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NEITHER THE PURSE NOR THE SWORD: DYNAMICS OF PUBLIC CONFIDENCE IN THE SUPREME COURT

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Systematic study of changes in support for the U.S. Supreme Court across time has not been undertaken. Armed with a time series of observations from 1966 through 1984, I provide a description of the ebb and flow of public esteem for the Court. Then I outline and test several plausible propositions about the dynamics of support. Statistical analyses compel the conclusion that apart from a relatively constant core of support, increases in judicial activism, inflation, and solicitude for the rights of the accused decreased confidence in the Court; the events surrounding Watergate and increases in presidential popularity and the public salience of the Court brought about increased popular esteem for the high bench. Previous scholars, based on cross-sections of individuals, have emphasized the public's ignorance of and disinterest in the Supreme Court and judicial policy making. The responsiveness of public support for the Court in the aggregate to political events and shifts in the behavior of the justices stands in stark contrast to the conventional image of United States citizenry as singularly out of touch with and unmoved by the Supreme Court.

In the 1960s and early 1970s, at the same time as and perhaps because of the political and social chaos and the apparent decline of faith in basic values and rules, a small but prolific body of political scientists focused attention on public support for a variety of political institutions. Naturally, because of the importance and visibility of the office and the ready availability of data, the president and presidency claimed the bulk of scholarly energies (Kernell, 1978; Mueller, 1973). Nonetheless a few hearty students of the courts (e.g., Dolbeare and Hammond, 1968; Murphy and Tanenhaus, 1968a, 1968b) have attempted to discover the levels, depth, and bases of public support for judicial institutions among publics in the United States (for work on other institutions, see Dennis,

1966, 1975a; Parker and Davidson, 1979; Patterson, Hedlund, and Boynton, 1975).

The lack of any formal connection to the electorate and its rather demonstrable vulnerability before the president and Congress mean that the United States Supreme Court must depend to an extraordinary extent on the confidence, or at least the acquiescence, of the public. Mr. Justice Frankfurter stated the quandary more eloquently: "The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction" (*Baker v. Carr* [1962]; see also *United States v. Lee* [1882]). Virtually all scholars agree that the Supreme Court plays a crucial role in the making of national policy (Casper, 1976; Dahl, 1957; Shapiro, 1979), but if the Court is the

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"least dangerous branch," how do the justices manage to hold sway much of the time even in the face of substantial "law-making majorities" (cf. Barnum, 1985)? To account for this anomaly, some "commentators have attributed the Court's endurance as a national policymaker to its special status with the public" (Adamany and Grossman, 1983, p. 406).

For the most part, lamentably, empirical researchers have painted a dreary and unencouraging portrait of public attitudes toward the Court. Citizens know surprisingly little about the Court and the workings of the judicial branch, manifest scant concern about its personnel and about most decisions, and offer support contingent upon agreement with specific public policies (for reviews, see Adamany, 1973; Daniels, 1973). This brief set of generalizations, understandably enough, stems from data collected in cross-sections of the public. Yet, despite the widespread consensus these days about the importance and desirability of developing an understanding of the dynamics or temporal dimension of public opinion and other political phenomena, no one has undertaken a study of changes in public support for the Supreme Court across time (cf. Handberg, 1984). Fortunately, since 1966 Louis Harris Associates and the National Opinion Research Center have queried members of the American public on a relatively regular basis about confidence in a number of institutions, including the Court. In this article, armed with a time series of observations from 1966 through 1984, I provide a description of the ebb and flow of public esteem for the Court and then develop and test several plausible propositions about the dynamics of support.

I begin by reviewing some of the previous work on public evaluations of the Supreme Court and by briefly introducing the essentials of patterns of confidence in the Court from 1966 through 1984. I then present alternative explanations of confi-

dence in the Court and, finally, statistical results and interpretations. The statistical analyses lead me to conclude that increases in judicial activism, inflation, and solicitude for the rights of the accused decreased confidence in the Court; the events surrounding Watergate and increases in presidential popularity and in the public salience of the Court brought about increased popular esteem for the high bench. The responsiveness of public confidence in the Court to political events and to shifts in the behavior of the justices stands in stark contrast to the conventional image of U.S. citizenry as singularly out of touch with and unmoved by the Supreme Court.

Public Evaluations of the Court

Prior to the advent of modern political science, constitutional commentators made intriguing claims about the public's regard for the Supreme Court. Thus, for example, Lerner (1937) waxed eloquent in a classic essay about a deep-seated, psychological need for security among the public that was required in the United States by worship of the Constitution and transferred to the justices as interpreters of the basic law (see also Baas, 1979, 1980; Baas and Thomas, 1984; Jackson, 1954, p. 23; Levinson, 1980; Miller, 1965). This image of a revered and deified Supreme Court gathers scant support in the much more critical and human portrayals in the empirical research conducted since the 1950s. To be sure, in a study of the socialization of children, Easton and Dennis (1969, p. 278) lent some empirical credence to the views Lerner (1937) and others had articulated, but based on analysis of children's responses to open-ended questions, Caldeira (1977a, p. 864) found no evidence that children possess any detailed knowledge of the Court and its functions or see the

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justices as particularly omnipotent, omniscient, and beneficent; for the most part, children view the Court with indifference.

Research on the attitudes of adults reveals that there is only a relatively shallow reservoir of knowledge about or affect toward the Court in the mass public. Thus, for example, less than half of the public in 1964 and 1966 could name one or more specific decisions of the Court (Murphy and Tanenhaus, 1968a, p. 277; see also Casey, 1976; Dolbeare, 1967; Kessel, 1966). Many apparently clung to a belief in the myth of mechanical jurisprudence in the Court (Casey, 1974). Few members of the public, regardless of the place or time of the sample, fulfill the most minimal prerequisites of the role of a knowledgeable and competent citizen vis-à-vis the Court. Yet on more general evaluations of judicial performance, the public has, for the most part, given the Supreme Court more favorable than unfavorable marks (Dolbeare, 1967; Kessel, 1966; Murphy and Tanenhaus, 1968a). From the analysis of national surveys executed over a period of 30 years (1937–1966), Dolbeare and Hammond (1968) contend that the Court in fact enjoys widespread, though probably shallow, respect among the public (see also Dennis, 1975b; Dolbeare, 1967; Kessel, 1966). On the other hand, scholars report that favorable evaluations of the Court's performance have declined (Dolbeare, 1967; Murphy and Tanenhaus, 1968a; Tanenhaus and Murphy, 1981).

