowest in 1975.

\*a. True

b. False

@ Feedback: 1975 was indeed the low point (18.2%) but was quickly followed with 36.7% of cases decided in favor of the rights of the criminally accused in 1976. Obviously, the nature of the cases must have been different as the court membership did not change. Sometimes even minor differences in the specifics of a case can alter the votes of one or two members, changing minority decisions into majority ones.

Figure 5-7



**Learning Objective:** 5.9 Discuss the historical evolution of civil liberties and contemporary debates related to them.

As you will see in Chapter 10, the public’s support for a woman’s right to choose to terminate a pregnancy has been fairly stable across time and differs only based upon how the question is asked. Activity within the states, however, has not been stable as many legislatures have attempted to restrict or regulate abortions based upon their interpretation of what constitutes a threat to the mother’s health and whether an “undue burden” was placed upon her and her physician by regulations before viability. The number of restrictions increased dramatically after 2010, at least in some part due to the success of Republicans in the 2010 midterm election which drew out a disproportionately conservative group of voters, especially in Republican primaries. The enactment of the Affordable Care Act also added to the controversy over public funding of abortions. More new restrictions were enacted from 2011-2013 than in the entire previous decade (Source: Heather D. Boonstra and Elizabeth Nash, “A surge of state abortion restrictions puts providers—and the women they serve—in the crosshairs,” *Guttmacher Policy Review*, 17:1, accessed April 3, 2015 at <http://www.guttmacher.org/pubs/gpr/17/1/gpr170109.html>).

One way to measure restrictions by decade is to take the mean of the restrictions for each decade. This requires adding the number of restrictions enacted per decade, divided by the number of years in the decade (usually 10, but fewer for the data the chart provides for the 1980s and 2010s). As legislation tends to follow elections, and all but two states hold their elections in even years, a decade is defined as, for example, 2001 to 2010. The mean for the first three years of the current decade exceeds the sum of the means of the previous three.

Decade Mean # restrictions

1985-1990 9.0

1991-2000 12.2

2001-2010 18.3

2011-2013 66.7

**Questions to Consider:**

1. The number of restrictions placed by states on abortions increased dramatically in the 1990s.

a. True

\*b. False

@ Feedback: At least since the mid 1980s (the period displayed in the chart), the 1990s seems to be the low point for such restrictions.

2. In general, the most dramatic increase in abortion restrictions took place in which decade?

a. the 1980s

b. the 1990s

c. the 2000s

\*d. he 2010s (to date)

@ Feedback: The number of restrictions placed on abortions have been higher in 2011, 2012 and 2013 than in any past year. The increase from 2010 to 2011 was the most dramatic.