

The Semiconstrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation

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Numerous studies have found that elite and popular preferences influence decision making on the U.S. Supreme Court; yet, uncertainty remains about when, how, and why the Court is constrained by external pressure. I argue the justices are constrained, at least in part, because they fear nonimplementation of their decisions. I test this theory by utilizing a recent study of judicial power, which finds the Court enjoys greater implementation power in “vertical” cases (those involving criminal and civil liability) than in “lateral” cases (all others; e.g., those involving schools or government agencies). I find that Court constraint is strongest in important lateral cases—those cases in which implementation depends on support from nonjudicial actors. My findings suggest that Supreme Court constraint is driven by the justices’ fear of nonimplementation and is, therefore, dependent on institutional context.

It is therefore impossible to speak in the abstract of the power or function of the Supreme Court. The Supreme Court, like other agencies, has different powers and different functions depending on who wants it to do what, when and in conjunction with or opposition to what other agencies or political forces. If a final answer can ever be offered to the question, What is the role of the Supreme Court? it will be achieved by correlating various powers and functions in specific areas, rather than by a general examination of the nature of the Court. (Shapiro 1964, 2)

In June 2012, the U.S. Supreme Court issued its landmark decision in the Patient Protection and Affordable Care Act cases. In the months leading up to the ruling, President Obama and congressional Democrats “waged a not-so-subtle pressure campaign on the Supreme Court,” urging the justices to uphold the Act. Senator Charles Schumer warned that invalidating the health care law would place Medicare, Social Security, and food-safety laws “in jeopardy,” and the president cautioned that striking down the individual mandate would be “unprecedented” (Bolton 2012). Yet, despite these ef-

forts, the justices insisted they were impervious to external pressure. When asked about the health care case, Justice Thomas dismissed the possibility of outside influence: “You stay focused on what you’re supposed to do. All that other stuff is just noise” (Lichtblau 2012, 2). Three months later, Chief Justice Roberts unexpectedly joined the liberal wing of the Court and voted to uphold the health care law.

Notwithstanding assurances from Justice Thomas, Court observers have long noted its tendency to “follow th’ illicion returns” (Murphy 1964; Shapiro 1964). Scholars have amassed considerable evidence that public opinion constrains the justices’ decision making (e.g., McGuire and Stimson 2004), and elite preferences constrain their exercise of judicial review (e.g., Clark 2009). Yet, others raise doubts about the extent and nature of external influence (e.g., Giles, Blackstone, and Vining 2008; Owens 2010), and scholars continue to debate the causal mechanism behind this phenomenon (e.g., Casillas, Enns, and Wohlfarth 2011; Segal, Westerland, and Lindquist 2011). In this article, I evaluate an often mentioned, yet untested theory of Supreme Court constraint: I argue the Court is constrained, at least in part, because the justices fear nonimplementation of their decisions. Accordingly,

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the effect of external pressure is strongest when the threat of nonimplementation is most severe. When the justices can confidently assume implementation of their decisions, they are less constrained by external forces.

Testing this theory requires differentiating between cases in which the Court can reliably induce implementation and those in which it cannot. In my recent study of Supreme Court power, I find the Court possesses significant implementation power in “vertical” cases, those in which decisions can be directly implemented by lower courts (Hall 2011). These vertical cases generally involve criminal prosecution, civil liability, and judicial administration. However, in “lateral” cases, those in which the Court relies on nonjudicial actors, implementation generally depends on a lack of popular opposition, and significant popular opposition only arises in especially prominent cases. In this article, I employ this conception of Supreme Court power to test a new theory of differential judicial independence. If external influence is partially driven by a fear of nonimplementation and that fear is only warranted in important lateral cases, then the Court should be most constrained in those cases. Stated another way, the Supreme Court’s independence should correspond to its power: greater implementation powers should be associated with less constraint. Accordingly, I argue that the U.S. Supreme Court is semiconstrained; i.e., external political forces have greater influence on the Court’s decision making in some cases than in others, depending on the institutional context of the case.

My analysis offers several important contributions to the study of the U.S. Supreme Court. First, I find strong evidence that the Court is sometimes constrained by public opinion and elite preferences. Second, contrary to previous studies, I find that external influence is particularly strong in important cases. Third, my findings suggest that Court constraint is at least partially driven by the justices’ fear that nonjudicial actors will fail to implement unpopular rulings. And finally, because the Court possesses varying implementation powers in different issue contexts, the justices’ strategic considerations also vary by case type. Accordingly, the degree to which the Court is constrained in a particular case depends on the Court’s implementation powers in that issue context.

I begin by outlining a new theory of Supreme Court constraint based on the Court’s differential implementation powers. Next, I discuss matters of data and methodology, and then I test my theory of a semiconstrained Court in two separate analyses. In both analyses, I explore the differential influence of external pressure on the U.S. Supreme Court in vertical versus lateral cases. The first analysis examines the ideological outcome of Supreme Court decisions. The second analysis examines the Court’s use of judicial review. I find the Court is signif-

icantly more constrained in important lateral cases than it is in other cases; i.e., the Court enjoys greater independence when nonimplementation is unlikely. This finding suggests the justices are constrained, at least in part, by a fear that nonjudicial actors may fail to implement unpopular decisions.

Causal Paths to Supreme Court Constraint

Many scholars agree that the Supreme Court is constrained by external political forces, but there is no consensus regarding the causal path between external pressure and the Court’s decisions. Proponents of the separation-of-powers (SOP) model suggest that the Court refrains from moving policy to its own ideal point when doing so would result in Congress overriding its decision through a new statute (Ferejohn and Shipan 1990; Gely and Spiller 1990). If the justices rationally anticipate congressional overrides, they might even feel constrained in constitutional cases (Dahl 1957; Epstein, Knight, and Martin 2001; Meernik and Ignagni 1997).

The evidence for the rational anticipation narrative is mixed at best. A few studies suggest the justices engage in this behavior (e.g., Spiller and Gely 1992), but most have found little or no evidence of an SOP dynamic (see Segal and Spaeth 2002, chap. 8). There are also theoretical reasons to doubt that override is a significant concern for the justices. An override “may undermine the Court’s ideological preferences with respect to a specific statute, [but] it arguably poses no meaningful threat to the Court’s institutional resources or status” (Segal, Westerland, and Lindquist 2011, 93). Segal, Westerland, and Lindquist (2011) explicitly test whether the justices rationally anticipate the possibility of override and find no evidence to support that claim.