If the public refuses to offer unstinting praise of the Court's performance in general, citizens consistently cast an even more jaundiced eye on specific decisions of the justices. Asked about particular decisions of the Court, respondents to a national survey in 1966 volunteered three times as many negative as positive remarks (Murphy and Tanenhaus, 1968a, p. 287; cf. Adamany and Grossman, 1983, p. 411; Dennis, 1975b, p. 20). Over

the 10 years of Murphy and Tanenhaus's panel (1966–1975), the ratio of dislikes to likes declined to a slight extent, indicating perhaps a modest increase in support for specific policies of the Court (Tanenhaus and Murphy, 1981, p. 31). On the visible issues of the day, however one couches the issues, most people find fault with the choices the Court makes.

Scholars have offered a number of explanations for patterns of public support. For example, Murphy, Tanenhaus, and Kastner (1973, p. 50) identify "absence of concern about federal power, youthful idealization, political partisanship, a view of government as a monolith, sympathy for the underdog, liberalism, and agreement with particular decisions" as chief candidates in the search for an understanding of diffuse support. Yet, with all said and done, they conclude that attitudes toward public policy, regardless of the source, provide the best explanation of support. In effect, individuals classified on several items as "liberals" approved of the Court's policies, and the "conservatives" did not. Dolbeare and Hammond (1968), based on earlier studies, purported to show a relationship between partisan identification and association with the president on the one hand and support for the Court on the other. Democrats and adherents of the incumbent chief executive manifested significantly more support than did their counterparts (see Casey, 1976; Dolbeare, 1967, pp. 205–6). Still others suggest a connection between support for state courts and support for executives and legislatures (Lehne and Reynolds, 1978). At various times and places the following have emerged as significant determinants of support: political activism (Adamany and Grossman, 1983); membership in an elite (Beiser, 1972; Caldeira, 1977b; Murphy and Tanenhaus, 1970; Murphy et al., 1973, pp. 45–51; Schmidhauser and Berg, 1972); level of education (Casey, 1974; Murphy and Tanenhaus, 1968a); race (Hirsch and

Donohew, 1968); age (Kessel, 1966; Murphy and Tanenhaus, 1968a; Murphy et al., 1973); and social status (Casey, 1974). Subsequent analyses suggest, however, that beliefs about proper public policy tend to overwhelm demographic influences.

Measuring Support for the Supreme Court

During the storm over Franklin D. Roosevelt's "Court-Packing Plan" in 1937 and in the aftermath of *Brown v. Board of Education*, pollsters invested a fair amount of expense and energy in monitoring public attitudes toward the Supreme Court repeatedly over an extended period of time—in the former case, throughout 1937; in the latter, from 1954 through the early 1960s (Handberg, 1984). Because the interest of elite and mass publics inevitably moved on to new topics, polling operations soon dropped questions on the Court. The wording of items on the Court shifted with the focus of controversy. Thus, even though we now have data on public opinion and the Court from 1935 to the present, we have only recently begun to accumulate a lengthy string of comparable observations. Time-series regression, so often utilized with good effect in studies of presidential popularity, requires a substantial number of observations. Until recently, therefore, scholars of the Court could not study public support systematically across time.

In February of 1966, Louis Harris Associates, for the first time, asked a national sample of Americans, "As far as the people running the Supreme Court are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?" Nearly a year later, Harris posed the question again and then dropped the matter entirely until August of 1971. In

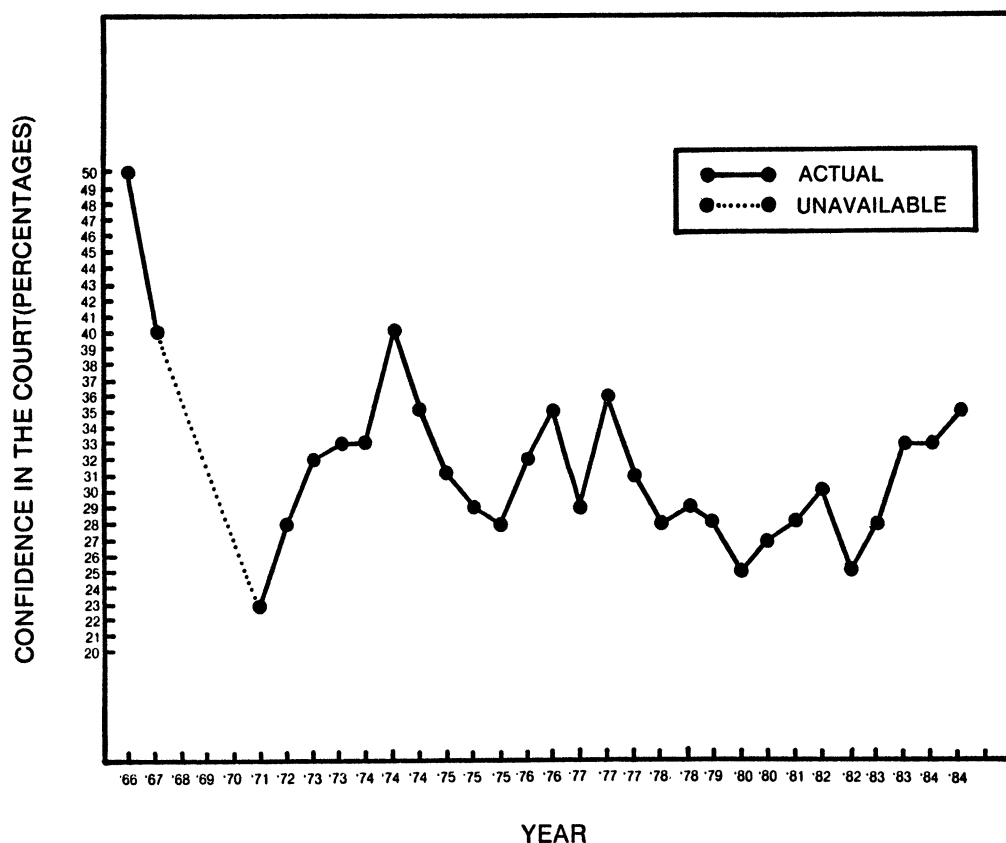
1973 the National Opinion Research Center (NORC) began to ask the question on an annual basis in the General Social Survey, missing only one year in the last decade. Over the period from 1966 through 1984, NORC and Harris have asked the same question in 29 separate surveys. For students of the Court, these 29 points constitute a rich lode of data. To be sure, one wishes for a larger number; after all, research on public evaluations of the president often includes hundreds of observations. Accordingly, I have taken particular aim at the parsimonious selection of independent variables.¹

