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THE SUPREME COURT AS A COUNTERMAJORITARIAN INSTITUTION? THE IMPACT OF PUBLIC OPINION ON SUPREME COURT DECISIONS

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Although normative questions about the role of the Supreme Court as a countermajoritarian institution have long excited controversy in democratic theory, empirical questions about how far the Court acts contrary to majoritarian opinion have received less attention. Time series analyses for the period 1956–89 indicate the existence of a reciprocal and positive relationship between long-term trends in aggregate public opinion and the Court's collective decisions. The Court's ideological composition changes in response to previous shifts in the partisan and ideological orientation of the president and Congress. The Court also responds to public opinion at the margins even in the absence of membership change. Since 1981, the relationship has vanished or turned negative in direction. The Court's ideological balance has been upset by an unbroken string of conservative-to-moderate appointments, thereby undermining the dynamics that promote judicial responsiveness and raising questions about the majoritarianism of the contemporary and future Court.

No matter whether th' constitution follows th' flag or not, th' supreme court follows th' illicion returns.

—(Mr. Dooley [Finley Peter Dunne])

The role of the Supreme Court in national policymaking has long excited controversy in American democratic theory. Little argument exists about the role played by the Court; constitutional and judicial scholars agree that the Court has considerable policymaking influence. The controversy, rather, surrounds the seeming incongruity of an unelected and therefore "undemocratic" institution exercising significant political power in a democratic society. Bickel (1962) refers to this as the "countermajoritarian difficulty" of the Court. He argues that declaring actions unconstitutional that were initiated by duly elected representatives vitiates the will of the people. Although Bickel refers specifically to the power of judicial review, his critique can be extended to the exercise of other judicial powers in the policymaking process as well.

The rationale traditionally advanced for investing substantial political power in an unelected Court is the protection of minorities from democratic excess. The line between popular sovereignty and majority tyranny has proven notoriously difficult to draw. Nevertheless the assumption has been that the Court functions, at least to a degree, independent of majority opinion or the popular mood.

Although the traditional view of the Court as a countermajoritarian institution has always been controversial on normative grounds, the empirical validity of this perspective is subject to debate, as well. In a celebrated series of articles beginning with Dahl's (1957) classic essay, judicial scholars have engaged in a continuing and increasingly rigorous debate about the extent to which the Court is, in fact, insulated from majoritarian pressures.

We here join that debate. Specifically, we use time

series methods and aggregate data to examine the relationship between public opinion and the decisions of the Supreme Court during the period 1956–89. In addition to measuring the strength of the relationship between public opinion and the Court's decisions and attempting to assess its causal direction, we develop and test alternative hypotheses about the pathways of public influence on the Court. Of particular interest is whether the Court attends directly to shifts in public opinion or responds only indirectly to shifting tides of public opinion through politically motivated changes in the membership of the Court.

PUBLIC OPINION AND THE SUPREME COURT

Among the first to challenge the empirical validity of the traditional view of the Supreme Court as a countermajoritarian institution, Dahl argued, "The view of the Court as protector of the liberties of minorities against the tyranny of majorities is beset with . . . difficulties that are not so much ideological as matters of fact and logic" (1957, 283). Observing that the Court only rarely overturned recently enacted policies of extant law-making majorities in Congress and the White House and almost never to protect the interests of identifiable minorities, Dahl concluded that American politics is characterized by relatively stable and enduring electoral/political coalitions that dominate national policymaking. Moreover, "Except for short-lived transitional periods when the old alliance is disintegrating and the new one struggling to take control of political institutions, the Supreme Court is inevitably a part of the dominant national alliance. As an element in the political leadership the Court inevitably supports the major policies of the

alliance" (p. 293). Dahl's thesis, of course, is a much elaborated and sophisticated version of the conventional wisdom succinctly expressed by Mr. Dooley in the opening epigram. Nevertheless, the Dahl-Dooley hypothesis, as Funston (1975) labeled it, has its critics.

In perhaps the most widely cited critique of this perspective, Casper (1976) argued that Dahl substantially underestimated the extent to which the Court exerts political influence independently of, and frequently in opposition to, law-making majorities. Criticizing the exclusive focus on cases in which the Court held federal legislation unconstitutional, Casper expanded Dahl's analysis to include state and local legislation nullified by the Court, as well as cases where the Court altered national policy by interpreting federal statutes creatively.¹ Based on this additional data, he concluded that the Court was substantially more active in protecting minorities—and more willing to alter or reinterpret the policies of the dominant law-making coalition—than Dahl's earlier analysis allowed.

Although the relationship of the Court's decisions to public opinion is central to this debate, none of the authors addresses that issue directly. Lacking direct evidence on public opinion because "scientific opinion polls are of relatively recent origin," Dahl used the position of the legislative majority in Congress as a surrogate for majority will (1957, 283). If the Court overturned a law recently enacted by Congress, he considered it to have countermanded the will of the dominant coalition and thus, indirectly, of majority public opinion. Funston (1975) and Casper (1976) used similar strategies.

Aided by the increasing availability of social surveys and public opinion polls, several recent studies (e.g., Barnum 1985; Page and Shapiro 1983) have examined the relationship between public opinion and the Court's decisions more directly, exploring the congruence between the Court's decisions in specific cases and public attitudes toward the central issues in those cases. In the most ambitious study of this type, Marshall (1989) compares specific Supreme Court rulings with national public opinion polls from the mid-1930s through the mid-1980s. He observes that "the modern Court has been an essentially majoritarian institution. Where clear polls margins exist, three-fifths to two-thirds of Court rulings reflect the polls" (p. 192). Marshall finds that the level of congruence varies by policy area but concludes that the Supreme Court, overall, was about as responsive to public opinion as were other policymaking institutions. (For a contrasting perspective based on a very different style of analysis, see G. Rosenberg 1991.)

Although generally supportive of the Dahl-Dooley hypothesis, congruence studies have their limitations as well. For one, congruence tells us very little about causal direction (Caldeira 1991). It cannot distinguish situations where the Court responds to public opinion from those where public opinion is shaped by the decisions of the Court.²

Compounding this problem is the tendency of public opinion studies to focus on the decisions of the

Court only in a few landmark cases. Such cases are of obvious interest because of their political importance. Precisely for this reason, however, they are likely to be the cases in which the public is most interested and public opinion most intense. They also are likely to be the cases for which public opinion is most salient. As a result, these studies are limited in what they can tell us about the relationship of broader trends in public opinion and the myriad, more typical cases decided by the Court with little fanfare or publicity.

Another limitation of existing opinion studies identified by Barnum is that the questions asked in public opinion polls frequently do not correspond very closely with the specific issues in the cases with which they are matched (1985, 654). Of necessity, these studies must match specific decisions with broad opinions (e.g., comparing the limited right to abortion provided in *Roe v. Wade* with public responses to broad questions about support for abortion or even about the rights of woman).

The small number of Supreme Court cases in any issue area combined with the absence of extended times series data on public opinion in most policy areas also limits existing studies to relatively simple comparisons of the outcome of a single case with the level or direction of public opinion at the moment. This limits the introduction of statistical controls and prevents examination of the possibility that the impact of public opinion on the Court may occur at a significant lag.

More importantly, the focus on individual decisions and public opinion on specific policy issues at the moment assumes, in effect, that the impact of public opinion is direct and immediate—that the decisions of justices on pending cases are influenced by relevant public opinion polls seen in the morning paper. A more realistic assumption is that public opinion, if it is important, influences the Court as a result of gradual, almost imperceptible changes in the attitudes and beliefs of individual justices as they adapt, consciously or not, to long-term, fundamental trends in the ideological temper of the public. Examination of the later possibility requires extended time series data, previously unavailable, on ideological trends both in public opinion and Supreme Court decisions.

In short, the nature and extent of the relationship between public opinion and Supreme Court decisions remains very much in question.

PATHWAYS OF INFLUENCE

As to the processes or mechanisms by which public opinion might influence the Supreme Court, Dahl attributed the Court's reluctance to invalidate majoritarian policies to the president's power of judicial appointment (1957, 284). He argued that it would be "naive to assume that the Supreme Court either would or could play the role of Galahad," modifying its positions to accommodate public opinion. Reason-

ing that the average president in American history served for two terms and appointed two justices to the Court per term, he concluded that the Court was responsive because most presidents enjoyed ample opportunity "to tip the balance on a normally divided Court."