Instead, Segal, Westerland, and Lindquist find that the justices are constrained by their concern for “institutional maintenance”; i.e., the Court “appear[s] to recognize its broader institutional position vis-à-vis the elected branches and modify its decisions accordingly” (2011, 102). The Court might defend its institutional power and legitimacy by avoiding decisions that could provoke a congressional rebuke. Rosenberg (1992) highlights numerous sanctioning mechanisms at Congress’s disposal, including jurisdiction stripping, budget slashing, Court packing, and impeachment. Successful attempts to sanction the Court can be very costly to its power and legitimacy (Epstein, Knight, and Martin 2001); even unsuccessful attempts might be a credible signal of waning judicial legitimacy (Clark 2009, 972). Of course, the more important

the decision, the more likely it is to arouse a congressional rebuke. Accordingly, “[i]n the context of judicial review, the justices may be particularly sensitive to the preferences of those actors in the coordinate branches...” (Lindquist and Solberg 2007, 74). And, if the justices fear sanctions, they probably also pay attention to trends in public opinion when rendering decisions: “[D]ecisions ignoring the prevailing tides of public mood risk alienating the mass public, inciting negative reactions from the elected branches, and perhaps compromising the Court’s legitimacy” (Casillas, Enns, and Wohlfarth 2011, 76; see also Epstein and Knight 1998; Flemming and Wood 1997; McGuire and Stimson 2004; Mishler and Sheehan 1993, 1996).

Court sanctions are used so rarely, it seems unlikely that the justices actually feel threatened by their potential use (Segal, Westerland, and Lindquist 2011, 92), and many studies fail to find evidence of this institutional constraint (Owens 2010; Sala and Spriggs 2004; Segal and Westerland 2005). Of course, the absence of sanctioning behavior by Congress might indicate the threat is working. The ramifications may be so severe for the justices that they always strategically avoid congressional rebukes; hence, actual sanctions are unnecessary (Murphy 1964, 174; Segal, Westerland, and Lindquist 2011, 92). Nonetheless, the almost complete absence of sanctioning behavior by Congress raises doubts about the theory. Additionally, the Supreme Court is generally thought to enjoy “a reservoir of favourable attitudes or good will” that causes citizens to “accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (Gibson, Caldeira, and Spence 2003, 537; Easton 1965, 273). In fact, recent scholarship suggests the Court’s robust public support is highly resistant to change, even when the justices issue extremely controversial decisions (Gibson, Caldeira, and Spence 2003; Price and Romantan 2004). If the Court enjoys such extensive public support, strategic avoidance of sanctions may be unnecessary; at the very least, the fear of sanctions may not be the sole source of Court constraint.

Instead, the justices’ concern for institutional maintenance may be partially rooted in a fear of nonimplementation. Frequent nonimplementation of the Court’s rulings might reduce its power and degrade its legitimacy over time. Accordingly, the fear of nonimplementation may motivate the justices to heed the preferences of elected officials, even when override and sanctions are unlikely. Numerous scholars point to this fear as a potential source of constraint. For example, Cross and Nelson suggest courts are likely to respond to congressional preferences in order to avoid any “reluctance to implement the spirit and letter of the court’s opinion” (2001, 1437).

Similarly, Owens argues the Court may be constrained because “[p]residents can refuse to enforce the Court’s decisions and order Cabinet Secretaries and other high-ranking officials to ignore them” (2010, 414). The fear of nonimplementation may also prompt the Court to heed the public’s preferences. Casillas, Enns, and Wohlfarth suggest, “[w]ith little formal institutional capability to enforce the Court’s decisions and to compel the elected branches or the public to respect its judgments, justices must often act strategically in their opinion writing, adjusting to shifts in the public mood in order to ensure the efficacy of their decisions” (2011; see also Epstein and Knight 1998; McGuire and Stimson 2004; Mishler and Sheehan 1993, 1996; Murphy 1964).

Though it may be difficult for elected officials to sanction the Court, it is comparatively easy for them to ignore its decisions. The Court has traditionally been viewed as holding “no influence over either the purse or the sword” (*Federalist* 78). In fact, many argue that the Court is severely limited in its ability to induce social or political change (Horowitz 1977; Rosenberg 2008), and “[i]mplementation of the Court’s policies is far from perfect” (Baum 2003, 177).

However, other studies suggest the Court may possess significant power to affect social change, at least in certain contexts (e.g., Howard and Steigerwalt 2012; Keck 2009; McCann 1994). The Court is especially successful at altering behavior when it issues rulings related to criminal law, civil liability, or judicial administration, regardless of public opinion (Hall 2011). The Court tends to alter behavior in these “vertical” cases because implementation is controlled by lower courts in the judicial hierarchy, and these courts overwhelmingly adhere to Supreme Court precedent (Brent 1999; Gruhl 1980; Hoekstra 2005; Songer, Segal, and Cameron 1994; Songer and Sheehan 1990).¹ Of course, lower-court compliance is not perfect; judges sometimes exercise considerable discretion when making decisions (Baum 1978; Scott 2006). Nonetheless, lower-court defiance is rare, and the Court’s “hierarchical control appears strong and effective” (Westerland et al. 2010, 891).

The Court does not enjoy the same degree of policy control in cases unrelated to criminal law, civil liability, or judicial administration. Rulings in these “lateral” cases must be implemented by government actors outside the judicial hierarchy, usually elected officials or their agents. These elected officials must consider their constituents’ interests (Downs 1957; Fenno 1978; Mayhew 1974) and

¹ Public officials outside the judicial hierarchy may try to hinder the implementation of vertical rulings, but I find that lower courts generally succeed at implementing these decisions (Hall 2011).

generally respond to public opinion (Erikson, MacKuen, and Stimson 2002; Page and Shapiro 1983; Soroka and Wlezien 2010). Consequently, the implementation of Court rulings in lateral cases depends on the popularity of those rulings, whereas the implementation of rulings in vertical cases does not (Hall 2011).

The Court generally fails to implement rulings in lateral cases when it faces “strong public opposition” (Hall 2011, 18). Of course, the Court never faces such opposition when it decides cases on “issues unworthy of legislative attention”; accordingly, implementation failures tend to occur in “especially important Supreme Court rulings” (22), operationalized as those “rulings thought especially noteworthy by Court-watchers” at the *New York Times* and the *Washington Post* (167–72). In other words, the Court tends to influence behavior unless it issues unpopular rulings in important lateral cases.

This differential power dynamic creates an avenue for evaluating whether the fear of nonimplementation drives judicial constraint. If the Court is at least partly constrained by a fear of nonimplementation, then the degree to which it is constrained should depend on its implementation power. Therefore, external constraint should be most prominent in important lateral cases because those are the cases in which implementation depends on public support. Accordingly, I examine two categories of cases that I expect the justices to view as particularly important: cases that were salient to contemporary Court watchers in the media and cases involving judicial review of federal statutes.

Vertical versus Lateral Cases

My theory of Supreme Court independence hinges on the conceptual distinction between “vertical” and “lateral” cases. Vertical cases are those “in which lower courts can implement policy change” (Hall 2011, 16). Vertical cases usually involve situations in which the Court can produce change by requiring a procedure for, or establishing outright immunity from, criminal prosecution or civil liability. Because criminal and civil penalties are administered through the judicial system, lower-court judges can directly implement these decisions by simply not convicting defendants or not holding them liable unless the Supreme Court’s requirements are satisfied. Vertical cases also include those related to the administration of lower courts (e.g., free press in the courtroom). In contrast, lateral cases involve situations in which lower-court judges play no inherent role in the policy process and, therefore, do not directly control implementation. In these

situations, the justices must rely on nonjudicial actors for the efficacy of their rulings. To illustrate, consider two paradigmatic examples: *Roe v. Wade* (a vertical case) and *Brown v. Board of Education* (a lateral case).