To measure support for the Court, I have opted for the percentage of each sample who responded with "great confidence" in the justices. Figure 1, which displays this number from 1966 through 1984, illustrates the ebb and flow of public support for the Supreme Court. To place public attitudes toward the Court in a broader context, I shall also call attention to materials on Congress and the executive branch (Harris, various years; National Opinion Research Corporation, various years).²

Quite clearly, public confidence in the incumbents of the Court has taken a sharp secular decline from 1966 through 1984. More precisely, during this period support has on average dropped 2.2% each year ($Y = 35.5 - 2.2 \cdot \text{Time}$; $r^2 = .50$). Whereas about half of the public registered great confidence in the Court early in 1966, only one-third did so during 1984. Even if one considers 1967 as the base, support has dropped by a rather considerable amount. Public confidence in the Court hit rock bottom in 1971 and reached apogees in 1966 and 1974. Of course we have no way of knowing whether the degree of support recorded in 1966 typified public evaluations in the mid-1960s or whether it was entirely out of step. Confidence in the incumbents of the Court, unlike diffuse support (Handberg, 1984; Tanenhaus and Murphy,

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Figure 1. Patterns of Confidence in the Court: 1966–1984



1981), has varied a great deal, as the jagged pattern attests. For the entire period, support has a mean of 32%, a standard deviation of 5.5, and a range of 27%. Much of the variation, to be sure, stems from the rapid decline in the late 1960s. If, for example, we restrict our attention to the 1970s and 1980s, confidence in the Court actually ranges from 23% to 40%, for a mean of 30.5 and a standard deviation of 4.0.

Yet confidence does not bob around randomly; change comes gradually. In the late 1960s and the early 1970s, the decline and then rebound of confidence in the Supreme Court marched in step with patterns for other political and social institu-

tions. For the Court, "Watergate" translated into a major temporary gain of public support. Judges and courts, after all, had stood as bastions of the rule of law against the attempts by Nixon and associates to evade justice. Paradoxically, though Congress played a more central role in Watergate than did the Court, the public gave the incumbents of the national legislature much less credit. By 1978, confidence in the Court was again on the decline, perhaps reflecting a general discontent with institutions caused by economic instability. In the last four surveys, support for the Court, along with that for Congress and the president, has increased markedly, consonant with

the many reports of an increase in optimism since the midpoint of the first Reagan administration. Finally, across the entire period, the public has bestowed greater confidence in the incumbents of the Court than in those of Congress and usually by quite a large margin.

Explanations of Support for the Court

Thus far I have established that support for the Court varies considerably over time; of this there can be little doubt. Now, the more significant issue is, What, precisely, accounts for these perturbations in public confidence? It is conceivable, on the one hand, that support for the Court responds to changes in societal conditions: as the quality of life declines, so, too, does faith in the justices. On the other hand, perhaps members of the public react to events, politics, and judicial behavior. Large happenings on the political landscape could shape public perceptions of the high bench. The justices themselves, through their own actions, might increase or decrease esteem for the Court, or public feeling about the Court could simply follow sentiment toward other political institutions. These broad conceptions of the wellsprings of public support for the Court encompass each of the more specific explanations I shall develop in this section and test in the next.

Economic Conditions

Work on presidential popularity, support for Congress, and confidence in institutions in general often indicates a strong and positive relationship between economic prosperity and stability and favorable public evaluations. Chief executives who preside over serious inflation and unemployment normally suffer considerable losses of public support, and unstable prices apparently cause more damage

(Kernell, 1978; MacKuen, 1983). There is some evidence that the public holds Congress responsible for our economic well-being: as unemployment increases, so does congressional "unpopularity" (Parker, 1977), and Lipset and Schneider (1983) report strong and negative relationships between confidence in the Court and inflation and unemployment. Obviously the Court has no direct impact on economic performance, and no one would argue that it does. Nevertheless, in the bad times of the 1970s, discontent over economic maladies and lost faith in economic organizations spilled over onto noneconomic institutions. High unemployment, which naturally shakes public certitude about the structure of the economy, may well translate into less support for political institutions, including the Court. It is even more likely that inflation should decrease public support for the Court and other institutions because prices affect everyone in some measure. To measure inflation and unemployment, I have chosen the percentage of change in prices and the rate of unemployment in the quarter previous to the observation on public support (U.S. Department of Labor, various years).

Presidential Popularity

Several scholars have contended that people think of the president and the Court in the same vein (Casey, 1975; Dolbeare, 1967; Dolbeare and Hammond, 1968). The president, of course, nominates all members of the Court. Because the president usually has a number of opportunities to nominate new justices, the Court normally constitutes an integral part of the "ruling coalition" (Dahl, 1957; see Scigliano, 1971). From the results of polls, Dolbeare (1967) reports that respondents are more likely to see the Court in a favorable light when a member of their own party occupies the White House and that those who were inclined

to defer to presidential decisions were similarly disposed toward the Court. In a later study, Casey (1975) affirmed the "presidential association" and demonstrated that opinions toward the chief executive have a greater impact on attitudes toward the Court among independents than among partisan identifiers. Furthermore, people who trust in the federal government as a whole evince greater support for the Court (Murphy et al., 1973). We therefore have good reason to expect support for the two institutions to move hand-in-hand, even if people do not connect the president and the Court. If support for institutions in general tends to move upward and downward in unison, then presidential popularity and confidence in the Court should show a significant and positive relationship (cf. Tanenhaus and Murphy, 1981). To measure presidential popularity, I have relied on Gallup's data and used the percentage of each sample who express approval of the incumbent chief executive in the quarter prior to the observation on attitudes toward the Court (Gallup, various issues).