Elaborating this thesis, Funston (1975) demonstrated that the periods when the Court has been out of step with the dominant political coalition coincide with electoral realignments. In his view, the fact that these periods have been brief reflects the speed with which the dominant coalitions that emerge from realignments are able to appoint enough justices to alter the decision-making balance on the Court. Although Funston's data have been criticized (Canon and Ulmer 1976), the Dahl-Funston hypothesis regarding the primacy of membership change is widely accepted (see, e.g., Baum 1992; Schubert 1970; Segal 1985).

Notwithstanding the prominence of the Dahl-Funston hypothesis, another perspective holds that the Court can and does respond to public opinion even in the absence of membership change. The argument usually advanced is that Supreme Court justices are acutely aware of the limitations of the Court's power and its dependence on voluntary acquiescence to its decisions (see, e.g., Adamany and Grossman 1983). As Justice Frankfurter expresses it in *Baker v. Carr* (1962), "The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction."

According to this argument, the Court's concern for its authority makes it reluctant to depart too far or too long in its decisions from prevailing public sentiment. This is not to say that judges "play the role of Galahad." Neither is it to argue that justices consult opinion polls prior to making decisions or that they tailor their judicial philosophies to the latest fluctuations in public opinion on specific issues. It is rather to suggest both that members of the Court are political creatures, who are broadly aware of fundamental trends in ideological tenor of public opinion, and that at least some justices, consciously or not, may adjust their decisions at the margins to accommodate such fundamental trends.³

Even in the absence of concerns about the legitimacy of the Court's decisions, there are good reasons to believe that Supreme Court justices may be influenced by long-term changes in the climate of public opinion. Justices are no less susceptible than other individuals in society to influence by evolving societal norms and values. If, for example, attitudes in the political culture toward the role of women in society undergo significant changes over time, it is unlikely that the attitudes and beliefs of sitting justices can remain permanently immune to these changing mores. Gradually, the attitudes at least of some of the justices are likely to change, thus shifting the Court's ideological center of gravity, as well.

The likelihood, of course, is that under either of these variants of what we shall call the *political*

adjustment hypothesis, the resulting changes in the decisions of individual justices will occur gradually over time and be almost imperceptible at the moment. Thus, it is unrealistic to expect the results of a specific public opinion poll to be linked to specific decisions either of an individual justice or of the Court as a whole. The expectation, rather, is that the overall pattern of justices' decisions—and thus the ideological center of gravity of the Court—should respond gradually, and at a considerable lag, to broad trends in the ideology of the public.

Little systematic evidence exists with respect to the political adjustment hypothesis, although anecdotes abound. A classic example, frequently cited, was the apparent retreat by the Supreme Court in the 1930s from its initial opposition to President Roosevelt's New Deal legislation (see, e.g., the citations in Caldeira 1987). Confronted by political pressures and by hostile public opinion mobilized in part by FDR in support of his "Court-packing" scheme, the Court abruptly reversed its string of anti-New Deal decisions upholding minimum-wage laws in *West Coast Hotel v. Parrish* (1937) and the Wagner Act in *NLRB v. Jones and Laughlin Steel Company* (1937), among other decisions. It did so, moreover, without any change in membership.

Also frequently cited is the Court's decision in *Korematsu v. the United States* (1944), in which the popularly supported and presidentially ordered internment of Japanese-Americans was upheld by the Court despite widespread misgivings by constitutional scholars and jurists about the constitutionality of this decision. Even Chief Justice Rehnquist has acknowledged that the Court's decision in *Youngstown Sheet and Tube Company v. Sawyer* (1952) was probably influenced by popular sentiment toward President Truman and the Korean War.⁴ Indeed, Rehnquist has argued:

Judges, so long as they are relatively normal human beings, can no more escape being influenced by public opinion in the long run than can people working at other jobs. And, if a judge on coming to the bench were to decide to hermetically seal himself off from all manifestations of public opinion, he would accomplish very little; he would not be influenced by current public opinion, but instead would be influenced by the state of public opinion at the time he came to the bench (1986, 40–41).

Still further indicative of the importance of public opinion for the Court is the evidence that members of the Court may have at times attempted to manipulate public opinion. In an ingenious study drawing upon a series of early Gallup polls tracking public opinion across the period of the Court-packing fight, Caldeira (1987) demonstrates that the Court's precipitous change of direction on New Deal legislation played a critical role in undermining public support for FDR's Court-packing plan. Caldeira refrained from attributing political motives to the Court based on this evidence. However, his data, together with the anecdotes about other episodes in the Court's history,

certainly suggest the plausibility of the political adjustment hypothesis.

METHODS AND MEASURES

To examine the relationship between public opinion and Supreme Court decisions, we use aggregate yearly data for the period 1956–89. Data on Supreme Court decisions are available from the U.S. Supreme Court data base (Spaeth 1991), which includes all Supreme Court decisions during the period of study.

Given both the relatively small number of cases for many specific policy areas in a number of the years under study and our concern with measuring broad ideological trends, we decided not to attempt the development of policy-specific measures of the Court's decisions.⁵ Rather, we developed a composite measure of the overall ideological tenor of the Court's decisions each year. The Supreme Court data base codes each of the nearly seven thousand cases decided during this period according to whether its outcome was liberal or conservative in direction.⁶ The liberalism of Court decisions in any year is then calculated simply as the percentage of all cases in a year decided in a liberal direction.⁷

In developing an index of the liberalism of Court decisions, we considered only the approximately four thousand cases that were decided by full opinion and oral argument. *Per curiam* cases and cases decided by memorandum were excluded because of concerns that many such cases are highly routine. Such cases are unlikely either to influence, or to be influenced by, public opinion.⁸

To measure the ideological main currents of public opinion across this 33-year period, we relied on Stimson's (1992) innovative index of the liberalism of what he calls the "public mood" in America.⁹ Stimson identified 139 different domestic social and economic policy questions that had been asked in identical form in major public opinion polls in two or more years between 1956 and 1989. After determining the liberal-conservative direction of public responses to each question, he constructed a composite measure from the individual items. The resulting index measures the relative liberalism-conservatism of the public mood across a broad range of domestic policy concerns on a yearly basis for the period 1956–89.¹⁰

To consider the Dahl-Funston hypothesis that linkages between public opinion and Supreme Court decisions are mediated through the changing ideological composition of the Court, we again turned to existing measures. Specifically we used the ideology scores for individual justices constructed by Segal and Cover (1989) based on analyses of the justices' judicial philosophies at the time of their confirmation hearings.¹¹ To create an aggregate, yearly measure of the ideological composition of the Court, we summed Segal and Cover's individual ideology scores across the nine justices sitting on the Court in any year. A useful feature of this index is that it identifies the

ideology of the justices based on their behavior before their respective appointments to Court, rather than on their voting records while on the Court (Sheehan, Mishler, and Songer 1992). This avoids the problem of circularity inherent in studies that attempt to explain Supreme Court decisions using measures based on those same decisions.

Finally, several additional measures were constructed to control for the possibility that the effects of public opinion on the Court are mediated through the effects of the president and Congress. Two aspects of the presidency were examined: the party of the president and a partisan-controlled measure of presidential popularity.¹² Two measures of the decision-making majority in Congress were also considered: the simple percentage of seats in the House of Representatives controlled by Democrats and a composite measure reflecting the presence and success of the conservative coalition in the House of Representatives.¹³