In *Roe*, the Court ruled that women have a constitutional right to obtain an abortion, at least in certain circumstances. Even before defendants challenged the constitutionality of abortion laws, lower-court judges played an integral role in the process of outlawing abortion; in practice, this policy required prosecutors to charge abortionists with a crime and lower courts to convict them of that crime. Therefore, the successful implementation of the Court’s decision in *Roe* required nothing more than lower-court judges acquitting any person charged under an abortion statute. Consequently, the number of legal abortions in the United States significantly increased following *Roe* (Hall 2011, 38–44), and the decision had far-reaching societal effects (e.g., Bitler and Zavodny 2002; Donohue and Levitt 2001). The ruling was effective, despite some strong public opposition, because the case involved a vertical issue; i.e., lower courts could directly implement the decision. A similar dynamic occurred in vertical rulings involving flag desecration, obscenity, the exclusionary rule, the right to counsel, and the Gun-Free School Zones Act (Hall 2011, 38–96).

In vertical cases, the Court can alter the behavior of nonjudicial, as well as judicial, actors by “designating a particular class of citizens as immune from criminal prosecution” or civil liability (Hall 2011, 163). This class of citizens might be defined by establishing their liberty to engage in a particular activity; e.g., *Roe* immunized those charged under an abortion statute from criminal conviction. The Court might also define a class by establishing procedural rights that are due to certain individuals; e.g., *Miranda v. Arizona* immunized from criminal conviction those convicted based on a confession without being read Miranda warnings. By immunizing these individuals from prosecution or liability, the Court is able to prompt changes in private behavior (such as doctors providing abortions) and government behavior (such as police reading Miranda warnings) (61–71). Consequently, the Court may have little control over the distribution of public resources or the administration of public agencies, but it can influence policy by immunizing people from criminal and civil liability. Thus, “the Court may not hold the sword or the purse of our society, but it does hold the keys to our jail, and every time it turns a key it wields great power” (163).

The Court’s decision in *Brown*, however, occurred in a very different institutional context. In *Brown*, the Court ruled that public schools must desegregate. Of course,

lower courts play no inherent role in the administration of public schools; the judiciary's involvement in this policy process started only after litigants challenged segregation. Accordingly, the actual desegregation of schools had to be administered by local school boards and other nonjudicial actors. Lower-court judges could try to encourage implementation by issuing injunctions or, in extreme situations, holding resisters in contempt, but implementation ultimately depended on the cooperation of nonjudicial public officials who tend to follow popular preferences. Consequently, most public schools in the Deep South remained segregated for a decade after *Brown* due to intense public pressure (Klarman 2004). Only in the border states, where popular opposition was weaker, did the Court's ruling have any effect (Hall 2011, 127–30; Rosenberg 2008, 72–107). In other words, the Court's decision was not implemented because it was a lateral ruling that faced strong public opposition. Similar patterns appear in lateral rulings related to school prayer, censorship in school libraries, and minority set-aside programs (Hall 2011, 130–47).

Notice that whether a case is vertical or lateral is determined by the institutional context of the case, not by any action on the part of the justices. Lower courts are inherently involved in convicting abortionists, regardless of the content of the Supreme Court's ruling. Similarly, public schools were not administered by lower courts before *Brown*, and there is nothing the justices could have written in their opinion to change that fact. This institutional context shapes the options available to the justices in any given case. Of course, the Court always has the option of approving the status quo by dismissing a case, upholding a statute, and so on, and this option would avoid non-implementation problems. But almost every case offers the opportunity for the justices to alter policy, and their likelihood of success may well influence whether they take that opportunity.

Analysis

I test my theory of a semiconstrained Court in two separate analyses. First, I evaluate the influence of public opinion and elite preferences on the ideological outcome of Supreme Court decisions. Second, I evaluate the influence of these external forces on the Court's decision to invalidate federal statutes. Each of these analyses confirms that external pressures exert stronger influence when non-implementation is a concern.

Both of my empirical analyses require coding Supreme Court cases as either vertical or lateral. I have previously coded cases based on a careful analysis of

each case's institutional context (Hall 2011). Unfortunately, that approach is inefficient for coding thousands of Supreme Court decisions. Instead, for this analysis, I utilize issue codes in the U.S. Supreme Court Database² to facilitate the coding process. Cases were coded as vertical if they involve potential criminal penalties, potential monetary damages, or the internal administration of lower courts. All other cases were coded as lateral.

Many of the issue codes in the Supreme Court database clearly indicate that cases are vertical or lateral. For example, I code all cases in the "criminal procedure," "liability, punitive damages," and "attorneys" issue categories as vertical because they involve criminal penalties, civil liability, and judicial administration, respectively. I code all cases in the "voting," "desegregation," "affirmative action," and "reapportionment" categories as lateral because they do not. Instead, cases in these issue categories involve suits brought by private citizens to compel changes in the administration of nonjudicial government agencies.³ Unfortunately, some issue categories do not clearly indicate whether cases are vertical or lateral. For these categories, I took a random sample consisting of 20% of all cases in the category. I then read the syllabus for each case in the sample to evaluate whether the case involved criminal prosecution, civil liability, or judicial administration. If the cases in the sample were either all vertical or all lateral, I coded all cases in the issue category accordingly. If the sample contained both vertical and lateral cases, I individually coded every case in the issue category.

Specific details about the coding of issue categories and cases, as well as brief explanations for these coding decisions, are provided in the online supporting information. As a validity check, I compare my case coding to my previous hand coding of the 59 cases in my judicial power study. My issue-based coding decisions agree with the previous coding in 56 of these 59 cases (95%). I discuss the specific circumstances of disagreement in the supporting information.

Although most cases are clearly vertical or lateral, some borderline cases exist. For example, many cases in the dataset involve Title VII of the Civil Rights Act of 1964 or the Age Discrimination in Employment Act (ADEA). Some of these cases are clearly vertical because they

²Available at <http://scdb.wustl.edu/>.

³In the supporting information, I present additional robustness checks excluding criminal procedure and civil rights cases to ensure that my results are not driven by one of these case categories. My findings are robust to the exclusion of either or both of these case categories.

involve private suits for monetary damages.⁴ Others involve suits filed by the Equal Employment Opportunity Commission (EEOC) to enforce an order against an employer.⁵ These situations resemble criminal cases because a government agent must go through the judiciary to penalize a private party. Finally, some of these cases involve a suit filed by a private party seeking an injunction against a particular practice by the EEOC.⁶ These cases initially appear to be lateral because a private party is seeking a judicial order to alter the behavior of a nonjudicial government actor. However, most of these rulings could ultimately be enforced through lower courts in suits for monetary damages. Accordingly, I code all of these cases as vertical. Yet, one might argue that all of these cases should be coded as lateral because Title VII and the ADEA are officially enforced by the EEOC, a nonjudicial independent agency. In the supporting information, I run several analyses in which I change the coding of various borderline cases. My results are robust to all of these alternative coding decisions.