Judicial Activism

For the last 30 years or so, commentator after commentator has taken the Supreme Court to task for getting itself too involved in the making of public policy and the lives of the citizens. Critics and even friends of the Court have often warned that over the long haul, "judicial activism" can and does carry severe penalties. These cautions come in several forms. First of all, some scholars have argued that the Court, by refraining from the use of judicial review, can legitimize the policies of other branches of government. If the Court in fact has the power to confer legitimacy, then excessive activity might devalue the judicial coin. Second, others point out that when the Court invalidates a state or federal law, it acts contrary to the preferences of a "law-making majority" (Dahl, 1957). To rebuff

popular wishes repeatedly or on controversial measures, however heroic and appropriate, is to run the risk of public disapprobation and perhaps active resistance. Historically, extended periods or particularly aggravating instances of judicial activism have culminated in congressional attempts to curb the powers of the justices; the Court-Packing Plan of 1937 and the Jenner Bill of 1957 spring immediately to mind (Murphy, 1962).

Though assertions of this kind have great currency, few have subjected them to empirical testing. Lehne and Reynolds (1978) show that during a period of great controversy over a significant judicial decision, the salience of the Supreme Court of New Jersey increased, and evaluations became more dependent on people's views of public policy. Yet in the aggregate, judicial activism seems not to have made much difference; through all of the brouhaha, ratings of the Court did not move consistently in one direction.

Few scholars, commentators, or judges agree on the meaning of the concept of judicial activism. In an ideal world, I would create indicators of judicial activism that reflect all of the facets of this complex notion; here I have chosen a simple measure: the number of times the Supreme Court has declared a federal law invalid (for data and further justification, see Caldeira and McCrone, 1982, p. 110).³

Salience of the Court

In the normal course of events, the Court does not rank high in public visibility. At certain junctures, however, the Court becomes a more salient object in the public mind. By taking on tough issues and deciding them in a dramatic fashion, the justices themselves play a major role in focusing attention on the Court. Various mass media are even more central in shaping the agenda for public discussion (Grey, 1972; Newland, 1964). In any event, regardless of the precise reasons, public attention to the Court

changes substantially over time. Under certain circumstances, heightened salience should lead to greater comprehension of the Court. Presumably, people who learn more about the complexities of judicial decision making will lend the Court greater support than will the less sophisticated. The gist of the argument is that "to know the Court is to respect it, if not to love it" (Kessel, 1966; Murphy et al., 1973, p. 41).

From another perspective, public visibility might actually contribute to negative attitudes toward the justices. Quite apart from stories at the beginning of the term or on new appointments, much of the attention to the Supreme Court in the mass media derives from particular decisions. Clearly, controversial decisions merit much more extensive coverage, usually of a highly divided court. Since the Court often surfaces in the mass media in divisive and politically-charged situations, members of the public might well associate the high bench with trouble. Under public scrutiny, the Court does not usually show off its best judicial face—a harmonious, nonpartisan collection of Solomons. Furthermore, these occasions of intensified interest could focus the citizenry on the reality that judges do make law, all the time—a fact that apparently escapes some people (Casey, 1974).

Cognizant of potential flaws, I have nonetheless employed the number of stories on the Court in the *New York Times* in a year as an indicator of public salience. That newspaper of course reaches only a fraction of the citizenry, but a large proportion of national opinion-leaders read the *Times*. One way or another, the *Times*' coverage of the Court filters down into the towns and villages of America. If anything, this indicator overestimates the salience of the Supreme Court.

Crime

During the era of the Warren Court and

even well into the Burger Court, members of the public blamed the Supreme Court for all manner of social maladies—permissiveness, communism, pornography, venereal disease, and the breakdown of the family. An ever-expanding rate of crime figured prominently among the ills ascribed to the Supreme Court. Certainly, an image of the Court as an all-powerful entity unloosing the fetters on social disorder and moral decay does not comport well with the quite circumscribed powers most scholars envision. Even if the Court did have a hand in encouraging the lawless, most academics agree that other influences (e.g., demographics) account for much of the increase in the rate of crime during the 1960s and 1970s. Still, the rate of crime did skyrocket in the midst of the Warren Court's heyday, a time when the accused and the convicted seemed to win a victory every week, and so it is not surprising that some should conclude that the Supreme Court was at fault.

At any rate, when crime goes up, the Court constitutes a logical and handy target for public displeasure. Indeed, of all of the problems that plague the nation, crime provides one of the best tests of the efficacy of the legal and political processes. Courts, after all, have the responsibility of trying and punishing the accused. Just as citizens hold the chief executive responsible for inflation and unemployment, so, too, might the public view the control of crime as peculiarly within the ambit of the Supreme Court. Fault, once placed at the doorstep of the Court, could result in a decline in the public's confidence in the justices. To test this notion, I have used the change in the rate of crime in the quarter previous to the collection of the data on confidence (U.S. Department of Justice, various years). Following the considerations I have outlined, I project that as the rate of crime increases, the level of public support for the Supreme Court will decline.

