



May 2015

The Least Dangerous Branch: The Dark Horse in American Democracy

Lexi Baltes

Illinois Wesleyan University

Follow this and additional works at: <https://digitalcommons.iwu.edu/respublica>



Part of the [Political Science Commons](#)

Recommended Citation

Baltes, Lexi (2014) "The Least Dangerous Branch: The Dark Horse in American Democracy," *Res Publica - Journal of Undergraduate Research*: Vol. 19

Available at: <https://digitalcommons.iwu.edu/respublica/vol19/iss1/9>

This Article is protected by copyright and/or related rights. It has been brought to you by Digital Commons @ IWU with permission from the rights-holder(s). You are free to use this material in any way that is permitted by the copyright and related rights legislation that applies to your use. For other uses you need to obtain permission from the rights-holder(s) directly, unless additional rights are indicated by a Creative Commons license in the record and/ or on the work itself. This material has been accepted for inclusion by editorial board of Res Publica and the Political Science Department at Illinois Wesleyan University. For more information, please contact digitalcommons@iwu.edu.

©Copyright is owned by the author of this document.

The Least Dangerous Branch: The Dark Horse in American Democracy

Abstract

This research examines the extent to which the Supreme Court has the power to influence public opinion. There is a good deal of consensus in the literature regarding the influence of public opinion on the Supreme Court. However, a relatively small pool of contradictory research attempting to turn the casual arrow from the Court to the public underscores the fact that the question of whether or not a dynamic, back-and-forth relationship exists is still open for debate. Using a portion of the work done by Erikson, MacKuen and Stimson in *The Macro Polity* (2002) as a model, and relying heavily on James Stimson's public mood data and salient Supreme Court decisions from 1969-2008, this study asserts that the Supreme Court has the power to influence the public mood on salient issues, especially with regard to highly unanimous decisions. Consequently, this study suggests a dialogue exists between two groups that were never intended to speak.

THE LEAST DANGEROUS BRANCH: THE DARK HORSE IN AMERICAN DEMOCRACY

Lexi Baltes

Abstract: *This research examines the extent to which the Supreme Court has the power to influence public opinion. There is a good deal of consensus in the literature regarding the influence of public opinion on the Supreme Court. However, a relatively small pool of contradictory research attempting to turn the casual arrow from the Court to the public underscores the fact that the question of whether or not a dynamic, back-and-forth relationship exists is still open for debate. Using a portion of the work done by Erikson, MacKuen and Stimson in *The Macro Polity* (2002) as a model, and relying heavily on James Stimson's public mood data and salient Supreme Court decisions from 1969-2008, this study asserts that the Supreme Court has the power to influence the public mood on salient issues, especially with regard to highly unanimous decisions. Consequently, this study suggests a dialogue exists between two groups that were never intended to speak.*

INTRODUCTION

Public opinion carries great weight in the American form of democratic government. A government by the people and for the people implies the certainty of a back-and-forth dialogue between public preferences and institutional accommodations. In order to ensure the government acts faithfully, certain restraints are in place—namely, electoral accountability and legitimacy through acceptance. In this way, the public controls the thermostat, choosing the ideological temperature of the policy produced, enforced, and allowed to stand.¹⁰²

The public has tremendous power and influence over the governing of the nation, yet it is well documented that, at least at the individual level, the public is not well informed about political issues.¹⁰³ But how, and how effectively, is the public calling the shots for a global superpower? John Zaller (1992) and James Stimson (1991; 1994) explain that by relying on elite influence (politicians, public officials, etc.) and other heuristics, the public manages to make rational decisions and control the ideological thermostat in a systematic and predictable way. Public opinion is tied to governmental action and positions. However, Jacobs and Shapiro are adamant about the diminishing responsiveness to public opinion. They believe that politicians use the measurement of public opinion “not to move their positions closer to the public’s (as commonly assumed) but just the opposite—to find the most effective means to move public opinion closer to their own desired policies.”¹⁰⁴

This is a dangerous proposition for any branch of government, but what of the “least dangerous branch,” the branch theoretically isolated from the passions of the public and the passing partisan tides? The interaction between the Supreme Court and public opinion may be both the most interesting and least studied relationship for largely the same reason: it is the forbidden fruit of government and politics, the relationship that was never supposed to be. However, in order to

¹⁰² Erikson, Mac Kuen, Stimson 2002; Deutsch 1963; Easton 1953; Wlezien 1995

¹⁰³ e.g. Converse 1962

¹⁰⁴ Jacobs & Shapiro 2002, p. 55

understand politics today, the question must be asked: to what extent do Supreme Court decisions have the power to influence public opinion and mood? There is a significant compilation of scholarship suggesting the presence of the relationship between public opinion and its influence on Supreme Court decisions, but not much more than defensive, nervous rhetoric regarding the reversal of the causal arrow. This research, relying heavily on Stimson's public mood data and salient Supreme Court decisions between 1969 and 2008, seeks to shed light on the extent to which the "least dangerous branch" can influence the public at a level as fundamental as mood and opinion, and investigate the implications the results have on the balance of power.

LITERATURE REVIEW

Over 50 years ago, Robert Dahl sparked interest in the Supreme Court's political presence. He wrote, "As a political institution, the Court is highly unusual, not least because Americans are not quite willing to accept the fact that it is a political institution and not quite capable of denying it," and yet, "much of the legitimacy of the Court's decisions rest upon the fiction that it is not a political institution but exclusively a legal one," (1957). The idea that the nation has turned a blind eye to the incongruous attributes it associates with the Court only becomes clearer as partisan divide places increasing credence on ideological position of issues and policy.