Supreme Court Decision Making

I begin by considering every U.S. Supreme Court decision from the 1951 term through the 2007 term.⁷ My dataset consists of 6,404 cases. I code the dependent variable as the ideological direction of the decision (1 = liberal decision, 0 = conservative decision).⁸ I consider several factors that might influence the justices in their decision making: the justices' ideology, public opinion, elite preferences, case salience, and the institutional context of the decision; i.e., whether the case is vertical or lateral.

The Court's decision making is undoubtedly influenced by the ideology of the justices themselves (Segal and Spaeth 2002). I include natural court fixed effects to

control for any possible impact of the Court's composition. I also control for *Court Ideology* using the Judicial Common Space score of the median justice on the Court to control for ideological variation within natural courts (Epstein, Knight, and Martin 2007).⁹ I reverse the sign of the scores so that higher values indicate more liberal preferences. Accordingly, I expect a positive relationship between Court Ideology and decision making.

To measure the influence of public opinion, I employ the Stimson Policy Mood Indicator, which includes information from hundreds of public opinion survey questions on political issues asked at repeated points over time (Stimson 1999).¹⁰ The Stimson Policy Mood Indicator is used for almost all studies of public opinion's influence on the Court because it captures the public's shifting preferences along the standard liberal-conservative policy dimension over time (e.g., Casillas, Enns, and Wohlfarth 2011; Giles, Blackstone, and Vining 2008; McGuire and Stimson 2004). Higher values of *Public Mood* indicate more liberal public ideology; therefore, a positive relationship between Public Mood and the Court's decision making suggests that public opinion influences the justices.

To measure the influence of elite preferences, I construct a measure of *Congressional Ideology* by taking an average of the Poole and Rosenthal Common Space scores (1997) for the median House and Senate members in each year. These Common Space scores provide reliable and comparable measures of congressional policy preferences on the standard left-right dimension over time. I reverse the sign of the scores so that higher values indicate more liberal preferences. Therefore, a positive relationship between Congressional Ideology and decision making suggests that elite preferences influence the justices.

I control for case *Salience* for two reasons. First, my findings may be biased if lateral cases are more likely to be salient to the public and, therefore, attract public criticism. That is, the justices may fear public criticism rather than nonimplementation. Therefore, it is important to directly control for Salience. Second, my theory suggests that the justices primarily fear nonimplementation in important cases. Therefore, I expect constraint to be strongest in salient lateral cases.

I employ Epstein and Segal's (2000) measure of case salience in order to capture cases that were thought to

⁴For example, *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

⁵For example, *EEOC v. Commercial Office Products*, 486 U.S. 107 (1988).

⁶For example, *EEOC v. Associated Dry Good Corp.*, 449 U.S. 590 (1981).

⁷The 1951 term is the first year for which the Stimson Policy Mood Indicator is available. Some studies of public opinion and aggregate Supreme Court decision making exclude cases before the 1956 term (e.g., Casillas, Enns, and Wohlfarth 2011; Flemming and Wood 1997; Giles, Blackstone, and Vining 2008). My findings are robust to excluding pre-1956 cases. I end my analysis with the 2007 term, the last year for which Judicial Common Space scores are available. Data on Supreme Court decisions were obtained from the U.S. Supreme Court Database. I exclude decrees, equally divided votes, and cases without oral argument (Decision Direction = 2, 4, or 5).

⁸I exclude cases for which the ideological direction of the decision could not be ascertained (Decision Direction = 3).

⁹See the supporting information for more details on the logic of including this variable and a robustness check without this variable in the model.

¹⁰I use the most up-to-date measure of the Stimson Policy Mood Indicator.

be important by Court watchers in the media. This measure identifies cases that were reported on the front page of the *New York Times*.¹¹ As Epstein and Segal explain, their “measure assumes that salience means roughly the same thing to newspaper editors as it does to the justices but since *both editors and justices make this calculation at about the same time, within the same political context*, this assumption does not seem a particularly onerous one” (2000, 73; emphasis in original). If the justices viewed these decisions as salient, they may well have considered the possibility of nonimplementation in these cases. Of the 6,404 cases in my dataset, I code 977 as salient.

Next, I include a dichotomous indicator variable, *Lateral*, taking on the value 0 for vertical cases and 1 for lateral cases. This coding process yields 4,921 vertical cases (77%) and 1,483 lateral cases (23%). Of the 977 salient cases in the dataset, 646 are vertical (66%), and 331 are lateral (34%). Notice that well over half of the cases in my dataset are vertical cases, setting up a tough test for my hypothesis. Numerous studies have found that external pressure influences the Supreme Court; I argue that these effects are actually concentrated in a small subset of cases: those cases in which the Court should fear nonimplementation.

Finally, I include interaction terms between Lateral, Salience, and Public Mood and between Lateral, Salience, and Congressional Ideology. These interaction terms test the differential effect of external influence across different case contexts. A positive and significant coefficient for an interaction term indicates that external pressure has a stronger influence in that case context. I also interact Lateral and Salience with the natural court fixed effects to account for different baseline rates of liberal decision making in different case types on different Courts. Because the dependent variable is dichotomous, I analyze the data using logistic regression with robust standard errors. I standardize Court Ideology, Public Mood, and Congressional Ideology to facilitate intuitive and comparable interpretation.

My analysis improves on previous studies in several ways. First, many studies have examined the influence of public opinion or elite preferences, but few have examined both in the same analysis. Because the Court may consider both factors when making decisions, I consider both influences in my models. Second, most work on public opinion examines aggregate decision making by the Court rather than individual decisions. Although aggregate decision making is a reasonable measure of the Court's policy output, the Court does not make decisions

in the aggregate. By examining individual cases, rather than aggregate decisions, I provide a more theoretically appropriate test of my decision making theory.¹² Third, by comparing the degree of Court constraint across issue contexts (i.e., vertical versus lateral cases), I am able to test a potential causal mechanism for external influence: the fear of nonimplementation.

The results of the multivariate logit analyses are reported in Table 1. In the first model, I present the results of a logistic regression analysis with all Supreme Court cases and interaction terms for Lateral and Salience. Consistent with expectations, the Court's ideology is positively associated with its decision making; however, the main effects of Public Mood and Congressional Ideology are not statistically significant. Additionally, the interaction term for Public Mood and Lateral and the interaction term for Congressional Ideology and Lateral are not statistically significant. These results indicate that neither public nor congressional preferences appear to influence the Court in nonsalient cases.¹³ These findings are consistent with my expectations: when there is little possibility of strong public opposition, the justices need not fear nonimplementation and, therefore, disregard external pressure.