AN OVERVIEW OF BASIC TRENDS

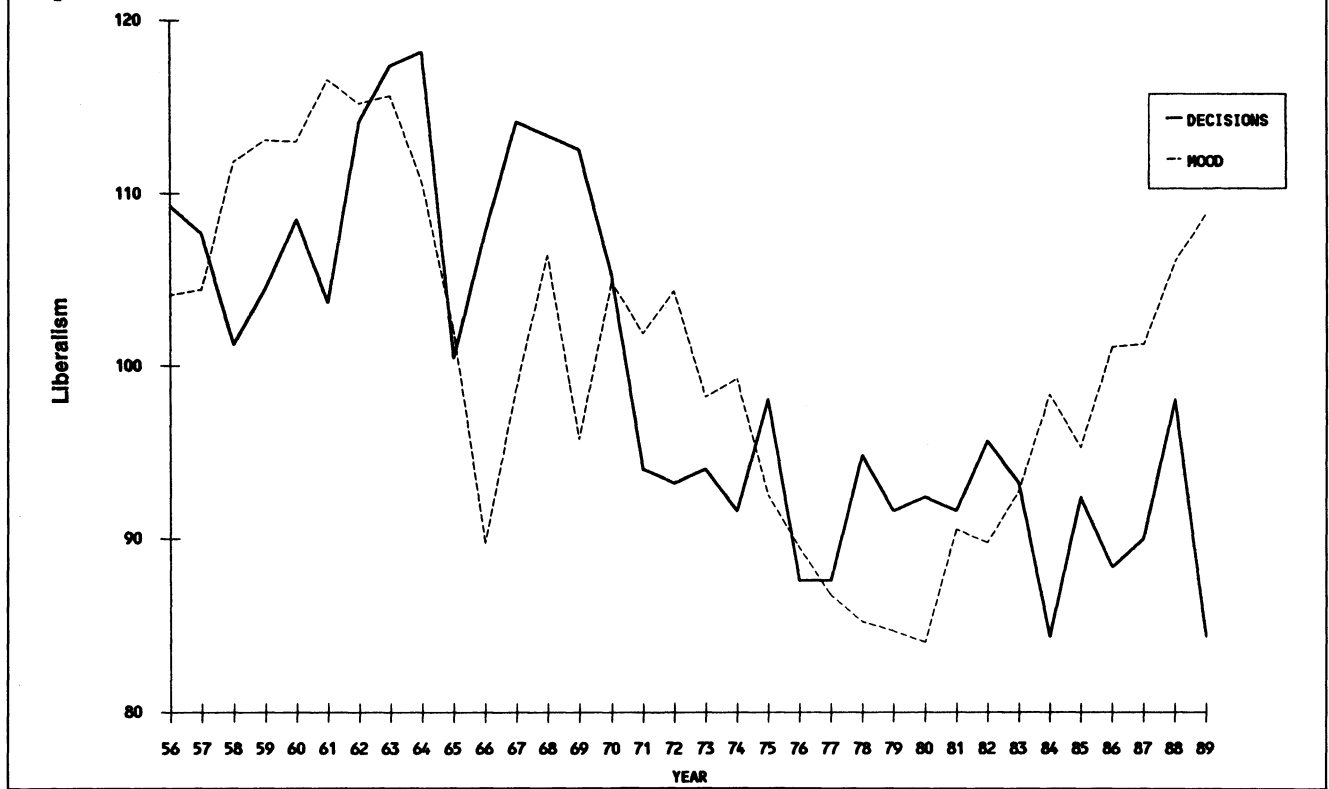
Figure 1 compares the liberalism of the public mood and Supreme Court decisions for the period 1956–89.¹⁴ Indicative of the face validity of our measure of Supreme Court decisions, the trends in the liberalism of the Court's decisions accord very well with what we think we know about recent history. Our measure indicates that the Court's decisions become increasingly liberal during the early Warren years, averaging a full standard deviation above the 33-year mean throughout the 1950s and early 1960s. The liberalism of the Court levels off in the mid-1960s, then falls precipitously across the Burger years, after which there is a continuing, but much more gradual and intermittent, increase in conservative decisions during the 1980s.

Also noteworthy in Figure 1 is the close correspondence between the trends in the Supreme Court decisions and the liberalism of the public mood across most of the period. Both series register increasing levels of liberalism during the 1950s and early 60s; both decline abruptly during the latter 1960s; and both reach bottom circa 1980, although they clearly diverge thereafter. Nevertheless, the simple correlation between the series ($r = .56$), though statistically significant, indicates that there are significant discrepancies in these trends, as well.

Part of the reason the correlation between the public mood and the Court's decisions is not stronger is that the strength and timing of their common trends clearly differ. These differences provide clues to the direction of causality. Figure 1 suggests that changes in the public mood generally precede the associated changes in the liberalism of Supreme Court decisions. For example, the increasing liberalism evident in both series in the late 1950s and early 1960s begins somewhat earlier in the public mood, as does the subsequent conservative tide observed in both series in the late 1960s and early 1970s. Al-

FIGURE 1

Standardized Measures of the Liberalism of the Public Mood and the Liberalism of Supreme Court Decisions



though the conservatism of the Court overtakes public opinion during the Nixon years, public opinion maintains its gradually conservative trend throughout the 1970s, anticipating by several years the increased conservatism of the Court during the Reagan years. The principal exception to this pattern occurs in the period since 1980, in which the resurgence of liberalism in the public mood is unmatched by any similar trend in the Court's decisions.

Consistent with the emphasis accorded membership change in explaining changes in Supreme Court decisions, Figure 2 demonstrates even greater congruence between the ideological composition of the Court and trends in the liberalism of the Court's decisions ($r = .77$). The strength of this relationship is consistent with the Dahl-Funston hypothesis of the centrality of membership change in explaining fluctuations in the Court's decisions. Nevertheless, although closely aligned, there are indications of relatively short lags in this relationship, as well. Particularly notable is the evidence that the decline in the liberalism of the Court's decisions in the late 1960s began somewhat *before* the first of President Nixon's conservative appointments to the Court. This evidence, however preliminary and tentative, accords with the political adjustment hypothesis that the Court can and does respond to political trends even in the absence of a change in its membership.

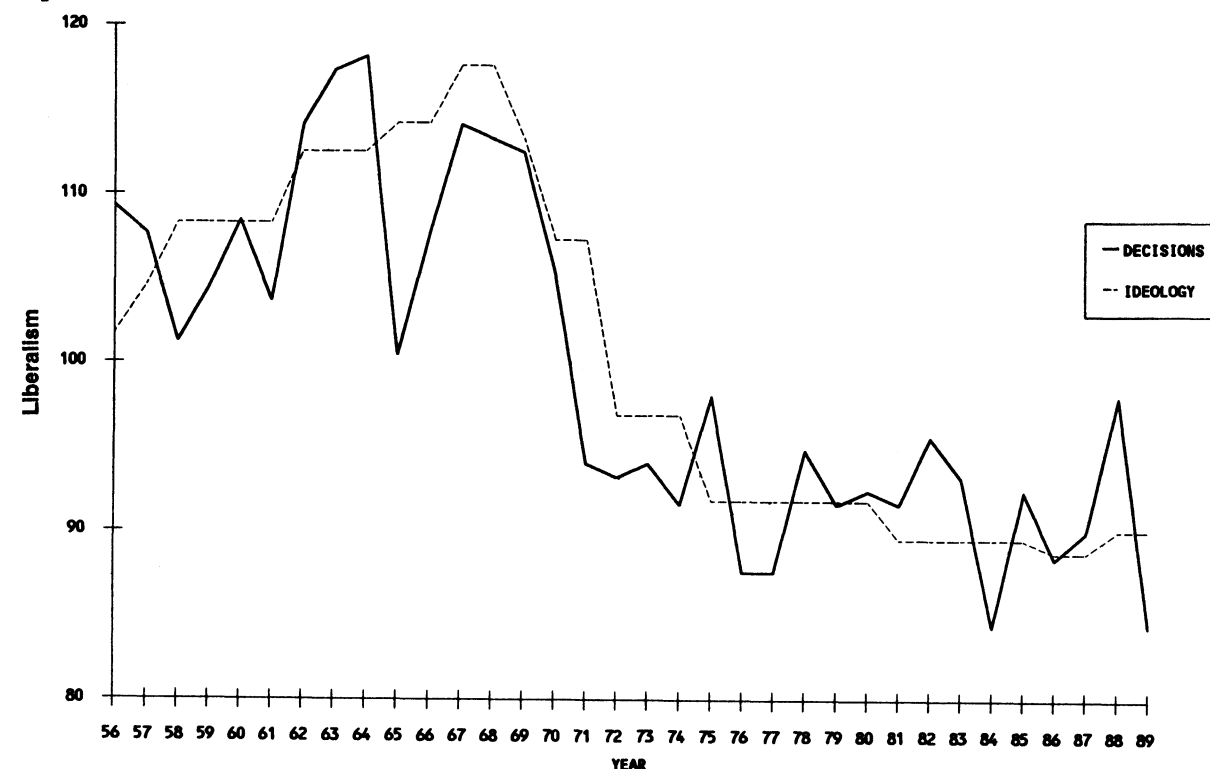
LINKAGES AND LAGS

Simple inspection of trend data is useful for obtaining a broad overview of the relationships between public opinion and Supreme Court decisions; but greater rigor is required to estimate the nature and extent of this relationship, determine its timing or lag structure, establish causality, and assess the viability of alternative pathways of influence. Moreover, care must be taken to control for the high levels of autocorrelation found in several of the variables.