There is a good deal of consensus in the literature regarding the influence of public opinion on the Supreme Court.¹⁰⁵ Theory would suggest, in these more polarized times, this influence would weaken or fade completely as Justices become more fixated upon an ideological stance regardless of external influences. Nevertheless, in a relatively recent study of cases from 1953-1996, McGuire and Stimson (2004) found that the Supreme Court continues to weigh their decisions against public mood so as to issue decisions that have a chance of being enforced.

These findings are reminiscent of Dahl's influential propositions and an ample amount of legitimacy hypothesis scholarship since then.¹⁰⁶ Recent scholarship suggests that public mood, even after controlling for the "social forces" that influence both public and judicial mood, influences constitutional interpretations espoused in Supreme Court decisions.¹⁰⁷ At the very least, this points to the weighed and measured constraint placed on the Court based on its own forethought and self-preservation. Like other politicians, Supreme Court Justices seem to have a perception of the most expedient position.¹⁰⁸ There is an established pattern of acknowledgement of, and respect for, public mood in the decisions of the Supreme Court.

¹⁰⁵ McGuire & Stimson 2004; Casillas, Enns, Wohlfarth 2010; Erikson, Stimson, MacKeun 2002

¹⁰⁶ Mondak 1992; Baas & Thomas 1984; Jaros & Roper 1980; Murphy & Tanenhous 1968; Marshall 1987; Johnson & Martin 1998

¹⁰⁷ Casillas, Enns, & Wohlfarth 2010

¹⁰⁸ Stimson, MacKuen & Erikson 1995

The presence of a unified voice from scholars regarding the existence of a relationship running from public mood to Supreme Court decisions cannot be overstated when theorizing about reverse causation. If the legitimacy of Supreme Court decisions depend, at least in part, on public acceptance, then it follows that the Court would actively try to pull public opinion toward its preferences. The idea of figuratively purchasing stability public opinion finds wide support among scholars of the Supreme Court.¹⁰⁹ Referenced many ways throughout the literature, the term “judicial capital” will hereby be used to indicate the “funds” used by the Supreme Court. The theory maintains that the Court can use its judicial capital to purchase the legitimacy of a decision, but at some point it will run out of capital and have to start saving again. This research is less interested in determining the way in which the Court gains, spends, and otherwise uses this capital than it is with advancing the notion that when purchasing legitimacy, the Court might also be purchasing public opinion. The idea of judicial capital is a foundational theoretical justification that functions to situate and legitimize this study within the larger body of literature.

Turning to the relatively small pool of research that looks at the influence of Supreme Court decision on public opinion, it becomes clear that the question of whether or not a dynamic, or biconditional, relationship between the Court and the public exists is still open for debate. Much of the current literature concludes evidence is lacking to indicate any such relationship exists.¹¹⁰ However, there are flaws in both theory and design throughout this camp of research.

In one of the more prominent studies, Marshall (1987) finds that but for a small collection of cases, Supreme Court decisions have virtually no effect on public opinion. He looks at the influence of just eighteen cases using pre- and post-decision opinion poll data. The statistical limitations of such a design go without saying, but what is more, the eighteen Court decisions used were from varying issue domains. It is important to note that when researching the impact of Supreme Court decisions it is difficult to justify looking at individual cases. It is well known that “(policy) is highly cumulative, the result of a stream of decisions over time.”¹¹¹ The Court rarely rules singularly or finally on any issue, and even when it does, its decision is still taken in concert with decisions on other issues. Therefore, it is flawed to look at certain isolated hiccups in the Court’s discourse and far better to analyze its influence in light of the fluid voice espoused in a collection of decisions. Other studies stop short of actually investigating the influence of the Supreme Court on public opinion because they conclude that people know too little to be able to systematically respond to

¹⁰⁹ Casillas et. al. 2010; McGuire & Stimson 2004; Hetherington & Smith 2007; Mondak 1992; Caldeira & Gibson 1992

¹¹⁰ Blake 1977; Marshall 1987; Baas & Thomas 1984; Jaros & Roper 1980; Murphy & Tanenhaus 1968; Hetherington & Smith 2007

¹¹¹ Erikson et. al. 2002

Supreme Court decisions.¹¹² People generally lack political information and the motivation necessary to process and correctly align themselves with ideological positions taken in Court opinions.¹¹³ Therefore, these researchers conclude there is no reason to look further. This study is much less concerned with knowledge and explicit awareness of Court decisions, but instead asserts that awareness is not a requirement for potential influence. To believe otherwise is to discount ample research in the way of heuristics besides knowledge that have been confidently considered to aid the formation of “appropriate” public opinions, and ignore the reality that public mood may be an airborne virus catchable absent direct contact.

Those finding a significant influence of Supreme Court decisions on public opinion¹¹⁴ are relatively few in number and possess their own theoretical and logistical shortcomings. Mondak (1992) finds that the Court can increase support for rulings, but at a price. This is consistent with the judicial capital theory. However, it would seem that when measuring influence of the Court, analysis ought not be limited to support for the decision, but perhaps better focused on ensuing change of opinion, especially opinion on the issues about which the decision was determined. Furthermore, Mondak’s conclusions are drawn from a controlled experiment that utilizes hypothetical policy and rulings, which exacerbates the limitations of the research.