As discussed above, if the Court is partially constrained by a fear of nonimplementation, the effect of Public Mood and Congressional Ideology should be strongest in salient lateral cases. The significant interaction term for Lateral, Salience, and Public Mood indicates that the effect of Public Mood is significantly stronger in salient lateral cases than in other cases. A Wald test indicates that Public Mood has a significant positive effect in these cases ($p = .001$, one-tailed test). The significant interaction term for Lateral, Salience, and Congressional Ideology indicates that Congressional ideology also has a significantly stronger effect in salient lateral cases. A Wald test indicates that Congressional Ideology has a significant positive effect in these cases ($p = .037$, one-tailed test).

The second model includes only salient cases to highlight the differential effect of external constraint in salient lateral cases. As shown in the model, the main effects of Public Mood and Congressional Ideology are not

¹²In the supporting information, I present a model of the influence of Public Mood on aggregate decision making in vertical versus lateral cases. I find that the effect of public opinion on aggregate decision making is also significantly stronger in lateral cases.

¹³In the supporting information, I present an analysis of external pressure on the Supreme Court in nonsalient cases. I find that external pressure has no effect in nonsalient cases, and there is no difference between the influence of external pressure in vertical versus lateral nonsalient cases.

¹¹ Available at <http://epstein.usc.edu/research/salience.html>.

TABLE 1 The Differential Impact of Supreme Court Constraint on Decision Making

	All Cases	Salient Cases	Vertical Salient	Lateral Salient
<i>Main Effects</i>				
Court Ideology	0.26** (0.08)	0.55** (0.23)	0.53* (0.28)	0.60 (0.42)
Public Mood	−0.07 (0.09)	−0.26 (0.23)	−0.27 (0.23)	1.11** (0.36)
Congressional Ideology	0.05 (0.18)	−0.18 (0.22)	−0.18 (0.24)	0.76* (0.41)
Lateral	−0.18 (0.51)	4.13** (1.23)		
Salience	−0.81 (0.78)			
<i>Interaction Effects</i>				
Public Mood × Lateral	0.05 (0.18)	1.37** (0.43)		
Congressional Ideology × Lateral	−0.14 (0.18)	0.92* (0.45)		
Public Mood × Salience	−0.23 (0.24)			
Congressional Ideology × Salience	−0.31 (0.23)			
Lateral × Salience	4.33** (1.32)			
Public Mood × Lateral × Salience	1.34** (0.46)			
Congressional Ideology × Lateral × Salience	1.07* (0.48)			
Constant	0.07 (0.28)	−0.22 (0.84)	−0.25 (0.88)	3.98** (1.24)
N	6369	948	637	311
Wald χ^2	318.65	92.14	47.81	44.02
Prob > χ^2	.00	.00	.00	.00
Pseudo R ²	.04	.10	.06	.17
Log Pseudolikelihood	−4227.46	−585.64	−412.22	−173.41

Note: Table reports the results of logistic regression models of decision making by the U.S. Supreme Court. Natural court fixed effects and natural court interactions with Lateral and Salience are omitted for presentation purposes. Robust standard errors reported in parentheses.

*p < .05; **p < .01 (one-tailed test).

statistically significant and signed in the wrong direction, indicating that these factors do not influence decision making in salient vertical cases. However, both Public Mood and Congressional Ideology have a stronger effect in lateral cases than in vertical cases. Once again, Wald tests indicate that both Public Mood ($p = .001$, one-tailed test) and Congressional Ideology ($p = .030$, one-tailed test) have significant positive effects in salient lateral cases. Finally, I present separate regressions with salient vertical cases and salient lateral cases for a side-by-

side comparison. These models clearly demonstrate that external constraint influences decision making in salient lateral cases, but not in salient vertical cases. Contrary to previous studies (Casillas, Enns, and Wohlfarth 2011), I find that public opinion does influence Supreme Court decision making in salient cases; however, this influence occurs primarily in lateral cases.

Figures 1 and 2 illustrate the impact of constraint on the Court (within-line variation) in vertical versus lateral cases (between-line variation) with 95% confidence

FIGURE 1 Average Marginal Effects of Public Mood in Salient Cases

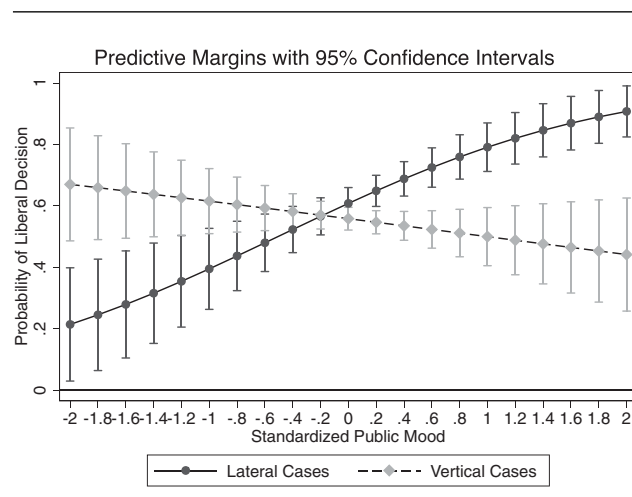
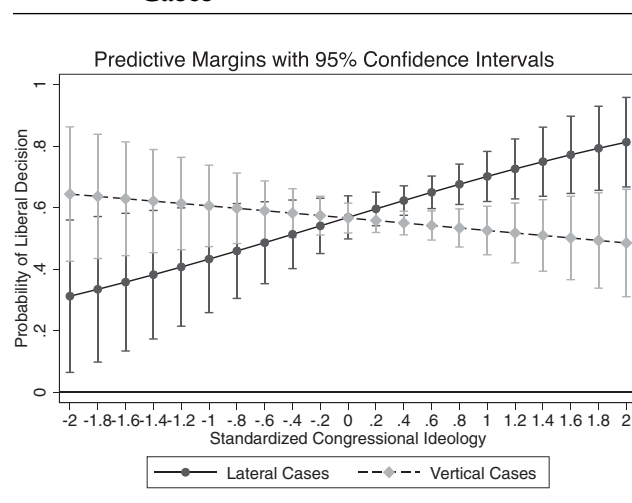


FIGURE 2 Average Marginal Effects of Congressional Ideology in Salient Cases



intervals.¹⁴ Figure 1 displays the predicted probability of the Court issuing a liberal decision in a salient case as Public Mood moves from conservative to liberal. In vertical cases, the probability of the Court rendering a liberal decision does not increase as the public becomes more liberal; however, in lateral cases the Court tends to follow public opinion, issuing more liberal decisions when popular opinion is more liberal. Figure 2 presents the predicted probability of the Court issuing a liberal decision in a salient case as Congressional Ideology moves from conservative to liberal. As shown in the figure, Congressional Ideology has a positive effect on decision making in lateral cases, but not in vertical cases.