Judicial Solicitude for the Rights of the Accused

Related to the previous hypothesis, if members of the public become concerned about crime and make a connection between it and the Court, we might reasonably expect some movement in public support as the Supreme Court shifts in one direction or the other concerning the rights of the accused. Statements of the justices both on and off the bench suggest a belief among them that judicial protection of criminal defendants normally goes against the tides of public opinion and often translates into public anger. The public need not monitor the subtleties of changes in the criminal law, and everything we know about citizens' knowledge of the law indicates that, for all but a select few, this would be impossible. Instead, the citizenry might sense the general tenor of the Court's attitude toward the rights of the accused and then reduce or increase confidence accordingly. Since only a small segment has direct contact with the *Supreme Court Reports*, the public would receive cues on the justices' current stance at second- and third-hand from such sources as newspapers, television, radio, and opinion-leaders. In light of the lack of public knowledge, confidence in the Court would probably respond only to relatively gross shifts in judicial policies. This means that we need not worry a great deal over the development of sophisticated and detailed indicators of the content of the Supreme Court's policies in the criminal law. Accordingly, I have relied on the percentage of the cases on criminal law decided against the government as a measure of the Court's solicitude toward the accused in any particular term. There is no apparent difference in the effects of shifts in the Court's state and federal decisions on public support, so I have treated the criminal decisions as one category. The foregoing ruminations suggest that as judicial support for the

accused increases, public support for the Supreme Court will decrease.

Political Events

In previous work on support for institutions and leaders, scholars have demonstrated the crucial effects of discrete political events and circumstances on the rise and decline of public confidence. For example, Mueller (1973) persuasively argues that crises in foreign affairs result in "rallying-around-the-flag" and a subsequent increase in the popularity of the incumbent chief executive (cf. Parker, 1977). Unfortunately for the purposes of analysis, events normally associated with the Court seldom cause a splash of the dimensions of the Mayaguez incident or the Cuban missile crisis. Particular decisions sometimes do gain a fair amount of attention in the elite media of communications, but few single cases—with the exception of a bombshell such as *Dred Scott*—have sufficient weight to shift public attitudes one way or the other. Even if we could isolate a number of crises or landmark decisions, the polling organizations have not gathered data on support for the Court often enough to permit a precise reading on the influence of salient events.

Quite apart from the momentous and controversial decisions of the last two decades, such as *Roe v. Wade* and cases on capital punishment, two easily identifiable political events rank far above others in potential effects on public support for the Supreme Court. Many have commented on the spectacular consequences—at least in the short run—of the Watergate scandal on the structure of government and people's perceptions of politicians. To be sure, the revelation of the innumerable "horribles" sent President Nixon's rating, as well as public confidence in politicians in general, down to the depths. Perhaps paradoxically, however, public stock in Congress and the Supreme Court rose dramatically. Hear-

ings in the Senate and, later, the House Judiciary Committee's work on articles of impeachment placed the national legislature in an uncustomarily positive light. The courts, from the lowest levels to the highest, consistently opposed the president's schemes to place himself "above the law" and out of the reach of the judicial process. These judicial heroics culminated in *United States v. Nixon*, in which the Supreme Court unanimously refused to allow the president to shield himself from legal scrutiny with a claim of "executive privilege." Presidential misbehavior in Watergate created an opportunity for the Supreme Court and Congress to serve in a visible manner as bulwarks of democracy and of law and order. Therefore, I expect that, apart from other influences on confidence, Watergate increased public support for the incumbents of the Supreme Court. To assess the effect of Watergate, I use a dummy variable, scored 1 for August 1974, and 0 otherwise.

The latter part of the administration of Lyndon Johnson marked the beginning of a longer and rather persistent slide downward of public confidence in government and other institutions. Disorders in the streets of large cities, rebellion among students in universities, the morass in Vietnam, President Johnson's pronounced proclivity for hedging the truth—all these and more spelled a precipitous fall from the grace of the relatively trusting and perhaps naive public of the 1950s and mid-1960s. The precise reasons for the increased distrust, however intriguing, need not detain us (see Citrin, 1974; Miller, 1974), for the central point is that the Supreme Court, along with other basic institutions, fell victim to the new dispensation of pervasive cynicism. This we must take into account. Close observers disagree on the exact juncture at which public trust began to dissipate, but we do know from Figure 1 that support for the Supreme Court took the greatest proportionate drop from 1967 to 1971. Hence I

hypothesize that a decline occurred after 1967. To construct a properly specified model of support for the Court, I have included a dummy variable for the Johnson administration, scored 1 for surveys executed in 1966 and 1967, and 0 otherwise. Accordingly, I expect to encounter a positive regression coefficient.

Thus far I have adumbrated several alternative explanations of changes in confidence in the Supreme Court: economic conditions, the rate of crime, presidential popularity, judicial activism, support for the rights of the accused, and political events. Formalization in the fashion of a multivariate model yields:

$$Y_t = \alpha_0 - \alpha_1 X_1 - \alpha_2 X_2 + \alpha_3 X_3 - \alpha_4 X_4 - \alpha_5 X_5 - \alpha_6 X_6 - \alpha_7 X_7 + \alpha_8 X_8 + \alpha_9 X_9 + \epsilon_t, \quad (1)$$

where Y_t represents the degree of confidence; α_1 , the rate of inflation; α_2 , the level of unemployment; α_3 , presidential popularity; α_4 , the number of federal statutes the Court declares invalid; α_5 , the salience of the Court; α_6 , the rate of crime; α_7 , the percentage of support for the accused among the justices in a particular year; α_8 , the effect of Watergate; α_9 , the quantum drop in public trust after 1967; and ϵ_t , random errors. Based on the considerations outlined in the previous paragraphs, I believe we should find $\alpha_1, \alpha_2, \alpha_4, \alpha_5, \alpha_6$, and $\alpha_7 < 0$, and α_3, α_8 , and $\alpha_9 > 0$.