Taking a unique approach, Franklin and Kosaki (1989) also find that the Supreme Court influences public opinion. However, they do not measure influence in terms of increased support for the Court’s position on an issue. Instead, they measure the structural change of groups supporting certain issue positions, finding that Supreme Court decisions lead to greater homogeneity and clearer preferences between groups (1989). Though Franklin and Kosaki view this structural change as the dichotomous alternative to increased support, in reality, it neither helps nor hinders the theory advanced in this research; rather, it merely answers a complementary question regarding the Court-public relationship. They also find that salient issues blunt the Court’s impact because salient issues are those about which people already have well-ordered beliefs. This is significant because the study at hand looks only at salient issues and cases. Implications of evidence regarding Supreme Court influence on these issues would seem to suggest that the Court has some power to change minds, not to simply help form opinions. This study aims to complement Franklin and Kosaki’s work so as to offer a broader picture of Supreme Court influence on the public and offer clearer implications about any such relationship.

Johnson and Martin (1998) support the conclusions drawn by Franklin and Kosaki, but suggest even further limits on the Court’s influence. They posit that the Court may influence the

¹¹² Murphy & Tanenhous 1968

¹¹³ Hetherington & Smith 2007

¹¹⁴ Petrick 1968, Franklin & Kosaki 1989, Mondak 1992, Johnson & Martin 1998

public in accord with the structural change hypothesis, but any kind of influence only occurs after the first major ruling on a given issue: subsequent rulings have no effect. Tracking single issues across time, the expectations for this study are fundamentally at odds with the limitations put forth by Johnson et. al. (1998).

In sum, a theoretically sound and scientifically verifiable approach to analyzing Supreme Court influence on public opinion is lacking. The absence of a unified scholarly voice on the topic, and even on the approach to studying the topic, is not altogether surprising, considering the relatively few specific inquiries into the idea of Supreme Court influence on public opinion. Furthermore, there are limitations inherent in the study of an institution with the power to handpick the issues it addresses combined with the study of a free public whose preferences have only recently become well documented. This research attempts to go some way towards filling this gap and standardizing the approach through which future research on the topic might utilize, by implementing a new method that pairs external validity with formulaic consideration for accuracy and error.

After determining that public opinion influences not only Supreme Court decisions but rather the outputs of all three branches of government, Erikson, MacKuen, and Stimson (2002, 2008) extend the thermostat analogy and turn the casual arrow around for Congressional policy—looking at public mood¹¹⁵ as a function of policy and finding a negative relationship. As policy becomes more liberal the public mood becomes more conservative, or in other words, as policy moves in one ideological direction, the public has a logical increased desire for policy in the other direction. *The Macro Polity* model will be employed in this research to extend the analysis of mood as a function of policy into the realm of policy espoused in Supreme Court decisions.

RESEARCH DESIGN AND HYPOTHESES

The central predication of this research is that Supreme Court decisions do, in fact, influence public opinion. However, this proposition is not intended to act counter to evidence suggesting that public opinion influences the Court; rather, it is a supplemental study aimed at uncovering a more complete picture of this relationship as a two way street. One side of the street is paved, the other currently in its primitive stages of construction.

In order to test the dynamic part of this relationship, the part that points the casual arrow from Supreme Court decisions back to the public, I will use the portion of testing done in *The Macro Polity* that looks at mood as a function of policy (2002, 2008) as a model. In their study, Erikson, MacKuen, and Stimson create an index by awarding a -1 (conservative) or +1 (liberal) to each piece of significant (as defined in David Mayhew's two sweep test) legislation¹¹⁶, and then taking the cumulative sum of these scores to create one score for each biennium. Using this score as the key

¹¹⁵ Stimson 2012

¹¹⁶ Mayhew 1991

independent variable they run an Ordinary Least Squares regression to analyze the influence of policy on public mood (using Stimson's public mood data) controlling for the effects of the economy on mood, specifically inflation and unemployment indicators. As previously mentioned, their testing ultimately concludes there is a negative relationship regarding policy influence on mood; thus, a representation of the thermostat analogy.

Based on this model, I approach Supreme Court decisions in much the same way that Erikson et. al. approach policy. Looking at Court cases from 1969-2008,¹¹⁷ I consider only salient cases,¹¹⁸ and of those, only cases involving race, religion, or sex (discrimination, privacy, etc.) issues¹¹⁹. There are multiple defenses for this emphasis on salience. First, it is consistent with *The Macro Polity* model, which only looks at salient policy.¹²⁰ Second, it is most interesting to understand the public's relationship and interaction with the Court on issues that matter most to both groups. Finally, research has shown that the Court is most likely to defy public opinion on salient cases.¹²¹ Therefore, in an attempt to look at the back and forth between the Court and the public, it is best to look at cases in which there is not complete harmony between the Court decision and public preference. The idea here is that, whether or not the public is aware or has any knowledge of the decisions, salient cases in these issue domains are the ones most likely to matter, which is different than influence; if it were otherwise, this study would be irrelevant.

The restrictions mentioned above leave 146 cases for analysis, with an average of just under four cases per year. In accord with Erikson et. al., each decision was given one of five scores: -1, -0.5, 0, 0.5, 1. Negative values indicate a conservative decision, positive values indicate a liberal decision, and zero indicates a decision that is neither liberal nor conservative.¹²² A score of -0.5 or 0.5 was awarded when the decision was obviously narrow in scope or left open the clear possibility of a different decision given slightly different circumstances.¹²³ The sum of the scores in each year was produced to create a cumulative decision score per year.