¹⁴These figures report average marginal effects; conditional marginal effects are reported in the supporting information.

This analysis yields several important findings regarding Supreme Court constraint. First, I find that popular and elite preferences influence Supreme Court decision making, and this effect can be measured at the individual case level. Second, contrary to previous findings, the Supreme Court appears to respond to public opinion only in salient cases. Third, I find that the relationship between external pressure and the Court's decision making is not a simple one. In some issue contexts, the Court is indifferent toward external pressure, while in others it tends to succumb to this pressure. And finally, the nature of this differential effect—specifically, the divide between vertical and lateral cases—suggests that Supreme Court constraint is, at least partially, driven by the justices' fear of nonimplementation. In salient lateral cases, the justices must contemplate the possibility that unpopular rulings will not be implemented and, therefore, tend to avoid issuing unpopular decisions in order to protect their own power and legitimacy. In vertical cases, the justices have less reason to fear nonimplementation and, therefore, tend to disregard popular and elite preferences.

Judicial Review of Federal Statutes

Next, I evaluate the influence of popular and elite preferences in another group of cases that the justices likely view as important: cases involving the potential invalidation of federal statutes. Once again, if constraint is driven by a fear of nonimplementation, the effect should be stronger in lateral cases. To test this theory, I examine the Court's decision making in the 174 cases in which a party challenged the constitutionality of a federal statute between 1955 and 2004.¹⁵ The dependent variable in my analysis is the invalidation of a federal law by the Court (1 = invalidation, 0 = no invalidation). The Court struck down a federal law in 47 of these cases and upheld a law in 127 cases.

Measuring public preferences regarding the invalidation of federal statutes requires modifying the Stimson measure of public mood because an invalidation could be a liberal or conservative decision. Accordingly, for each case, I code whether striking down the law would be a liberal decision.¹⁶ Of the 174 cases in my dataset, an invalidation would be a liberal decision in 102 cases. In these

¹⁵I choose this date range so that my study is directly comparable to the study by Segal, Westerland, and Lindquist (2011).

¹⁶I use the Decision Direction and Declaration of Unconstitutionality variables from the U.S. Supreme Court Database to make these coding decisions. I code a potential invalidation as liberal if the decision was liberal and the Court struck down the law or if the decision was conservative and the Court did not strike down the law.

cases, I expect invalidation to be positively associated with liberal public mood; therefore, for these cases I simply use the standardized Stimson Policy Mood Indicator as my new variable, *Strike Mood*. However, in the other 72 cases, an invalidation would be a conservative decision. In these cases, I expect invalidation to be negatively associated with liberal public mood. For these 72 cases, I code Strike Mood as the inverted standardized Policy Mood Indicator. Therefore, for all 174 cases, higher values of Strike Mood indicate that an invalidation would be consistent with the public's mood. Therefore, I expect invalidation to be positively associated with Strike Mood, especially in lateral cases.

Next, to measure the influence of elite preferences, I construct a measure of *Institutional Constraint* based on the ideology of the median justice, median House and Senate members, and the president. Models of elite influence suggest that the Court will be constrained when its preferences deviate substantially from the preferences of these elected officials (Segal, Westerland, and Lindquist 2011). To test this theory, I create a measure reflecting two alternative regimes: one in which the Court's ideal point falls at or between the ideal points of the median House and Senate members and the president and one in which the Court's ideal point falls outside this range. I measure the ideal points of the median House and Senate members and the president using Poole and Rosenthal Common Space scores (1997), and I measure the ideology of the median justice using Judicial Common Space scores (Epstein, Knight, and Martin 2007). In the first regime, Institutional Constraint is coded as 0, indicating that the Court is unconstrained. In the second regime, Institutional Constraint is coded as the absolute distance between the Court and the nearest institutional actor. If the Court heeds elite preferences when exercising judicial review, the probability of invalidation should be negatively associated with Institutional Constraint.

I also include an indicator variable, *Lateral*, taking on the value 0 for vertical cases and 1 for lateral cases. I then include an interaction term between Lateral and Strike Mood. If the influence of public opinion is stronger in lateral cases than in vertical cases, the coefficient for this interaction term should be positive and statistically significant. I also include an interaction term between Lateral and Institutional Constraint, which should be negative and statistically significant if elite preferences have greater influence in lateral cases. In the dataset, 83 of the cases (48%) are lateral (e.g., *McConnell v. FCC*, *New York v. U.S.*, and *Rostker v. Goldberg*); 91 cases (52%) are vertical (e.g., *Ashcroft v. ACLU*, *U.S. v. Morrison*, and *Mistretta v. U.S.*). Therefore, once again, my theory suggests that

external influence on the Court is primarily found in a minority of cases.

Next, I include controls for the expected preferences of the elected branches toward the specific federal law challenged in the case. If the justices rationally anticipate the possibility of override, then the probability of invalidation should decrease as support from the pivotal legislator increases. To obtain these measures, I adopt the approach of Segal, Westerland, and Lindquist (2011), who use Common Space scores to estimate contemporary support for public laws. The first step in this process is to run logistic regressions on the original roll-call votes using the then-member of Congress's Common Space score to predict yeas. Next, they use the coefficients from these equations along with each sitting legislator's Common Space score to estimate the predicted probability of the sitting legislator supporting the law at the time of potential review. The authors then calculate the predicted support for the law by the actor who is least likely to support it among the House median, the Senate median, and the president (or the pivotal legislator for an override vote in the House and Senate if they are both more supportive than the president). A negative coefficient for *Predicted Support by the Pivotal Legislator* would suggest that the Court rationally anticipates the possibility of override.¹⁷

I also calculate the Court's preferences toward the law using the same process for the Judicial Common Space score of the median justice on the Court (Epstein, Knight, and Martin 2007). If the Court pursues its own policy preferences when reviewing federal statutes, the probability of invalidation should decrease as *Predicted Support by the Supreme Court* increases.

Finally, I include a series of control variables to account for other factors that have been shown to influence judicial review. First, I control for the possibility that the Court responds separately to the preferences of individual legislative actors by including a measure of the ideological distance between the Court and the nearest chamber of Congress (regardless of the president), the president (regardless of Congress), and the House and Senate Judiciary Committee Chairs. Next, I include a measure of Court-curbing activity in Congress (Clark 2009). This variable is the number of Court-curbing proposals introduced in Congress during the previous year. Lastly, I include controls for support from the Solicitor General, the number of amicus briefs filed in favor of the law, and the number of amicus briefs filed in opposition to the law.¹⁸

¹⁷See Segal, Westerland, and Lindquist (2011) for a full description of this modeling strategy.