Findings

I present in Table 1 the results of the estimating procedure for the comprehensive model sketched in the previous paragraph. These results portray, at the very least, an encouraging initial step toward a persuasive and powerful explanation of confidence in the Supreme Court. Taken as a whole, the equation provides a good, if not excellent, fit with nearly 80% of the variance explained; six of the nine coeffi-

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Table 1. Confidence in the Supreme Court

Independent Variables	Estimates ^a		Level of Significance
	<i>b</i>	<i>t</i> ratio	
Intercept	45.44	4.58	.000
Political events/conditions			
Watergate	10.58	2.79	.012
Johnson administration	12.53	2.89	.010
Presidential popularity	0.11	1.85	.082
Social/economic conditions			
Rate of crime	-0.00	-0.01	.986
Rate of unemployment	-0.55	-0.79	.436
Inflation	-0.51	-1.24	.231
Judicial actions			
Salience of the Court	0.08	1.97	.065
Invalidation of federal laws	-2.35	-1.90	.074
Court's support for defendants' rights	-0.21	-1.98	.064
	<i>R</i> ² = .79	<i>DF</i> = 17	<i>N</i> = 27

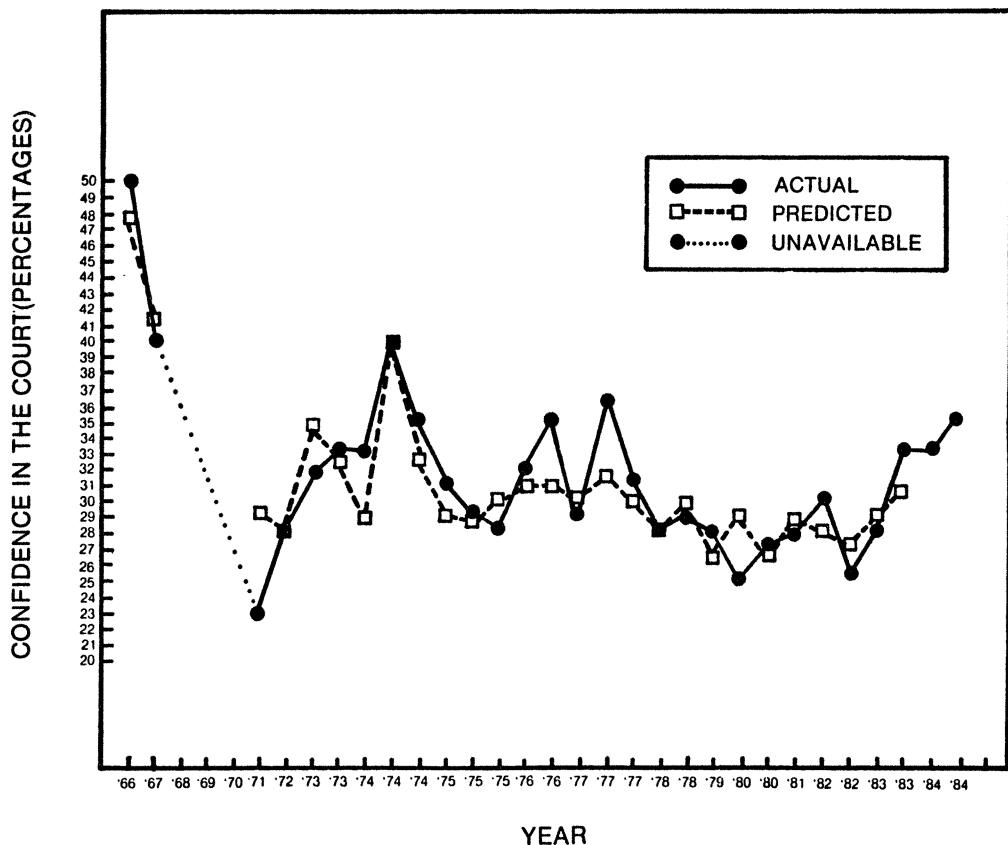
^aAfter testing for the significance of the autoregressive terms in an initial run, I have excluded them from this equation.

cients reach statistical significance, and the signs of eight of the nine run in the correct direction.⁴ Salience in the Court alone goes astray for reasons discussed shortly. According to the intercept, about 45.4% of the public would express considerable confidence in the incumbents of the Court if the several independent variables equalled zero. To be sure, students of presidential popularity achieve uniformly more impressive coefficients of determination, oftentimes as the result of using a lagged dependent variable. Yet the fit in Table 1 compares quite favorably with previous reports on evaluations of Congress (Parker, 1977) and would appear even better had I chosen to run the risk of including a lagged version of confidence in the Supreme Court. Figure 2 illustrates how the estimates track with the actual observations; with the exception of 1971, October 1976, and July 1977, the model performs remarkably well.

Over the period from 1966 through 1984, ebbs and flows of confidence in the

Court responded, to a surprisingly large extent, to the happenstances of political events. During and immediately after the consummation of Watergate and the resignation of President Nixon, support for the Supreme Court shot up more than 10 points. The Court benefitted from the president's woes, as I mentioned earlier, in part because of its association with defenses of the "Constitution" against what many in 1973 and 1974 perceived as frontal assaults on the underpinnings of the legal order. Similarly, before wholesale disillusionment and demoralization spread at the end of the Johnson administration, support for the justices ran a full 13% above the norm for the entire period under investigation ($\alpha_9 = 12.5$). Public attitudes toward the Court, as well as toward virtually every element of the American "Establishment," fell in the late 1960s from the lofty pedestals of the years of Eisenhower and Kennedy. The Court may have suffered somewhat more than others from loss of public esteem because

Figure 2. Actual vs. Predicted Patterns of Confidence in the Court:
1966-1984



of perceived connections with problems of race, crime, and cultural disorder, but the justices shared the company of a distinguished group.

Confidence in the Court, unlike support for Congress and the president, reflects the palpitations of economic conditions in what I can most charitably describe as a muted fashion. Bad economic times do not, of course, translate into increases in public esteem for the justices, but they do not seem to hurt a great deal. Thus, for example, the rate of unemployment failed to muster a statistically significant coefficient even as it appeared to manifest the expected negative effect ($\alpha_2 = -0.55$; $p < 0.43$). Infla-

tion presaged, as I hypothesized, deleterious consequences for public support for the Court; for each increase of 1% in the consumer index of prices, the proportion that recorded considerable esteem dropped more than half of 1% ($\alpha_1 = -0.51$; $p < .23$). This relationship, though far from secure, survived a passel of tests I contrived to detect spuriousness. How can we account for the differential effects of inflation and unemployment? For one, although most of us express concern over the plight of the jobless, the rate of unemployment directly affects only a fraction of the citizenry; even at the high tides of economic depression, only a few feel the pinch. To the contrary, because

everyone purchases goods and services, inflation, particularly at high levels, presumably holds a greater potential for wreaking havoc with the overall public mood and feelings of confidence. It is commonplace that extended bouts of inflation call into doubt the performance of political and economic actors. That jobs and the stability of prices should on the whole make only a modest dent in confidence in the Court reflects, without doubt, the lack of any direct connection in the public mind between the justices and economic activities. In an odd way, then, the lack of compelling relationships between confidence and economic conditions testifies to the rationality of the ebb and flow of public evaluations of the Supreme Court.