¹¹⁷ This is a post-Warren Court case pool. The Warren Court is often said to be the most activist Court of all time—here we look at the influence of supposedly less activist courts. This time period is also convenient, in that public mood data becomes much more reliable around the 1960s.

¹¹⁸ Epstein and Segal (2000) provide a widely accepted operationalization of salient cases to be those appearing on the front page of the *New York Times* the day after the decision was released.

¹¹⁹ These three issue domains are broad enough to include a wide range of opinions, but they are also issues about which people are not only likely to have formed opinions but those with which they have personal experience.

¹²⁰ Erikson et. al. 2002

¹²¹ Casillas et. al. 2011

¹²² Only a handful of zeros were awarded, and all were cases in which the Court unanimously decided not to decide and remand for more information.

¹²³ In addition to a single primary coder, intercoder reliability was confirmed with three additional coders looking at a random sample of ten decisions from the case pool. There was 100 percent consistency across all four coders in terms of the ideological direction of the 10 cases and 83 percent consistency as to the value itself.

The cumulative decision score per year will be the independent variable of focus, representing the annual nature of Supreme Court outputs. Implementing Ordinary Least Squares regression, the analysis will focus on the relationship between this independent variable and the single dependent variable: change in public mood.¹²⁴ Stimson's policy mood indicator is an amalgamated index that produces a single score to represent the aggregate shift along the liberal-conservative continuum of public mood over time by combining policy preferences of survey respondents across many different issues. Stimson's mood data is publicly available¹²⁵ and was last updated in 2011.

It is important to note that the data used in this research are not the raw mood scores. Instead, for the purposes of this analysis, the value produced by taking the change in mood from the previous year to the current year is used. Using a change score ensures that the direction of causality suggested is, indeed, the one being tested. In the form of a quasi-experimental design, we have the mood measure before the year of decisions, then the experimental treatment of Supreme Court decisions, and then the mood measure following those decisions. By subtracting the pre-experimental measure from the post-experimental measure, we can determine the effect of the experimental treatment.

Looking at overall mood as a product of time-lagged decision scores would be a useful avenue for future research to pursue; however, the change score lends itself much better to the study at hand for a variety of reasons.¹²⁶ Though change scores are limited to short term analysis, they ensure the appropriate direction of causality, as mentioned above. Further, looking at change scores eliminates the chance that any relationship suggested by the data is only a long-term, possibly spurious, relationship. Isolating annual change in mood is therefore the best, though not the only, choice of dependent variables for this study. Thus, the focus of the analysis will ask the question: does the short-term change in tenor of Supreme Court decisions produce short-term change in mood?

Finally, with the annual decision score as the key independent variable influencing the dependent change in mood, I also control for fluctuations in the economy (inflation and unemployment),¹²⁷ and the ideal point¹²⁸ and ideology of the Court.¹²⁹ Both sets of scores are given individually to each Justice. I took the average of these scores for each year to produce one ideal

¹²⁴ Stimson 2012

¹²⁵ These data are available at www.unc.edu/~jstimson/Data.html.

¹²⁶ Overall public mood is a cumulative, or developing, score, so to look at mood, rather than change in mood, the effects would probably not be seen without a large time lag. This type of analysis is beyond the scope of this research given the data collected. The case pool is 146 cases over 40 years, just under an average of four per year. Each annual time lag would eliminate one data point from a relatively small pool. Future research might additionally look at cases 10 to 20 years earlier so a time lag could be conducted with more confidence and thereby add another dimension to the research.

¹²⁷ It is well known that the state of the economy affects public mood (Erikson et. al. 2002); however, I anticipate that its influence, and thus its relevance, will be diminished when looking at change in mood rather than overall mood. Nevertheless, inflation and unemployment variables were included just to be certain.

¹²⁸ Martin & Quinn 2002

¹²⁹ Segal & Cover 1989

point score and one ideology score for the entire Court in each year.¹³⁰ The Martin-Quinn ideal point score offers a dynamic indicator of Court preference, with a new score given for every year an individual Justice serves. The Segal-Cover ideology score, which assigns a single value to each Justice for the duration of their time on the Court, offers a more stable and consistent indicator of Court preferences. Thus, we can control for multiple aspects of possible influence of Justices' influence on public mood that might bypass the Supreme Court decisions.

The expectation for this research is that there is an identifiable influence of Supreme Court decisions on public mood, but I propose the nature of this relationship to be opposite that of the one found when at mood as a function of Congressional policy. Whereas there is a negative relationship between Congressional policy and mood, consistent with the thermostat analogy (as policy becomes warmer/more liberal there is an increased desire from the public for cooler/more conservative policy), I predict a positive relationship between Supreme Court decisions and public mood. The Court is neither a representative nor elected institution, and therefore the public may not attempt to control the thermostat in the same way they do a Congressional body. Rather, it is plausible, and here expected, that the public listens to the Court as authoritative and final, recognizing their lack of control over the unelected body. In this way, I propose that Supreme Court decisions act as a recalibration of the thermostat, with the public meeting the Court closer to its espoused temperature, and then taking any qualms to Congress from this new playing field.¹³¹

Finally, I predict the level of agreement between Justices to make a difference. When looking only at unanimous decisions, I expect the above stated positive relationship will become stronger. A unanimous Court seems to put forth a certainty and finality that will be felt by the public. By the same token, greater dissent within the Court will signal a lack of cohesion, certainty, and therefore finality that will reduce the malleability of public mood. Thus, I predict the relationship between

¹³⁰ The idea of using the average score of the three most ideologically moderate Justices in each year was considered but ultimately rejected. Though it is true that the more moderate Justices often act as the deciding votes in salient cases, and therefore the ideal points and ideologies of these Justices have a greater influence on the decision that ultimately reaches the public, this aspect is accounted for in the score given to each case. Instead, these variables are meant to control for the influence that the nature of the Court and its members, outside of its decisions, has on the public. While this might be interesting, it is not the focus of the study and could potentially cloud the results. It seems plausible that when people look at the Court they respond more to a Scalia than a Kennedy; therefore, the average of the entire Court is what the public sees and what they would be influenced by (if at all) when considering decisions. In this way, these variables are supplemental and help to control for knowledge of the Court and its decisions—since I do not see either knowledge or awareness as a precondition for possible influence.