¹⁸I borrow all of these measures from the replication data for Segal, Westerland, and Lindquist (2011) available online at

TABLE 2 The Differential Impact of Supreme Court Constraint on Judicial Review

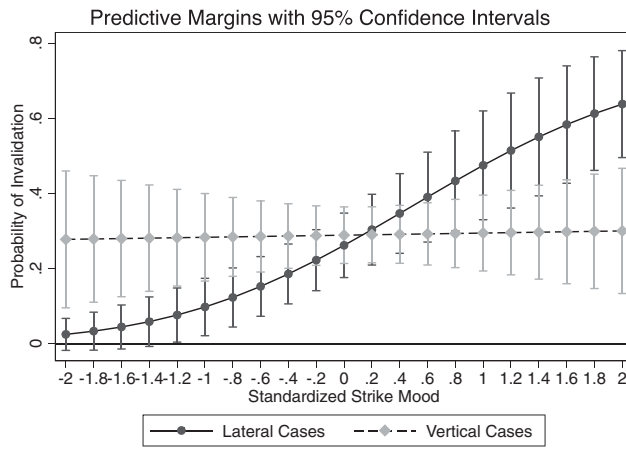
	All Challenges	All Challenges	Vertical Challenges	Lateral Challenges
Strike Mood	0.26 (0.30)	0.04 (0.28)	0.10 (0.41)	2.22** (0.89)
Strike Mood × Lateral	1.18* (0.59)	1.61** (0.60)		
Institutional Constraint	−16.34* (7.52)	−7.50 (7.15)	−9.53 (10.20)	−135.54** (46.75)
Institutional Constraint × Lateral	−84.61** (23.07)	−118.05** (29.40)		
Predicted Support by the Pivotal Legislator	1.95 (1.35)	3.85 (1.93)	9.94 (2.90)	−2.45 (1.83)
Predicted Support by the Supreme Court	−1.45 (1.68)	−3.73 (2.37)	−10.47** (3.55)	2.26 (3.02)
Floor Median Distance from Court		−10.68* (2.97)	−14.92** (5.55)	−4.24 (4.02)
President's Distance from Court		−4.01* (1.73)	−3.82 (3.13)	−4.22 (2.75)
House Jud. Chair Distance from Court		−4.18** (1.58)	−5.42** (1.98)	−1.49 (2.67)
Senate Jud. Chair Distance from Court		−2.99* (1.71)	−2.04 (3.20)	−5.00* (2.52)
# of Court-Curbing Bills Introduced		−0.04 (0.03)	−0.05 (0.03)	−0.06 (0.05)
Solicitor General Support		−1.07 (0.68)	0.43 (0.99)	−4.44** (1.40)
Amicus Briefs in Favor of the Law		−0.06 (0.06)	−0.22 (0.18)	0.10 (0.10)
Amicus Briefs Opposing the Law		−0.03 (0.08)	0.10 (0.13)	−0.21 (0.17)
Lateral	−0.25 (0.41)	−0.02 (0.47)		
Constant	−0.84 (0.82)	6.17** (2.13)	6.08* (3.23)	8.16** (3.21)
N	174	174	91	83
Wald χ^2	28.77	42.10	38.44	20.20
Prob > χ^2	.00	.00	.00	.06
Pseudo R ²	.18	.34	.42	.47
Log Pseudolikelihood	−83.18	−67.07	−31.43	−24.99

Note: Table reports the results of logistic regression models of invalidations of federal statutes by the U.S. Supreme Court. Robust standard errors reported in parentheses. * $p < .05$; ** $p < .01$ (one-tailed test).

The results of the multivariate logit analyses are reported in Table 2. In the first model, I present the results of a simplified logistic regression analysis. In the second model, I include all of the control variables. As

www.u.arizona.edu/cwesterl. See Segal, Westerland, and Lindquist (2011) for a more detailed description of these variables and the logic of their inclusion in the model.

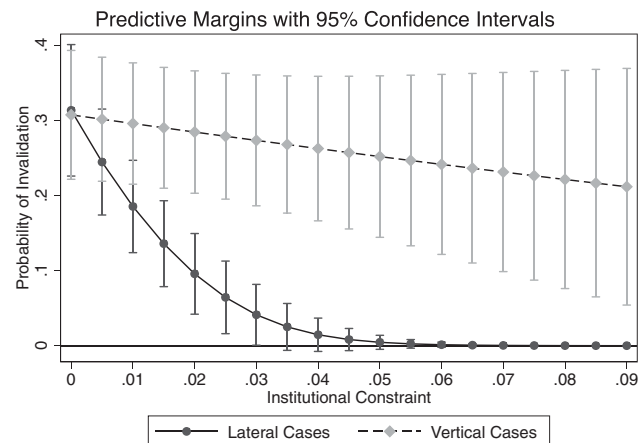
shown in the table, the main effect of Strike Mood is not statistically significant; however, the interaction between Strike Mood and Lateral is positive and statistically significant, indicating that the public's mood has a stronger influence in lateral cases. A Wald test indicates that Strike Mood has a significant positive effect in lateral cases in the simplified model ($p = .002$, one-tailed test)

FIGURE 3 Average Marginal Effects of Strike Mood on Judicial Review

and the model with additional controls ($p = .001$, one-tailed test). The main effect of Institutional Constraint is negative and statistically significant in the simplified model. In the second model, Institutional Constraint is not statistically significant, but several of the constraint variables (e.g., Floor Median Distance from Court and President's Distance from Court) are negative and statistically significant. These results suggest that the Court is somewhat constrained by the elected branches in vertical cases. However, the interaction between Institutional Constraint and Lateral is negative and statistically significant in both models, indicating that constraint is stronger in lateral cases than in vertical cases. A Wald test indicates that Institutional Constraint has a significant negative effect in lateral cases in the simplified model ($p = .000$, one-tailed test) and the model with additional controls ($p = .000$, one-tailed test).

In the third and fourth models, I provide side-by-side comparisons of the model for vertical and lateral cases. Once again, these models suggest that the preferences of the elected branches, but not the public, influence the use of judicial review in vertical cases. In lateral cases, Strike Mood has a statistically significant impact on judicial review, and the effect of Institutional Constraint is even stronger than in vertical cases. All of these findings confirm my theoretical expectations: external influence appears to be stronger in lateral cases than in vertical cases.

The substantive impact of Supreme Court constraint is presented in Figures 3 and 4.¹⁹ Figure 3 illustrates the impact of Strike Mood on judicial review (within-line

FIGURE 4 Average Marginal Effects of Institutional Constraint on Judicial Review

variation) in vertical versus lateral cases (between-line variation) with 95% confidence intervals. As shown in the figure, Strike Mood appears to have no effect in vertical cases. In lateral cases, the probability of the Court invalidating a federal law increases from roughly 0 to more than .6 as the public's mood moves in the ideological direction of striking the law.

Figure 4 reports the effect of Institutional Constraint on judicial review (within-line variation) in vertical versus lateral cases (between-line variation) with 95% confidence intervals. Once again, external pressure has little substantive impact on judicial review in vertical cases; however, in lateral cases the probability of the Court striking a law sharply declines as Institutional Constraint increases.²⁰

These findings offer strong support for my theory. The influence of elite and popular preferences on the invalidation of federal statutes is significantly stronger in lateral cases, suggesting that the justices heed external pressure in part because they fear nonimplementation of their decisions. In vertical cases, the justices have less reason to fear nonimplementation. Consequently, in these cases, they are less constrained by external political forces.