Existing theory provides little guide to specifying the lags that might exist in the relationship between the ideological tenor of the public mood and the Court's decisions. Under either of the hypothesized pathways of influence, a significant lag is expected. According to the Dahl-Funston hypothesis, it takes time for a shift in public opinion to be reflected in presidential politics; and additional time is needed for a newly elected president to have opportunities to fill vacancies on the Court. Even where the Court responds directly to perceived changes in opinion as proposed by the political adjustment hypothesis, it still takes time for justices to perceive a change in the public mood. More importantly, it takes time for societal trends to be absorbed and reflected in the attitudes and beliefs of justices or for justices to

FIGURE 2

Standardized Measures of the Ideological Composition of Supreme Court Membership and the Liberalism of Supreme Court Decisions



become convinced that a change is of sufficient salience, magnitude, and endurance as to threaten the Court's authority.

Lacking more specific theoretical guidance, we proceeded empirically to identify the lengths of possible lags. Using Box-Jenkins time-series procedures (Box and Jenkins 1976; Box and Tiao 1975), we identified the autocorrelation in the public opinion series as a simple, first-order autoregressive, or AR(1) process. An AR(1) model then was used to filter the measures of public opinion and the Court's decisions, and the filtered measures were cross-correlated at lags of 0-10 years. Although principally interested in the impact of public opinion on Supreme Court decisions, we examined lags in both directions because of the possibility that the relationship would be reciprocal.

The cross correlations are reported in Table 1. The coefficients in the lower half of the series indicate the correlations between public opinion at time t and the Court's decisions in later years $t + 1$ to $t + 5$. Logically, these indicate the potential impact of public opinion on subsequent Court decisions. The correlations in the top half of the series measure relationships between opinion at t and decisions in earlier years $t - 1$ to $t - 5$. These reflect possible reciprocal effects of the Court's decisions on public opinion.¹⁵

As expected, removing the autocorrelation in these

series substantially reduces the zero-order correlation (the middle coefficient); the resulting coefficient is small and statistically insignificant. Nevertheless, the public mood is significantly and positively correlated with trends in the Court's decisions at a lag of five years; and the relationship approaches significance at lag $t + 3$, as well.

The strong positive relationship between the Court's decisions and the public mood at lag $t - 1$ also supports the suggestion that the relationship is reciprocal. Although a substantial literature documents the impact of specific Court decisions on public opinion (frequently in a negative direction), the very preliminary evidence here suggests that the broad pattern of Court decisions has a generally positive impact on the public mood. More generally still, this indication of reciprocal links between the public mood and the Court's decisions hints at the existence of a relationship in which (1) the ideological tenor of the Court's decisions are responsive in the long run to the shifts in the ideology of the public mood and (2) the Court's decisions subsequently reinforce and legitimize those shifts in mood. This is highly speculative, of course. Here, we shall concentrate on the possible impact of the public mood on the decisions of the Court and leave the reciprocal relationship to a later study.

As a preliminary step in examining how far linkages between public opinion and the Court's deci-

TABLE 1

Cross Correlations between the Liberalism of Supreme Court Decisions and the Ideological or Partisan Composition of the Public Mood, Presidency, Congress, and Supreme Court

COURT DECISIONS ^a	PUBLIC MOOD ^b	DEMOCRATIC PRESIDENT'S POPULARITY ^c	DEMOCRATIC PRESIDENT ^d	% SEATS DEMOCRATIC ^e	CONSERVATIVE COALITION ^f	IDEOLOGICAL COMPOSITION OF COURT ^g
t - 5	-.07	-.17	.12	-.13	.19	.17
t - 4	.18	-.13	.23	.01	-.20	.30*
t - 3	-.12	.13	-.17	.04	-.08	.07
t - 2	-.14	.18	.10	.25	-.09	.31*
t - 1	.40*	.00	.00	-.20	.15	.37*
t	-.01	.02	.04	-.10	-.20	.28
t + 1	.12	.08	.33*	-.12	.19	.44*
t + 2	.08	.24	.24	.07	-.11	.22
t + 3	.26	.34*	.17	.25	.10	.22
t + 4	.19	.02	-.22	.23	-.30*	.20
t + 5	.36*	.11	.19	-.02	-.14	.28

Note: All variables are filtered by a first-order autoregressive model, $(1 - .73B)y_t = a_t$, prior to analysis.

^aYearly percentage of Supreme Court cases decided in a liberal direction.

^bIndex of the liberalism of public opinion on domestic policy concerns.

^cPartisan-controlled index of presidential approval (see n. 18).

^dDummy variable scored 1 if a Democrat is president, 0 otherwise.

^ePercentage of Democratic seats in the House of Representatives.

^fPercentage of roll call votes in which a majority of Republicans and southern Democrats opposed and defeated a majority of northern Democrats in House of Representatives.

^gSum of liberalism scores of Supreme Court justices at time of initial appointments.

*p ≤ .05.

sions are mediated through elite opinion or the changing composition of the Court, Table 1 also reports the cross correlations between the Court's decisions and several measures of the ideological and partisan composition of Congress, the presidency, and the Supreme Court. Both the party of the president and a partisan-controlled measure of the president's popularity are moderately correlated with the Court's decisions—party at a lag of one year and popularity at a lag of three years. In contrast, the percentage of seats in the House of Representatives occupied by Democrats is unrelated to the Court's decisions at any lag up to 10 years; but the strength of the conservative coalition in the House is significantly and negatively correlated with the Court's decisions at a lag of four years. In none of these cases is there any evidence of reciprocal effects.

Finally, Table 1 also reports cross correlations between the liberalism of the Supreme Court's decisions and the ideological makeup of the Court's membership. As expected, the correlations are the strongest, and the lags the shortest, in the data. There also is clear evidence of reciprocal effects. The significant, positive correlation at lag $t + 1$ suggests that changes made in the composition of the Court in one year are reflected in the decisions of the Court beginning the next session. Both the relative strength of the correlation and its short lag are consistent with the Dahl-Funston hypothesis that the composition of the Court is the proximate cause of decision change and an important intervening link to other putative causes.

Equally interesting, however, is the evidence of

reciprocal relationships. Significant correlations at lags $t - 1$, $t - 2$, and $t - 4$ suggest that changes in the membership of the Court are as likely to *follow* changes in the Court's decisions as they are to *precede* them. This is not to suggest that changes in the Court's decisions "cause" the membership of the Court to change. Our suspicion is, rather, that the correlations are spurious consequences of simultaneous "political adjustment processes" operating on the president and Congress, as well as the Court.

The political adjustment hypothesis holds that members of the Court, perceiving a fundamental shift in public opinion, adjust their decisions at the margins to accommodate that shift. Since the president and Congress are presumably even more sensitive to public opinion, the likelihood is that the same forces that prompt the Court to adjust its decisions will influence the president's judicial appointments and thus the future composition of the Court. In this sense, the Court's decisions not only are responsive to public opinion in the absence of membership change but appear even to anticipate changes in the Court's composition.

MULTIVARIATE MODELS

The lags identified in the cross-correlations were used to specify a series of multivariate models estimating the impact of public opinion on Supreme Court decisions (Table 2). The logic behind models A–D is roughly that of Simon-Blalock causal modeling (Blalock 1961) or what Morris Rosenberg (1968) calls the

TABLE 2

The Impact of Public Opinion on Supreme Court Decisions, 1956–1989

	MODELS			
	A ^a	B ^a	C ^b	D ^b
Intercept	-24.3 (30.7)	-1.98 (28.2)	-46.6* (23.9)	-11.95 (25.42)
Public Mood _{t-5} ^c	.77** (.30)	.49* (.27)	1.08** (.22)	.66** (.26)
Court Membership _{t-1} ^d	—	2.78** (.79)	—	1.76** (.70)
Democratic President _{t-1} ^e	—	—	5.41* (3.03)	5.52* (2.89)
Democratic President's Popularity _{t-3} ^f	—	—	-.31** (.12)	-.15 (.12)
Conservative Coalition _{t-4} ^g	—	—	-.86** (.34)	-.53 (.27)
Reagan Intercept ^h	140.9* (73.7)	90.3 (59.0)	161.3** (50.2)	114.2* (48.8)
Reagan × Mood _{t-5}	-1.59* (.81)	-.94 (.56)	-1.78** (.55)	-1.22* (.54)
AR(1)	-.52 (.18)	-.15 (.09)	—	—
R ² (reg) ⁱ	.35	.71	.80	.85
R ² (tot) ^j	.68	.78		
Durbin-Watson	1.86 (ns)	1.92 (ns)	2.03 (ns)	2.19 (ns)
Lung Box Q (df = 12)	10.6 (ns)	10.9 (ns)	11.8 (ns)	11.6 (ns)

Note: Standard errors are in parentheses. N = 34.