¹³¹ How the public responds to Supreme Court decisions is different than how it responds to the Supreme Court. For the sake of theory, I propose that the public may indeed respond in accord with the thermostat analogy regarding the makeup of the Court, while at the same time demonstrating a positive relationship regarding decisions put forth by the same Court. This is why it is important to ensure we are looking at the decision of the Court absent the influence of individual Justices.

Supreme Court decisions with three or four dissents will be weaker, if it even exists, than the influence of all cases.¹³²

FINDINGS

The initial analysis looks at the influence of all the Supreme Court decisions in the case pool, divided into annual units with a single cumulative case score, on the change in public mood. Using annual decision scores, average ideology of the Court, average ideal point of the Court, unemployment rate, and inflation rate as the independent variables, OLS determines that we are explaining 24 percent of the variance, statistically significant at the 0.1 level. In this regression, annual decision score is statistically significant at the 0.1 level and in the expected direction, with a positive B-value of .319. Average ideology of the Court and average ideal point of the Court were also statistically significant at the 0.1 level. It is important to note that inflation rate came nowhere near approaching statistical significance as a predictor of change in mood,¹³³ thus the model was repeated without inflation as an independent variable.

In the new model, the independent variables still explain 24 percent of all variance; further, this explanatory power is now statistically significant at the 0.05 level. The key independent variable of annual Supreme Court decision score now has a strong positive relationship with change in mood, and is statistically significant at the 0.05 level.¹³⁴ For every one unit increase in the liberalism of the annual cumulative decision score, there is a .323 unit increase in the liberalism of overall public mood, holding all other variables fixed. These data are consistent with the hypothesis.

Brand new, issue specific public mood data is currently being produced by Stimson and his team. Though the project is in its primitive stages, mood data for two issues, abortion and race,¹³⁵ is now available dating back to the late 1960's and early 1970's.¹³⁶ Issue specific data allows the addition of a deeper dimension to this research. It is a dimension ripe for exploration that will offer more reliable results than attempting to track public opinion data using individual questions or cases as has been done in the past. In order to use these data most effectively a race case decision score and an

¹³² As a point of clarification, I stand by the fact that knowledge and awareness of the decision are not necessary preconditions for possible influence. The idea here is that the numerical divide representing the degree of the dissent need not be known in order to be felt through alternate channels.

¹³³ Lack of significance of both inflation and employment was anticipated due to the use of change scores as the dependent variable; however because inflation received a *p* value of .913, its inclusion may be interfering with the results.

¹³⁴ Average ideology of the Court also moves to statistical significance at the .05 level, while average ideal point of the Court remains statistically significant at the 0.1 level.

¹³⁵ Average ideology and average ideal point were added to the equation with these issue specific tests in mind, otherwise it would seem the two variables were getting at largely the same thing. The more stable measure of ideology was added for the very stagnant issue of abortion, and the more dynamic measure of ideal point was added for the dynamic issue of race. Additionally, it was assumed that ideology would not be a good indicator for race given the changing ideological position on race during this time period.

¹³⁶ These data are produced in the same way as overall mood scores as discussed on page eleven, but for issue specific polling data only. The data are available at www.unc.edu/~jstimson/Data.html.

abortion case decision score was created for each annual term using the same method as was used for the initial analysis of all cases. Thus, we apply a test that looks at change in race mood as a function of cumulative race case decision scores and change in abortion mood as a function of cumulative abortion case decision scores.

The setup for this model is nearly identical. However, when looking at race mood as a function of race case decision scores, the average ideal point of the Court is used as the key indicator to pick up the influence of preferences of the Justices themselves. Race is a dynamic issue that calls for use of a dynamic value; both the issue of race and public opinion towards racial issues have changed considerably over the course of the time period under study. Furthermore, because of the way the issue of race has evolved, ideology would not be an accurate way to get at preferences regarding the issue. By the same token, abortion is a static issue;¹³⁷ neither the issue, nor public opinion towards it, has shown much variation over time. When looking at abortion mood as a function of abortion case decision scores, the average ideology of the Court is used as the key indicator to pick up the preference of the Justices themselves.

The race model does not pass the significance test, with a p value of .103, meaning we cannot reject the null hypothesis and infer a relationship exists. However, all things considered, and given the relatively limited size of the data, a more elaborate, long-term study might not be dissuaded from hypothesizing similarly in expectation of a more fruitful yield.¹³⁸

The abortion model, on the other hand, is statistically significant at the 0.1 level and explains nearly 41 percent of the variance regarding change in abortion mood. The cumulative decision score for abortion cases is a statistically significant indicator for predicting change in abortion mood at the 0.05 level. Interestingly, though not necessarily surprising, the relationship between abortion decision scores and abortion mood is strong and negative; for every one unit change towards more liberal Supreme Court decisions regarding abortion there is a -1.27 unit change in liberalism of public mood on the issue. In other words, more liberal Supreme Court abortion decisions lead to a public desire for more conservative abortion policy.