Surprisingly, despite record-shattering rates of change in the 1960s and 1970s, crime as recorded by the F.B.I. had no influence on the amount of confidence the public bestowed upon the Supreme Court. Indeed, of all of the variables, the rate of crime manifests the most diminutive regression coefficient and the least significant *t* ratio in the statistical sense. In the face of steep and very real increases in the rate of crime, the U.S. public apparently failed to hold the Court responsible for this social problem. The middle 1960s, a time of accelerating rates of crime, encompassed high levels of support for the Supreme Court; the late 1970s, a period of markedly less-pronounced movements upward in the incidence of criminal activities, produced relatively low evaluations of the justices among the public. Others have shown that the mass public, in thinking about personal safety, responds not to actual, official reports of the incidence of personal and property crimes but, rather, to the mass media's coverage of the problem of crime (MacKuen, 1979). Thus, if the local newspaper or television station dramatizes the threat of crime, members of the public manifest more anxiety about personal

security. Similarly, in making choices on the size of requests and appropriations, the president and Congress apparently weigh the mass media's coverage of crime as heavily as the F.B.I.'s measures of crime (Caldeira and Cowart, 1981; but see Caldeira, 1981). In sum, from the results in Table 1 and earlier research, it seems likely that the media must focus on crime before people express much concern and place blame on the Court.

Proponents of the view that the citizenry associates the justices and the Supreme Court with the presidency can find considerable succor in the statistical results in Table 1. Presidential popularity does indeed exercise a statistically significant, albeit modest, influence on the amount of confidence the public accords the Court. For each 10% increase in popular approval of the president, *ceteris paribus*, public confidence in the Supreme Court increases by approximately 1% ($\alpha_3 = .114$; $p < .082$). Furthermore, in analyses not presented here, the relationship between presidential popularity and confidence in the Court grows ever stronger and more secure in successively more parsimonious versions of the model. These results, moreover, should encourage scholars who have hypothesized that the amount of public support for various institutions tends to move upward and downward together—to a considerable degree in lock step. Members of the public, in this conception, record happiness or displeasure with our institutions across the board. Some auxiliary statistical analyses provide further evidence of this phenomenon. For example, confidence in the Court and in Congress track closely during much of this period.⁵ Without more extensive data, however, I cannot make an informed choice between the two formulations outlined here. Let it suffice to say that, for whatever reason, presidential popularity and confidence in the Supreme Court most of the time move in the same direction.

Contrary to conventional wisdom, in the case of the Court, familiarity does not breed contempt—or so the results in Table 1 seem to suggest. Greater public visibility of the Court, in fact, translates into a higher degree of support among the public. For each increase of 12% in the amount of coverage of the Court in the *New York Times*, *ceteris paribus*, Harris and NORC have recorded on average an increase of 1% in confidence in the Supreme Court ($\alpha_s = .077$; $p > .065$). Here, as in some other instances, the relationship gains strength and security in successive variations of the basic model. Some scholars, as I noted earlier, have suggested the possibility that public knowledge of the Court leads to greater support for the justices (Kessel, 1966; Murphy et al., 1973, pp. 41–43). Yet the weight of evidence from cross-sectional studies, I thought, went rather clearly against the happy idea that an appropriately enlightened public would demonstrate a proper appreciation of the Supreme Court (Murphy et al., 1973, pp. 42–43). So the fundamental question remains, Why does public opinion behave in this fashion? It is, after all, difficult to believe that the Supreme Court reaps increased public esteem from publicity on the controversial decisions the justices must inevitably hand down each term. Quite to the contrary, I believe, we can account for the positive association between the salience of Court and public confidence in the justices if we concentrate on the institutional focus of much reporting in the newspapers. Apart from the usual flow of stories on decisions, the *New York Times* and other newspapers on occasion write up individual justices or the Court as a whole, for the most part divorced from the content of the docket. Even so-called investigative stories on the Supreme Court or particular justices almost always present the institution in an extraordinarily positive light. The conjunctions between the ebb and flow of the

Times's coverage of the Court and the series on public confidence provide some circumstantial evidence for these speculations. In the final analysis, I suspect the content of the stories on the Court matters a good deal more than the sheer number. That, of course, is an empirical issue and one someone can test with further data.

As expected, judicial activism, in the form of invalidations of federal statutes, cost the Supreme Court dearly in the court of public opinion. Interpretation of the regression coefficient starkly illustrates the high price the Court pays for opposing the will of Congress. For each federal statute the Court has struck down in the past 17 years, public confidence in the justices has declined about 2.4% ($\alpha_4 = -2.35$; $p < .07$). The losers of litigation, inside and outside the Court, have made such a claim for so long and so many times that the putatively negative consequences of judicial activism have risen to the status of a shibboleth. Nonetheless, the evidence presented here buttresses this ancient pearl of wisdom. To the extent that federal law at any point represents the strong preferences of a majority, the Supreme Court treads on thin ice in the act of invalidating large numbers of statutes. Over the years, as the Supreme Court invalidates federal laws, the justices amass a coalition of enemies, groups and individuals whose views of public policy have lost favor and who will naturally accord the high bench less confidence. Expressed consistently, judicial opposition to Congress may in and of itself lead to resentment and loss of trust among the public—not because of any great love of the national legislature but, rather, as a result of a perception that the Court has upset the balance of our constitutional system. Citizens may indeed view Congress as the “broken branch,” but they also have a stake in the process by which national officials check one another. There is, of course, no way of knowing with these data why the

public responds in a negative fashion to judicial negations of congressional statutes. Regardless of the precise mechanism, however, I have adduced strong evidence that judicial activism does exact a significant cost in the coin of public confidence.