^aMaximum Likelihood Estimates.

^bOrdinary Least Squares Estimates.

^cIndex of the liberalism of public opinion on domestic policy concerns.

^dSum of liberalism scores of Supreme Court justices at time of initial appointments.

^eDummy variable scored 1 if a Democrat is president, 0 otherwise.

^fPartisan-controlled index of presidential approval (see n. 18).

^gPercentage of roll call votes in which a majority of Republicans and southern Democrats opposed and defeated a majority of northern Democrats in House of Representatives.

^hDummy variable coded 1 for years 1981 through 1989 and 0 otherwise.

ⁱVariance explained by model excluding autoregressive parameter.

^jVariance explained by model including autoregressive parameter.

*P ≤ .05 (one-tailed test).

**P ≤ .01 (one-tailed test).

process of elaborating relationships. We establish the existence of a relationship between public opinion and Court decisions (model A), then examine whether this relationship survives the introduction of controls for (1) the ideological composition of the Court (model B), (2) the ideological orientations of president and Congress (model C), and (3) all of the variables in combination (model D). Evidence that the relationship between public opinion and the Supreme Court vanishes when controls are introduced would validate the Dahl-Funston hypothesis that public opinion influences decisions of the Court only indirectly through the mediating influence of elections and the orientations of political elites on the ideological composition of the Court. Conversely, evidence that the effects of public opinion survive the introduction of these controls would support the political adjustment hypothesis that public opinion

has significant direct effects on the Court's decisions independent of the composition of the Court or the political orientation of president and Congress.

We noted previously that the ideologies of the public mood and of the decisions of the Court have diverged rather sharply since President Reagan's election in 1980 (recall Figure 1). Public opinion grew increasingly liberal across this decade, whereas the Court's decisions remained relatively stable or became slightly more conservative. This departure from the overall correspondence of these series raises the possibility of parameter instability over time. A Chow test (not shown) comparing the residual variance of a preliminary version of model D (without the interactive terms for the Reagan years) for the time periods 1956–81 and 1981–89, was statistically significant, confirming the existence of significant differences in the model before and after 1981.¹⁶ Thus, to account

for differences in the impact of public opinion in the Reagan years, all of the models include an interactive term and associated slope coefficient for public opinion during the period 1981–89.

Model A estimates the impact of the public mood on the liberalism of Supreme Court decisions controlling only for the Reagan years and first-order autoregression.¹⁷ It confirms the results of the cross correlations and indicates that the public mood “Granger-causes” Supreme Court decisions at a moderate lag.¹⁸ The maximum likelihood coefficient is statistically significant at a lag of five years, and the model reduces the variance in the liberalism of the Court’s decisions by 35% after adjusting for autocorrelation.

Also notable in model A is the coefficient for the interactive term measuring public opinion during the Reagan years. To determine the effect of the public mood during this period the coefficient for the interactive Reagan-Mood variable must be added to the coefficient for public mood more generally. Thus, in equation A the effect of the public mood during the Reagan years is:

$$Y = (-24.3 + 140.9) + (.77 - 1.59)X.$$

The impact of mood during the Reagan years is negative and about as large as the positive effect during the rest of the 1956–1989 period. That the coefficient for the interactive term is statistically significant indicates that the impact of mood differs significantly during the Reagan years compared to the rest of the period ($b = -.82$ vs $.77$).¹⁹

The discrepancy in the impact of public mood on the decisions of the Court before and after 1981 is equally strong in the other models, which control separately for the ideological composition of the Court (model B), the party and ideology of president and Congress (model C), and all of the variables simultaneously (model D). In each of these models, public opinion has strong, positive effects on the Court’s decisions prior to 1981 but about equally strong and *negative* effects during the Reagan years.

Regarding the avenues by which public opinion registers on the Court, the evidence in models B and D clearly indicates that the impact of public mood on the Court’s decisions survives the introduction of controls for the ideological composition of the Court and for the partisan and ideological orientation of Congress and president. This is the case both for the positive effects of public opinion prior to 1981 and the negative effects of public opinion thereafter.

That these effects are somewhat attenuated by the controls implies that the impact of public opinion on the Court’s decisions is mediated partly through its effects on the changing membership of the Court. However, consistent with the political adjustment hypothesis, the persistence of strong public mood effects controlling for the membership of the Court indicates that the impact of public opinion on the Court’s decisions is partially independent of membership change, as well.

A final observation in model D is the persistence of significant effects for the party of the president and the conservative coalition in Congress despite controls for the ideological composition of the Court. Here, again, the effects of president and Congress are reduced when the composition of the Court is controlled (compare models C and D), confirming, as expected, that the influence of president and Congress on the Court is mediated partly through the appointment and confirmation process. Again, however, the persistence of significant effects despite this control suggests that the Court responds to presidential and congressional sentiment in the absence of membership change and independently of public opinion, as well.

That the lags in these relationships are shorter for the party of the president and longer for the conservative coalition in Congress supports the expectation that the impact of the president on the Court is more immediate than that of Congress. Nevertheless, the consistency with which the Court’s decisions appear to follow the partisan and ideological orientation of the president and Congress during the years prior to 1981 lends credence to Dahl’s contention that the Court has traditionally acted as part of the dominant political coalition in America—at least prior to the Reagan years.

What emerges from these data, then, is an image of the Court prior to 1981 as an ideologically motivated but politically sensitive institution. The Court’s decisions were influenced substantially by the ideologies of the sitting justices but responded independently to both public and elite opinion, as well. In the years since 1981, however, the Court appears as an even more ideologically driven but politically isolated institution. Its decisions have been independent of, if not antagonistic to, recent trends in the public mood and have been out of alignment with the dominant coalition in Congress. That the Court’s decisions since 1981 have remained consistent with the partisan orientation of the president reflects, in all likelihood, the existence of divided government and the absence in the 1980s of any semblance of a dominant political alliance.

THE CHANGING COMPOSITION OF THE COURT

Notwithstanding the significant, independent effects of public and elite opinion on the Court’s decisions prior to 1981, the changing ideological composition of the Court’s membership clearly has been a principal dynamic underlying the Court’s decisions both before and (especially) after 1981. To understand better the effects of public and elite opinion on the composition of the Court, a second set of models was constructed (Table 3).

Consistent with the Dahl–Funston hypothesis, the results indicate that changes in the party (though not the popularity) of the president and changes in the

TABLE 3

The Impact of Changes in Public Opinion on Year to Year Changes in the Ideological Composition of the Supreme Court, 1958–1989

	MODELS	
	A	B
Intercept	-.31* (.15)	-.66** (.17)
Public Mood _{t-6} ^a	.09** (.02)	.05* (.02)
Democratic President ^b		.81** (.23)
Democratic President's Popularity _{t-1} ^c	—	.00 (.04)
Conservative Coalition _{t-4} ^d	—	-1.78** (.54)
Reagan Intercept ^e	.29 (.28)	.63** (.22)
Reagan × Mood _{t-6}	-.08* (.03)	-.01 (.03)
R ²	.39	.76
Durbin-Watson	2.21 (ns)	2.41 (ns)
Lung Box Q (df = 12)	8.11 (ns)	8.25 (ns)

Note: Standard errors are in parentheses. N = 34.

All estimates are ordinary least squares.

^aYearly change in the index of the liberalism of public opinion on domestic policy concerns.

^bDummy variable scored 1 if a Democrat is president, 0 otherwise.

^cYearly change in the partisan-controlled index of presidential approval (see n. 18).