Because abortion is systematically an outlying issue,¹³⁹ and attitudes towards it simply tend not to change much at all, it is actually quite logical that regarding this particular issue there would be a negative relationship between Court decisions and public mood. People will not simply accept variation on this issue as authoritative and final. Furthermore, it is important to note that this

¹³⁷ This is a trend verified by ample polling data tracking the issue.

¹³⁸ Although we cannot infer a relationship exists with a p value of .103, if we were to entertain the idea that a slightly larger case pool might reduce the p value the small amount necessary to infer a relationship exists, then it would be worthy to note that, looking past the F test to the T test, the race case decision score is statistically significant at the 0.05 level. Furthermore, the relationship is strong and positive.

¹³⁹ e.g. Caldeira & Gibson 1992

negative relationship concerning a generally unique issue does not cause the breakdown of the overall model; rather, it allows us to theorize a better, more concrete model that looks at public mood as a function of all of the Supreme Court decisions in the original case pool minus abortion cases.

Rerunning the OLS regression this way, we are able to explain 31 percent of the variance, statistically significant at the .05 level. Furthermore, the Supreme Court decision score minus abortion decisions variable is positive, strong, and statistically significant at the 0.01 level. For every one unit increase in liberalism in decision score there is a .512 unit increase in the liberalism of public mood. These data go a long way in providing additional evidence in support of the primary hypothesis of this study.

Next, we look to more rigorously examine this story about Supreme Court influence on public mood and opinion by investigating the unanimity aspect of the decisions. There is a predicted interaction here, meaning Supreme Court decisions do different things to public mood depending on a third variable: degree of unanimity.¹⁴⁰ In this portion of the research, Supreme Court decisions are grouped according to their number of dissents: decisions with zero or one dissents are considered highly unanimous, while decisions with three or four dissents are considered to be highly divided.

Running the model exactly the same way for only those decisions put forth with unanimity, we anticipate a stronger, positive relationship to emerge (see Figure 1). In fact, we find the unanimous decision model to explain about 44 percent of the variance, statistically significant at the 0.05 level. The decision score indicator for explaining change in mood is statistically significant at the 0.05 level with a strong, positive *B* value of .93.¹⁴¹ This is consistent with the hypothesis and is logically pleasing—the more certain the Court is of their decision, demonstrated through unanimity, the more stock the public is willing to give the decision.

Finally, in order to examine the alternate segment of the hypothesis we conduct one last regression using only highly divided decisions (three or four dissents) to determine the annual decision score, and use this as our key independent variable for predicting change in mood (see Figure 2). As expected, the findings indicate no statistical significance of any kind and do not even lend a hint of directionality of a potential relationship for future study. In other words, Supreme Court decisions completely lacking unanimity offer no explanatory power for determining the short-term change in public mood.

¹⁴⁰ Here, degree of unanimity is taken solely as the number of dissenters. Though the limitation of this operationalization is noted—not all dissents, or dissenters, are created equally.

¹⁴¹ Only 39 individual case scores qualified for this grouping of cases. This is a clear limitation, but also suggests that the data may actually underestimate the reality of this relationship.

Figure 1: Mood Change and Highly Unanimous Decision Score (annual)

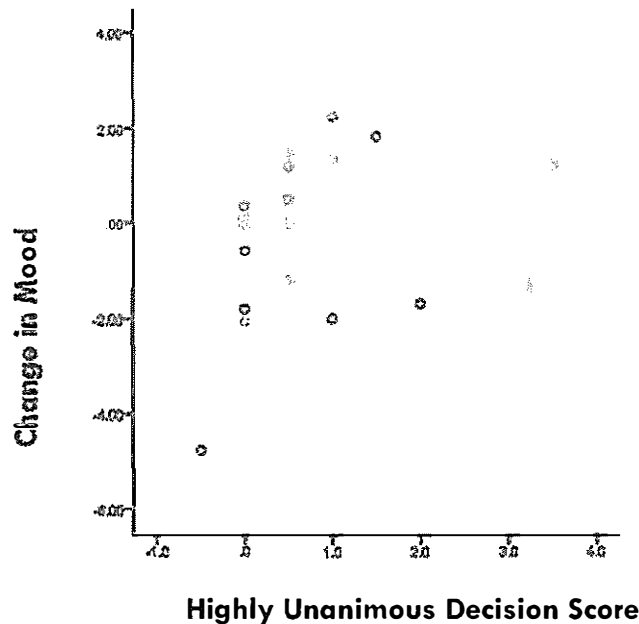


Figure 2: Mood Change and Highly Divided Decision Score (annual)