Public support has, in fact, responded in a significant fashion to changes in the Court's solicitude for the rights of individuals accused of crime. As the Supreme Court has manifested proportionately greater sympathy for criminal defendants, the public has in turn registered a sharp drop in confidence in the justices. More specifically, for every increase of 10% in the share of cases decided in favor of the accused, public support has declined somewhat more than 2% ($\alpha_7 = -0.21$). Two percent does not sound like a devastating blow, but concrete applications provide a graphic illustration of the consequences of the Court's drift in public policy toward the accused: as an empirical matter, judicial support for criminal defendants varied from 12% to 83% during the period from 1966 to 1984, and a shift of 20% or more from year to year happened several times. It goes without saying that members of the public do not make subtle distinctions in their thinking about the direction of the criminal law, and in view of the soup-like quality of individual responses to law and legal institutions, I do not wish to argue that the citizenry forms sharply defined conceptions of the Court or its policies. However, these results suggest that the mass public as a whole responds in a systematic fashion to shifts in the public policies the justices enunciate. Clearly, the public has little sympathy for either the esoterica of criminal procedure or the people who most often utilize these safeguards and apparently translates these attitudes into lack of confidence in the Court. Thus, like judicial activism, solicitude for the accused exacts significant costs to the Supreme Court among the citizenry.

Conclusion

Public support for the Supreme Court varies a great deal over time and eludes simple accounts, but in this article I have attempted to trace meaningful shifts in confidence and, more importantly, to frame and evaluate alternative explanations of the dynamics of esteem for the Court. These rival hypotheses include political events; the rates of crime, unemployment, and inflation; presidential popularity; judicial activism; salience of the Court among the public; and the justices' solicitude for the rights of the accused. Broadly speaking, I conclude that during the period from 1966 through 1984, crime and economic conditions played relatively small roles as determinants of public confidence and that political events and judicial actions registered striking impacts on changes in the public's view of the justices. More specifically, in descending order, the Johnson administration, Watergate, judicial support for the accused, the salience of the Court, invalidations of federal laws, and presidential popularity brought about statistically significant movements in public feelings toward the justices of the Supreme Court during this period.

What do these results mean? Citizens, as individuals, evince little or no knowledge of or concern for the Court; to the extent that they express sensible opinions, they base judgments on the vaguest and crudest of ideological frameworks. Social scientists have demonstrated this over and over again, and yet, in the aggregate, shifts in public confidence in the Court march to the beat of a markedly policy-oriented drummer. Public evaluations of the Court do not float freely, in a seemingly aimless fashion, unconnected to the perturbations of the political and legal processes. Rather, in evaluating the justices, the public appears to respond to events on the political landscape and to actions taken by the Supreme Court. If,

for example, the Court adopts a position against a law-making majority, the public accordingly exacts a cost in confidence—a rational calculus indeed. In broad outlines, then, the dynamics of aggregate support for the Court bear a remarkable resemblance to those for Congress and the presidency (Kernell, 1978; Parker, 1977). It is easy to forget that individuals' responses to the presidency and Congress hardly constitute a model of clarity or stability, for scholars of these institutions have spoiled us with crisp, neat political explanations of presidential popularity. Until now, however, scholars of the Court have worked solely with individual-level data and have, naturally enough, emphasized the poor quality of public evaluations of the justices. In this article, with aggregate data, I have portrayed the relationship between the public and the Court as somewhat more rational and calculated than have previous researchers. I do not, of course, wish to press my claim for rationality very far, but I do think that in the literature we have oversold our pessimistic view of public evaluations of the Court, just as students of elections for many years unfairly characterized voters as ignorant and apathetic. For the Supreme Court, as for Congress and the presidency, the movement of public—as opposed to individual—opinion comes much closer to meeting our conventional prescriptions.

Notes

I appreciate the assistance of Brad Lockerbie, a graduate student at the University of Iowa, who gathered much of the data for this project. Chia-Hsing Lu of the Laboratory for Political Research at Iowa helped in the construction of files and the workings of SAS.

1. On a number of occasions during the 1970s, Gallup asked the public, "Would you tell me how much confidence you, yourself, have in each one [a list of institutions, of which the Court was one]—a great deal, quite a lot, some, or very little?" Gallup apparently taps a phenomenon one might label *diffuse support*. Such support in fact and by definition

varies little and offers scant play for the investigator. Indeed, one scholar has argued, in part on the basis of Gallup's polls, that public ratings of the Court have changed little in 50 years (Handberg, 1984). By contrast, NORC and Harris focus on the performance of the current justices, very much as in evaluations of the president. A respondent in this context introduces policy-oriented considerations as a matter of course—or at least more so than in responding to Gallup's items. Since I aim to disentangle the connection between public opinion on the one hand and social conditions and political events on the other, the data from Harris and NORC suit my purposes well.

2. In Figure 1, and later in Figure 2, I have chosen to include the years 1968, 1969, and 1970 in order to retain a clear temporal sequence. Instead of interpolating for these years, I have used only actual observations in the statistical analyses.

3. Of course, I could just as easily have used the number of state laws the Supreme Court invalidated in a year as an indicator of judicial activism. I chose federal law instead because I wanted to capture conflict between the Court and national law-making majorities. In future work, I hope to refine this measure to take into account the age of law-making majorities.

4. Because of the ample specification of the model, serial correlation does not pose a threat here. For that matter, in many diagnostic analyses I detected no signs of intolerable levels of multicollinearity.

One reader has raised a question about the effects of the very high observations of confidence in the Court in 1966 and 1967 on the estimates of the model's coefficients. These observations, he suggested, might overwhelm the rest of the series and color all of the results. To test this notion, I removed the data for 1966 and 1967, deleted the variable for the Johnson administration, and ran the statistical analysis again. The new results are quite similar to those presented in Table 1; the main difference is that the quality of the fit declines.

5. Yet in preliminary multivariate analyses, I estimated the effect of confidence in Congress on support for the Court and found no significant relationship. That, of course, indicates the spuriousness of the simple relationship between the levels of confidence in the two institutions.

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