^dYearly change in the percentage of roll call votes in which a majority of Republicans and southern Democrats opposed and defeated a majority of northern Democrats in House of Representatives.

^eDummy variable coded 1 for years 1981 through 1989 and 0 otherwise.

*P ≤ .05 (one-tailed test).

**P ≤ .01 (one-tailed test).

ideological composition of Congress significantly influence changes in the ideological composition of the Court.²⁰ Predictably, the party of the president appears to have a stronger impact on the composition of the Court.²¹ Unlike the other variables in the model, the party variable was not differenced prior to analysis.²² This means that the impact of party in the model increases steadily across the length of a president's term. The longer a party controls the White House, the more vacancies on the Court the president is likely to be able to make and the greater the impact the president can have on the Court's ideological orientation.

Unlike the previous model, the impact of public opinion on the ideological composition of the Court does not appear to vary appreciably across the two periods. Public opinion has a small but significant and positive impact on the composition of the Court across most of the time period. The negative coefficients for public mood during the Reagan years suggest a different relationship during this period, but the coefficients are too small to be of consequence.

Furthermore, the coefficients for public opinion in both periods are substantially attenuated by the introduction of controls for the party of the president and the ideological composition of Congress. Although the positive impact of public opinion on the Court's composition prior to 1981 remains significant after introducing the controls, its coefficient is reduced by almost half. This suggests that the effects of public opinion on the composition of the Court are limited and mediated substantially through the impact of public opinion on the party of the president and the composition of Congress.

DISCUSSION

The relationship of public opinion to the Supreme Court appears to be both subtle and complex. We cannot do justice to these subtleties here, nor do we claim to have done so. Instead, we have attempted in this analysis to provide a broad overview of the relationship and to begin the process of identifying directionality and causality.

Empirically, the results of our analysis are easily summarized. For most of the period since 1956, a reciprocal relationship appears to have existed between the ideology of the public mood in the United States and the broad ideological tenor of Supreme Court decisions. The impact of the public mood on the Court's decisions occurs at a moderate lag; a somewhat shorter lag appears to exist in the reciprocal effects of Supreme Court decisions on public opinion. That both are strongly positive suggests the existence of a responsive Court whose decisions not only reflect changes in public opinion but also serve to reinforce and legitimize opinion change in an iterative process.

The impact of broad trends in the ideology of the public mood on the ideology of the Court's decisions appears to be mediated at least partially through the effects of public opinion on the ideological composition of Congress and the party of president and, via these linkages, through changes in the ideological composition of the Supreme Court. Nevertheless, the evidence suggests that public opinion exercises important influence on the decisions of the Court even in the absence of changes in the composition of the Court or in the partisan and ideological make up of Congress and the presidency. That the effects of public opinion take five years, on average, to register on the Court's decisions probably reflects both the time it takes for a change in public opinion to be reflected in presidential elections and the time required before a newly elected president has a Court vacancy to fill. Even where the Court adjusts its decisions in the absence of membership change, it is likely to take the justices several years to perceive, interpret, and react to fundamental changes in the public mood.

From this vantage, then, members of the Court appear to be politically, as well as ideologically, motivated. Although the Court's decisions are driven

substantially by the ideologies of its members, fluctuations in the ideological tenor of public opinion and in the ideological and partisan orientations of the president and Congress are also important. Clearly, the ideology of the Court occupies a critical position. Just as clearly, public and elite opinion are linked directly to the Court and influence its decisions even in the absence of changes in Court membership. At least, such are the patterns for the period 1956–81.

Normatively, the implications of this analysis are much less clear. Given its preliminary nature, a lengthy discussion of meanings is probably not warranted. Nevertheless, since we began with a brief discussion of the “countermajoritarian difficulty” posed by an unelected Court wielding substantial political power in a democratic society, it seems appropriate to speculate briefly on this issue in conclusion.

On the most superficial level, the results appear to reassure those committed to democratic principles and concerned about the countermajoritarian potential of the Court. Our analyses indicate that for most of the period since 1956, the Court has been highly responsive to majority opinion. Its decisions not only have conformed closely to the aggregate policy opinions of the American public but have thereby reinforced and helped legitimate emergent majoritarian concerns.

Reinforcing confidence in the majoritarian tendencies of the Court are the indications that the Court not only has been held responsive to public opinion through the appointment process but has also responded directly to trends in public opinion even in the absence of changes in the composition of the Court. The existence of alternative avenues by which public opinion can influence the Court provides additional protection against countermajoritarian tendencies—or at least, it can be so argued from the evidence up to 1981.

At the same time, those who celebrate the republican principles on which the United States was founded can take some comfort in the evidence that the linkage between public opinion and the decisions of the Court is imperfect and occurs after a significant delay. The five-year lag between changes in majority opinion and the reflection of those changes in the Court’s decisions suggests that the Court also serves as a temporary buffer against public opinion, shielding the policy process from public caprice and the passions of the moment. Moreover, it is important to reiterate that our analyses focus only on fundamental changes in the underlying ideological tenor of public opinion. Nothing in this analysis suggests that decisions of the Court are responsive to ordinary fluctuations in opinions about specific policies. We have not examined such linkages and are skeptical of their existence.

A problem with this optimistic appraisal, however, is that it is based on what is effectively a historical case study of only about 30 years of the nation’s history. Indeed, our analyses indicate that the relationship of the Court to public opinion has been very

different in the years since 1981. The decisions of the Court during the Reagan years were significantly countermajoritarian in direction and appear to have been driven almost entirely by the changing ideological orientation of the Court. The Court grew increasingly conservative across this period despite a liberal resurgence in the public mood. Although the conservative appointments of Presidents Nixon and Ford probably reflected the prevailing public sentiment at the time, the appointments of President Reagan increasingly did not. Moreover, it is highly likely that the conservative ideology of the Court and its decisions have either remained unchanged or grown increasingly conservative during the Bush administration, given the appointments of Justices Souter and Thomas. Thus, there is every reason to believe that the gap between public opinion and the decisions of the Court has continued to widen.²³

We do not mean to suggest by this that Presidents Reagan or Bush deliberately selected justices whose ideologies were antagonistic to the public mood or even that they employed different criteria for judicial appointments from other recent presidents. It is sufficient to argue that like their predecessors, they appointed justices whose ideologies they found compatible but that their personal ideology or the ideologies of their primary electoral constituencies were inconsistent with the public mood. Nor is it difficult to conceive of situations in which this might occur.

To the extent that presidential elections are decided principally on bases other than the public’s domestic policy concerns and the candidates’ policy positions (e.g., on the basis of candidate or party images, party identification, or even foreign policy considerations), then it is possible—perhaps even likely—that a president will be elected whose ideology is unrelated, if not antagonistic, to the public mood. Since more than three decades of research on voting choice and election outcomes in the United States indicate that candidate and party images and party identification often play larger roles in determining outcomes than the ideologies of the competing candidates, there are good reasons to believe that elections can produce results that are inconsistent with the ideology of the public mood.

Indeed, Stimson argues that something like this has occurred in the United States in recent years (1992, 79–84). Although the election of Ronald Reagan in 1980 was consistent with the ideology of the public mood, which reached its liberal nadir in 1979 (see Figure 1), the public mood changed direction almost simultaneously with Reagan’s election and has become increasingly liberal ever since (at least through 1989, when Stimson’s data ends). In Stimson’s telling of this tale, President Bush may have been elected in 1988 based on his clever exploitation of a lag that Stimson shows to have existed between the public’s self-identified ideology and the liberalism of the public mood in the middle 1980s. Simply stated, increases in self-identified liberalism lagged

several years behind the increasing liberalism of the public mood. By deemphasizing or fuzzing domestic policy issues and concentrating, instead, on labeling Dukakis as a liberal, Bush took advantage of this lag and was able to win the election despite the likelihood that many of his policy positions were inconsistent with an increasingly liberal public mood. Thus, following his election, when Bush appointed justices who shared his conservative ideology, the effect was to push the Court still further out of alignment with the changing public mood.

Mr. Dooley may have been correct that the Supreme Court follows the election returns. However, it does not necessarily follow, as Dahl and Funston apparently assume, either that election returns provide an accurate reflection of the ideological mood of the country or that the electoral process ensures that the president's appointments will conform to the prevailing mood.