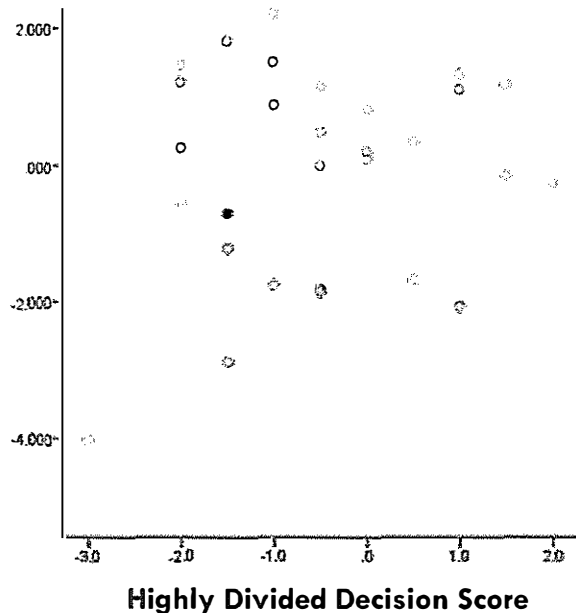


Table 1 presents a summary of all findings. We can conclude that Supreme Court decisions influence public mood and that this relationship is positive. Furthermore, the positive relationship is strengthened by excluding abortion cases and when looking only at highly unanimous decisions (both over all cases, and cases regarding a single issue). Thus, there is an interaction concerning Supreme Court influence on public mood, depending on unanimity of the espoused decision. We cannot conclude a relationship exists between decisions lacking unanimity and public mood

Table 1: Change in Mood as a Function of Supreme Court Decisions

	1	2	3	4	5	6
Decision Score	2.028** (.323) .312	2.241** (.514) .400	-2.642** (-1.270) -.648	2.805** (.512) .409	2.592** (.930) .539	1.206 (.257) .218
Unemployment	1.216 (.217) .187	.863 (.150) .156	1.815* (.418) .467	1.193 (.203) .175	.994 (.221) .204	.511 (.100) .093
Ideology	-2.357** (-5.655) -.368		-1.619 (-6.969) -.393	-2.575** (-5.880) -.382	-2.143** (-6.404) -.466	-.152 (-.456) -.027
Ideal Point	-1.785** (-.546) -.282	-1.871* (.496) .340		-1.621 (-.470) -.243	-1.921* (-.562) -.368	-1.598 (-.502) -.296
R Square	.241**	.257	.406*	.309**	.443**	.108

Note:

Each column indicates a separate regression: (1) all cases (2) race cases, (3) abortion cases, (4) abortion cases eliminated, (5) highly unanimous cases, (6) highly divided cases.

* $p < 0.1$ ** $p < 0.05$ *** $p < 0.01$

The t-value is listed first, followed by the B-value in parentheses, and then the Beta Weight.

Average ideology and average ideal point are consistently negative and frequently significant. This can be taken to mean that the public can respond negatively to the Court itself but dissociate that from acceptance and internalization of the decisions.

CONCLUSIONS AND DISCUSSION

This study does not attempt to upend the work suggesting public influence on the Supreme Court. Instead, the research in this study deepens the understanding of the relationship between the Court and the public in a way that begins to remedy the cognitive dilemma that Dahl wrote of so many years ago. The Supreme Court does function as a political player in the American form of government. The positive response hypothesis, originally put forth by Dahl (1957), but more recently rejected by Johnson and Martin (1998) and others, carries weight in American politics beyond an attempt by the Court to ensure legitimacy of decisions. Certainly, this research does not

try to advance the notion of a purely positive response from the public to Court decisions, and even presents abortion as a counter example. The power of the Court to influence the public may be limited (or enhanced) by judicial capital, among a number of other factors; however, multiple forms of testing confirm that the Court can, and does, influence the public on salient issues (i.e. race, abortion) at least some of the time. Thus, taken together with evidence that the public likewise influences Supreme Court decisions, we are left with a picture of a paved and functioning two way street—a dialog between groups that were never intended to speak.

At this point, it is worth reemphasizing the magnitude of the questions asked and answered in this study. The Supreme Court is a small unelected branch of the great American democracy, and yet the evidence holds from multiple angles that the American people are swayed and influenced by it in ways not mirrored by the elected branches. Again, in a study of salient issues and cases about which most people are said to have fixed opinions based on experience or proximity, we find a significant positive relationship between Supreme Court decisions and subsequent public mood in the short-term. The Supreme Court plays a role in changing (not merely forming) the minds and mood of at least some portion of the public.

Judicial activism is a term thrown around by politicians and the public alike. Though no one definition necessarily encompasses the term better than another, it is generally thought to refer to the amount of deference the Court gives to Congressional policy. This study, completely uninterested in supporting or renouncing the accusations of judicial activism that seem wildly popular in current political culture, may function to refine the working definition of judicial activism as it stands. Perhaps activism should not be viewed in terms of deference granted to Congress by the Court, but rather in terms of deference granted to the Court by the public. Indeed, this would make the Court “active” in all senses of the word. Using judicial capital to create an attitude of deference from the American public results in what appears to be popular internalization and acceptance of Supreme Court decisions, for better or worse.¹⁴²

Certainly, the conclusions drawn must be viewed in light of the data used in the study: three salient issue domains and 40 years of Supreme Court decisions for a total of 146 salient decisions delivered to the American people. Future research might look to extend this study by both deepening and broadening the case pool. The time period limitation was discussed in an earlier portion of this paper, but to reiterate, a larger time period would allow for a more confident use of a time lag, which would add a long-term dimension to this short-term study. Furthermore, opening up

¹⁴² Whether or not the Supreme Court puts forth apolitical, or anti-agenda decisions is beyond the scope of this paper although in this day of extreme polarization it is hard to imagine this might be so.

the case pool to include additional issue domains would go a long way in solidifying the evidence put forth in this analysis¹⁴³.

Nevertheless, certain limitations will always surround the study of the Supreme Court and public opinion. Most notably, there is no systematic way to control for the social forces that effect both Supreme Court decisions and public mood. This problem is greatly minimized, if not eliminated completely, by the use of change in mood scores rather than raw mood scores, and the use of safety-net economic indicators. However, any attempt to expand this study to a long-term analysis will have to grapple with the social forces that undeniably come with the terrain.

Finally, further investigation into the notion and workings of judicial capital logically follows the study at hand. Theoretically, we can explain the evidence of the Court's influence on the public by way of judicial capital: the Court uses its capital to acquire legitimacy of its decisions from the public, which subsequently turns into internal acceptance by the public. A scientific and psychological understanding of how the transfer from external acceptance (legitimacy) to internal acceptance (opinion) takes place would add a fluid and confident wholesomeness to the study of the Court-public relationship. As it stands, the evidence produced in this research already points to a well-developed, dynamic relationship between the Supreme Court and public opinion. It appears the "least dangerous branch" is something of a dark horse in the conversation that is the American Democracy.

¹⁴³ Public mood is a cumulative index that considers public opinion on many issues (e.g., gun control, healthcare, education); therefore, a model that included Supreme Court decisions from as many of those issues as possible would be best for this kind of study.

REFERENCES

- Baas, Larry R. and Dan Thomas. 1984. "The Supreme Court and Policy Legitimation: Experimental Tests." *American Politics Quarterly* 12 (3): 335-360.
- Blake, J. 1977. "The Supreme Court's Abortion Decisions and Public Opinion in the United States." *Population and Development Review* 3 (1): 45-62.
- Caldeira, Gregory A. and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science*, 36 (3): 635-664.
- Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. 2011. How Public Opinion Constrains the U.S. Supreme Court. *American Journal of Political Science*, 55 (1): 74-88.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Public Law* 6: 279-295.
- Deutsch, Karl W. 1963. *The Nerves of Government: Models of Political Communication and Control*. London, UK: Free Press of Glencoe.
- Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. 2000. "Ideological Divergence and Public Support for the Supreme Court." *American Journal of Political Science* 44 (4): 768-776.
- Easton, David. 1953. *The Political System: An Inquiry into the State of Political Science*. New York, NY: Knopf.
- Epstein, Lee, and Jeffery A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44 (1): 66-83.
- Erikson, Robert S., Michael B. Mackuen, and James A. Stimson. 2002. *The Macro Polity*. New York, NY: Cambridge University Press.
- Franklin, Charles H. and Liane C. Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion." *American Political Science Review* 83 (3): 751-771.
- Hetherington, Marc J. and Joseph L. Smith. 2007. "Issue Preferences and Evaluations of the U.S. Supreme Court." *Public Opinion Quarterly* 71 (1): 40-66.
- Jacobs, Lawrence R. and Robert Y. Shapiro. 2002. "Politics and Policy Making in the Real World: Crafted Talk and the Loss of Democratic Responsiveness." In *Navigating Public Opinion: Polls, Policy, and the Future of American Democracy*, eds. Jeff Manza, Fay L. Cook, and Benjamin Page. New York, NY: Oxford University Press.
- Jaros, Dean and Robert Roper. 1980. "The U.S. Supreme Court Myth: Diffuse Support, Specific Support, and Legitimacy." *American Politics Quarterly* 8 (1): 85-105.
- Johnson, Timothy R. and Andrew D. Martin. 1998. "The Public's Conditional Response to Supreme Court Decisions." *American Political Science Review*, 92 (2): 299-309.
- Marshall, Thomas R. 1987. "The Supreme Court as an Opinion Leader: Court Decisions and the Mass Public." *American Politics Quarterly*, 15 (1): 147-168.

- Martin, Andrew D. and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953-1999." *Political Analysis* 10, 134-153.
- Mayhew, David R. 1991. *Divided We Govern: Party Control, Lawmaking and Investigations*. New Haven, CT: Yale University Press.
- McGuire, Kevin T. and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics* 66 (4): 1018-1035.
- Mishler, William and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution?: The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87 (1): 87-101.
- Mondak, Jeffery J. 1992. "Institutional Legitimacy, Policy Legitimacy, and the Supreme Court." *American Politics Quarterly* 20 (4): 457-477.
- Murphy, Walter F. and Joseph Tannenhaus. 1968. "Public Opinion and Supreme Court: The Goldwater Campaign." *Public Opinion Quarterly*, 32 (1): 31-50.
- Norpoth, Helmut, Jeffery A. Segal, William Mishler, and Reginald S. Sheehan. 1994. "Popular Influence on Supreme Court Decisions." *American Political Science Review* 88 (3): 711-724.
- Petrick, Michael J. 1968. "The Supreme Court and Authority Acceptance." *Political Research Quarterly*, 21 (1): 5-19.
- Segal, Jeffery A. and Alfred D. Cover. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices." *American Political Science Review* 83(2): 667-565.
- Stimson, James A. 2012. "On the Meaning and Measurement of Mood." *Daedalus* 141 (4): 23-34.
- Srimson, James A., Michael B. Mackuen, and Robert S. Erikson. 1995. "Dynamic representation." *American Political Science Review* 89(3): 534-565.
- Stimson, James A. 2004. *Tides of Consent: How Public Opinion Shapes American Politics*. New York, NY: Cambridge University Press.
- Stimson, James A. 1991. *Public Opinion in America: Moods, Cycles, and Swings*. Boulder, CO: Westview Press.
- Wlezien, Christopher. 1995. "The Public as Thermostat: Dynamics of Preferences for Spending." *American Journal of Political Science* 39 (4): 981-1000.
- Zaller, John. 1992. *The Nature and Origins of Mass Opinion*. New York, NY: Cambridge University Press.