In arguing that the Court is "inevitably a part of the dominant political alliance" and cannot long exist as a countermajoritarian institution, Dahl assumed the existence both of a dominant political alliance and what he described as a "normally divided" Court. He assumed that the president and Congress would represent the same electoral coalition and that given a reasonable ideological balance on the Court, the ability of a president to appoint an average of two justices to the Court would usually be sufficient to tip the ideological balance of the Court in the direction of the dominant political alliance. Contrary to these assumptions, however, the United States has experienced divided government for all but four of the past 24 years. Moreover, because Republican presidents have filled all of the vacancies on the Court during this period and have appointed all but one of the current justices, the Court can no longer be considered reasonably balanced.

Dahl gave little consideration to the assumption of a balanced Court in his analysis; he mentioned it only in passing. Further reflection suggests, however, that the assumption is critical. In the absence of a reasonably balanced Court, serious questions exist about the effectiveness of either of the pathways by which public opinion has historically influenced the Court. Even if the Democrats were to regain control of the White House, there is little likelihood (given the current ideological imbalance) that sufficient vacancies would occur on this youthful Court to enable the balance to be restored, much less tipped in a liberal direction, in the foreseeable future.

Moreover, in the absence of a reasonably divided Court, it is doubtful whether pressures on the Court to respond directly to public opinion are sufficiently strong to have any meaningful impact on the Court's decisions. A change in public opinion sufficient to change the vote of a single justice at the margin can be of extreme significance if the Court is balanced roughly five to four. The significance of such a change for a Court divided six to three or seven to two is considerably more questionable.

Given the obvious limits of this analysis, we cannot

do more than speculate about these fundamental issues. Thus, although analysis of the Warren and Burger years generally paints a picture of the Court as an institution that has responded in deliberate fashion to majority opinion, informed speculation about current and foreseeable future trends raises disturbing though still unanswered questions about the role of the Court as a countermajoritarian institution.

Notes

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1. Casper also extended Dahl's analysis across time. Although he added only 14 years to the 167 considered by Dahl (ending in 1974, rather than 1957), those additional years include most of the Warren Court, whose behavior, Casper argues, was distinctive.

2. Indeed, although there are questions about whether the relationship is positive or negative, there is relatively greater evidence in the literature of judicial decisions' influencing public opinion and political support for the Court than of reciprocal effects. See, e.g., Adamany and Grossman 1983; Caldeira 1986; Dolbeare 1967; Kessel 1966; Lehne and Reynolds 1978; Marshall 1989; Tanenhaus and Murphy 1981).

3. Importantly, the political adjustment hypothesis does not require the public to be attentive to, or informed about, specific decisions of the Court. Indeed, much research shows that the public is neither. Neither is it necessary for the justices to believe in the myth of an attentive and knowledgeable public. What is important is a perception by one or more justices (the number depending on the ideological division on the Court) that the public has a general awareness of the broad ideological tenor of the Court in important issue areas and that the legitimacy of the Court and its moral force may be jeopardized by a pattern of decisions that contradict deeply held and abiding public beliefs or concerns.

4. This paragraph borrows heavily from O'Connor and Sabato 1993, 334-36). That the political adjustment hypothesis is standard fare in American politics textbooks is indicative of the widespread acceptance it enjoys notwithstanding the dearth of systematic evidence.

5. As will be noted, public opinion data for most specific policy areas are also in extremely short supply. Reliable data on most are unavailable in consistent time series before the middle 1960s. This, of course, compounds the problem of attempting to establish relationships between public opinion and the Court's decisions in specific policy domains over time. Thus, we have proceeded in stages, examining first the impact of general trends in public opinion on the overall ideological tone on the Court's decisions and delaying for a later analysis the more complicated task of looking at specific policy areas. Nevertheless, for a very preliminary effort at the latter, see Link 1992.

6. The criteria used in determining whether a particular decision is liberal or conservative are described in some detail by Spaeth (1991). In general, liberal decisions include those favoring unions, consumers, environmental protection, economic "underdogs," and individuals bringing civil liberties cases. Decisions made against these interests are generally coded as conservative. In cases involving economic regulation, liberal decisions are those decided in favor of the government. If the liberal or conservative direction of a decision could not be determined, the case was excluded from the analysis.

7. Measuring the liberalism of Court decisions over time is complicated by at least two additional considerations. First, the policy content of similar cases before the Court may change over time. For example, as the Court "settles" one set of issues with respect to the rights of criminal defendants and

is called on to settle other issues, it may become harder or easier for the Court to decide the case in a liberal direction, thus causing the percentage of liberal outcomes to rise or fall. Second, the mix of cases (criminal vs. civil liberty vs. economic regulation, etc.) that are decided by the Court also can vary over time because of changing societal conditions and concerns, as well as the changing agenda of the members of the Court. Together, these raise the possibility that a given percentage of liberal decision outcomes in one year may reflect a significantly more liberal or a significantly less liberal, policy position than would an identical percentage of liberal outcomes in a different year (see, esp., Baum 1988, 1992).

The usual way to handle these problems is to focus on cases in a single-policy domain (thereby limiting agenda effects) and correct for changing case content either by introducing statistical controls for specific case characteristics (Segal 1984, 1985; Atkins and Sloope 1986) or by adjusting for changes in the median votes of continuing justices (Baum 1988). Unfortunately, our interest in looking broadly at changes in the Court's ideology dictated our decision to aggregate across policy areas. However, to test the sensitivity of our measure to agenda effects, we compared outcomes in different policy areas (criminal, civil liberties, etc.) over time. The high correlations (average $r \geq .85$) suggest that agenda effects are probably relatively modest. We also introduced controls in some of our early multivariate models for the percentages of different types of cases heard by the Court each year. The controls, generally, were not statistically significant and did not alter the interpretation of results. This reinforces confidence that agenda effects are not significant. We drop these controls in the models reported in our analyses, because they did not add to the models and consumed numerous degrees of freedom.

Because we aggregate across policy types, it is not feasible to control effectively for case content effects by introducing case characteristics. The characteristics that distinguish criminal cases are obviously different from those that distinguish economic regulation cases. To control simultaneously for the myriad relevant case characteristics in many different policy areas would quickly exhaust the limited available degrees of freedom. It would be possible to adopt Baum's (1988) innovative strategy of controlling for case content by adjusting collective outcomes by the median change in the votes of continuing justices from one year to the next. Unfortunately, this strategy assumes that all change in collective outcomes is a function either of membership change on the Court or of changes in case content. The ideologies of individual justices are assumed to be invariant over time. Thus, to adopt this strategy would prevent our consideration of the political adjustment hypothesis that the Court may adapt its decisions to public opinion at the margins even in the absence of membership change. Moreover, in his study of civil liberties cases, Baum reports that the correlation between his content-adjusted measure and an unadjusted measure of collective outcomes is very high ($r = .88$; 1988, 910). This suggests that the problem of content effects may not be as severe in practice as it is in theory.

Given the absence of any significant evidence of agenda effects and the difficulty of controlling for content effects without introducing difficult limiting assumptions, we use the collective outcome of Supreme Court decisions as a surrogate measure of the policy ideology of the Court. The measure is imperfect, to be sure; but we contend that it does provide a reasonable basis for examining broad trends in the ideology of the Court's decisions over time. In support of this contention, we would point to the obvious face validity of the measure as illustrated in Figures 1 and 2 and as discussed in the subsequent text.

8. As a check on the consequences of this decision, we constructed a second index using all of the Court's decisions, including those decided *per curiam* or with memorandum opinions. We also constructed a policy-specific measure of the liberalism of the Court in criminal cases. Although there may be debate in other policy domains as to whether a particular decision is liberal or conservative, a decision in favor of the

defendant in a criminal case is almost always considered to be liberal. That all three measures are highly correlated ($r \geq .90$ for each pair) attests to the construct validity of the original measure and increases confidence in its interpretation as a composite indicator of the liberalism of the Court's decisions.

9. In an earlier version of this study, two additional measures of public opinion were considered: (1) political party identification (the percentage of the public identifying themselves at Democrats in yearly Gallup polls) and (2) self-identified ideology (the percentage of individuals identifying themselves as liberals in biennial National Election Studies). In brief, our analyses indicated that the public mood was much more strongly related to variations in the Court's decisions. Indeed, there were no significant correlations between either party identification or self-identified ideology and the liberalism of Supreme Court decisions at lags of 0–10 years. As we shall show, the links between the public mood and the Court's decisions are much stronger. Only the results from the analysis of the public mood are presented here. However, the expanded version is available from the authors on request.

10. In the process of constructing the summary index, Stimson developed a number of policy-specific components of mood, including an index of attitudes on crime, civil liberties, and gun control and another on abortion. Both have obvious implications for Supreme Court decisions. Unfortunately, because of the paucity of relevant opinion data Stimson's crime index is unavailable before 1963; and the abortion index is unavailable before 1973. Obviously, inclusion of these data would seriously reduce the already small number of cases available for analysis. Moreover Stimson demonstrates that trends in public opinion in most issue areas closely follow the overall pattern observed for the public mood (1992, 69–79). For example, a factor analysis of nine issue specific indices (excluding abortion, on which there were too few cases for analysis) produces two factors, one accounting for nearly 65% of the total variance in series, the other, less than 20%. All nine of the issue areas had loadings of .42 or higher on the first factor; six of the nine had loadings greater than .85. Only the crime, civil liberties, and gun control series loader higher on the second dimension than the first.

Given the loss of cases that would result from the use of issue-specific opinion measures, combined with the evidence that most, if not all, of these issue specific measures closely parallel the pattern observed for the more general measure of the public mood, we restrict our focus here to the general measure of the public mood. However, research in progress undertakes a similar examination of the links between public opinion and Supreme Court decisions in the areas of criminal procedures and civil rights, trying to match the Court's decisions in these cases with Stimson's measures of racial attitudes and public opinion on crime, civil liberties, and gun control for the much shorter time periods for which these data are available (Link 1992). The results of these preliminary analyses generally reinforce those reported here, albeit with slight differences in the length of the observed lags, especially for president and Congress. Significantly, nothing in these analyses undermines the current results or the interpretation given them.

11. Justices were assigned an ideological score on a scale of 1 (*most liberal*) to -1 (*most conservative*). There were a few justices early in the period covered by this study not included in Segal and Cover's (1989) analysis. We estimated the ideology scores for each of them based on the scale analyses reported by Rohde and Spaeth (1976). For elaboration of this method see Sheehan, Mishler, and Songer 1992.

12. Two indices of presidential partisanship were created. First, we constructed a simple dichotomous measure of party control of the White House, coded 1 during the years of a Democratic administration and 0 during periods of Republican administration. A second measure considers the popularity of the president. This was constructed by subtracting 50% from the average job approval rating of the president in any year and multiplying the result by 1 for Republican presidents. The assumption is that the liberalism both of the

Court's composition and its decisions should increase with the increasing popularity of Democratic presidents and should decrease with the increasing popularity of Republican presidents.

13. Four measures of the partisan and ideological composition of Congress were considered. The percentages of seats controlled by Democrats in the Senate and the House of Representatives were used as indicators of the partisan orientation of Congress. The percentages of all Senate and House roll-call votes won by the conservative coalition of Republicans and southern Democrats in opposition to a majority of northern Democrats were used as (negative) indicators of the liberal ideological orientation of Congress. Because the Senate and House measures were highly correlated and had virtually identical effects on Court decisions, we report only the House data in this paper.

14. To facilitate comparisons, all measures in Figures 1 and 2 have been standardized with a mean of 100 and a standard deviation of 10.

15. Initially, lags up to 10 years were examined. However significant relationships were not found at lags longer than five years. In the interest of simplicity, only lags up to five years are reported in the tables.

16. The Chow statistic measures whether a significant shift has occurred in the parameters of a model across two time periods. It operates, in effect, by comparing the residual sum of squares for the entire model with the residual sum of squares for the first of the two time periods alone, controlling the different degrees of freedom. More formally,

$$F_{(n-k)}^m = \frac{(SS - SS_1)/m}{SS_1/n - k},$$

where SS is the residual sum of squares for the entire period (1956–89), SS_1 is the residual sum of squares for the first part of the period (1956–80), m is the number of observations excluded in calculating SS_1 , n is the number of observations included in calculating SS_1 , and k is the number of parameters estimated in the model. The Chow statistic is distributed with an F -distribution with m and $n - k$ degrees of freedom.

To confirm that the appropriate break point in the series is 1980 and not some other year, we calculated three additional Chow tests. First, on the assumption that the parameters in the model might have changed before 1980 (e.g., in 1969 with the election of President Nixon and the appointment of Chief Justice Warren Burger), we undertook a Chow test of the stability of the model's parameters across the periods 1956–68 and 1969–89. The test was statistically significant at the .05 level (albeit barely), suggesting some instability, though less than in the comparison of the pre- and post-1980 periods. Second, the Chow test comparing the pre- and post-1969 periods was repeated without the years 1981–89. The result was not statistically significant. This strongly suggests that the Reagan years were very likely the source of the instability in the model's parameters and increases confidence that the model's parameters are reasonably stable through 1980 but differ significantly during the Reagan years.

17. Because of the presence of significant autocorrelation in these series, all of the models were estimated initially using full maximum likelihood techniques (Ostrom 1990, 35). The original estimates indicated that the autoregressive terms were not statistically significant in models C and D. Therefore we reestimated these models using Ordinary Least Squares procedures. The statistics at the bottom of each model summarize the model's performance. The Durbin-Watson statistic is a standard test for first-order autocorrelation in a model's residuals. The Lung Box Q statistic is calculated from the residual autocorrelation function and measures the extent of systematic variation in a model's residuals. If significant, it indicates that there is additional information in the residuals that is not captured up by the model. If the Lung Box Q statistic is not significant, then it is reasonable to conclude that the residuals are "white noise." $R^2(\text{tot})$ measures the total variance reduction achieved by a model including the autoregressive term. $R^2(\text{reg})$ measures that part of the reduction in

total variance associated with the structural model (i.e., after correction for the variance associated with the autoregressive term or noise model).

18. In essence, assessments of Granger causality (Freeman 1983; Granger 1969) require that lagged values of X account for significant variance in current values of Y that cannot be explained by past values of Y . In other words, we may infer that public opinion "Granger-causes" Court decisions to the extent that (1) there are significant lagged effects of public opinion on Court decisions, "controlling" via the autoregression term for prior values of the Court's decisions, and (2) these lagged effects produce significant reductions in the total variance explained by the equation.

19. That the interactive intercept terms in these equations are generally positive and large is of no particular substantive significance. In effect, they are statistical artifacts of the other variables in the equations; they indicate the baseline from which the effects of the other variables are measured.

20. Time series methods require that a series be stationary both in its mean and variance. Diagnostics indicated that the series measuring the composition of the Court was nonstationary in its mean. To compensate, this series was first-difference prior to analysis. Because the Court composition variable was differenced, it was necessary to difference the independent variables, as well. In substantive terms, this means that rather than explaining the ideological composition of the Court, our analysis is explaining changes in that composition.

21. According to the criteria for Granger causality the absence of lagged effects in this relationship makes it impossible to assess the direction of the relationship between the party of the president and the composition of the Court or to attribute causality. Nevertheless, although it is conceivable that the ideological composition of the Court can influence subsequent election outcomes and thus the party of the president, such effects, if they exist, are likely to be lagged several years or more. In contrast, it is much more likely that a change in the party of the president will have a more immediate effect on the composition of the Court, as, indeed, was the case in 1969 when President Nixon appointed Warren Burger to fill a vacancy on the Court shortly after his inauguration.

22. Although it would be nice to report that this result was the product of clever theorizing, in fact its discovery was serendipitous. A programming error led to the initial observation that the undifferenced party variable produced a much better fit. Tests of the other variables in the model indicated that the initial specifications (i.e., the differenced versions) were the better-fitting specifications in every case. Of course, having stumbled on the specification of the party variable, our explanation of its meaning is necessarily post hoc.

23. There is some speculation, based on several cases in the most recent (1991–92) session of the Court, that at least some members of the Court may be adjusting their views in a manner consistent with the direction of the public mood. Most frequently mentioned in support of this position are the decisions in *Lee v. Weisman* (1992) and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), in which conservative Justices Kennedy, Souter, and O'Connor voted to strike down prayer in high school graduation ceremonies and to strike provisions of a state abortion law requiring spousal notice. Although these justices' and the Court's decisions in these cases surprised many observers, it is much too early to conclude from these more-moderate-than-expected results that members of the current Court either individually or collectively are responding to recent trends in public opinion.

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