Conclusion

Previous research has found mixed evidence for the proposition that the U.S. Supreme Court is influenced in its decision making by external political pressures. The

¹⁹These figures report average marginal effects; conditional marginal effects are reported in the supporting information.

²⁰Institutional Constraint has a mean of .03 and a standard deviation of .06.

most recent studies on this topic suggest that public opinion and elite preferences do constrain the Court, at least in some contexts (Casillas, Enns, and Wohlfarth 2011; Clark 2009). Recent work also suggests the justices are not motivated by a fear of override but rather by a more general concern for institutional maintenance (Segal, Westerland, and Lindquist 2011). However, this previous research does not distinguish between a fear of sanctions and a fear of nonimplementation as the driving concern behind the Court's defense of its institutional power and legitimacy.

I find that the fear of nonimplementation is a critical factor motivating the Supreme Court's response to external pressure. Consequently, these external forces exert differential effects in different issue contexts. When deciding important lateral cases, the Court is highly constrained by external forces because it lacks the necessary implementation powers to give efficacy to its rulings in the absence of popular and/or elite support; however, when deciding vertical cases, the justices are relatively less constrained because their decisions tend to be implemented by lower-court judges regardless of external pressure. When the Court considers unimportant cases, the chance of strong public opposition is low; therefore, nonimplementation is unlikely and the justices can disregard external pressure. Although numerous scholars have found that the Supreme Court is constrained, I find that constraint is a significant factor in only a small subset of its docket.

My findings suggest that the U.S. Supreme Court is relatively independent when deciding cases related to criminal prosecution, civil liability, or judicial administration; however, the Court is more constrained when trying to alter policy beyond the control of lower courts, at least when those cases may potentially attract public interest. As a result, studies of judicial independence should be conscious of the varying institutional contexts surrounding cases in different issue areas. Rather than search for universal tendencies of Supreme Court behavior, judicial scholars should be attentive to differences in judicial power and independence across different contexts.

References

- Baum, Lawrence. 1978. "Lower-Court Response to Supreme Court Decisions: Reconsidering a Negative Picture." *Justice System Journal* 3: 208–19.
- Baum, Lawrence. 2003. "The Supreme Court in American Politics." *Annual Review of Political Science* 6: 161–80.
- Bitler, Marianne, and Madeline Zavodny. 2002. "Did Abortion Legalization Reduce the Number of Unwanted Children? Evidence from Adoptions." *Perspectives on Sexual and Reproductive Health* 34(1): 25–33.
- Bolton, Alexander. 2012. "Dems Wage Pressure Campaign on Supreme Court over Health Ruling." *The Hill*, 2 April.
- Brent, James C. 1999. "An Agent and Two Principals: U.S. Court of Appeals Responses to *Employment Division, Department of Human Resources v. Smith* and the Religious Freedom Restoration Act." *American Politics Quarterly* 27(2): 236–66.
- Casillas, Christopher, Peter K. Enns, and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55(1): 74–88.
- Clark, Tom S. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." *American Journal of Political Science* 53(4): 971–89.
- Cross, Frank B., and Blake J. Nelson. 2001. "Strategic Institutional Effects on Supreme Court Decision Making." *Northwestern University Law Review* 95(Summer): 1437–93.
- Dahl, Robert A. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6: 279–95.
- Donohue, John J., III, and Stephen D. Levitt. 2001. "The Impact of Legalized Abortion on Crime." *Quarterly Journal of Economics* 123(1): 425–40.
- Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.
- Easton, David. 1965. *A Systems Analysis of Political Life*. New York: Wiley.
- Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.
- Epstein, Lee, Jack Knight, and Andrew D. Martin. 2001. "The Supreme Court as a Strategic National Policymaker." *Emory Law Review* 55: 583–611.
- Epstein, Lee, Jack Knight, and Andrew D. Martin. 2007. "The Judicial Common Space." *Journal of Law, Economics, & Organization* 23: 305–25.
- Epstein, Lee, and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44(1): 66–83.
- Erikson, Robert S., Michael B. MacKuen, and James A. Stimson. 2002. *The Macro Polity*. New York: Cambridge University Press.
- Fenno, Richard F., Jr. 1978. *Home Style: House Members in Their Districts*. New York: HarperCollins.
- Ferejohn, John, and Charles Shipan. 1990. "Congressional Influence on Bureaucracy." *Journal of Law, Economics, & Organization* 6: 1–20.
- Flemming, Roy B., and B. Dan Wood. 1997. "The Public and the Supreme Court: Individual Justice Responsiveness to American Policy Mood." *American Journal of Political Science* 41: 468–98.
- Gely, Rafael, and Pablo T. Spiller. 1990. "A Rational Choice Theory of Supreme Court Statutory Decisions with Applications to the *State Farm* and *Grove City* Cases." *Journal of Law, Economics, & Organization* 6(2): 263–300.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33(4): 535–56.
- Giles, Micheal W., Bethany Blackstone, and Richard L. Vining. 2008. "The Etiology of the Occurrence of En Banc

- Review in the U.S. Court of Appeals." *Journal of Politics* 70(2): 293–306.
- Gruhl, John. 1980. "The Supreme Court's Impact on the Law of Libel: Compliance by Lower Federal Courts." *Western Political Quarterly* 33(4): 502–19.
- Hall, Matthew E. K. 2011. *The Nature of Supreme Court Power*. New York: Cambridge University Press.
- Hoekstra, Valerie J. 2005. "Competing Constraints: State Court Responses to Supreme Court Decisions and Legislation on Wages and Hours." *Political Research Quarterly* 58(2): 317–28.
- Horowitz, Donald L. 1977. *The Courts and Social Policy*. Washington, DC: Brookings Institution Press.
- Howard, Robert M., and Amy Steigerwalt. 2012. *Judging Law and Policy: Courts and Policymaking in the American Political System*. New York: Routledge.
- Keck, Thomas M. 2009. "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights." *Law & Society Review* 43(1): 151–85.
- Klarman, Michael J., ed. 2004. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. New York: Oxford University Press.
- Lichtblau, Eric. 2012. "Groups Blanket Supreme Court on Health Care." *New York Times*, 25 March.
- Lindquist, Stephanie, and Rorie Spill Solberg. 2007. "Judicial Review by the Burger and Rehnquist Courts: Explaining Justices' Responses to Constitutional Challenges." *Political Research Quarterly* 60(1): 71–90.
- Mayhew, David R. 1974. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
- McCann, Micheal. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- McGuire, Kevin T., and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *Journal of Politics* 66(4): 1018–35.
- Meernik, James, and Joseph Ignagni. 1997. "Judicial Review and Coordinate Construction of the Constitution." *American Journal of Political Science* 41(2): 447–67.
- Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(1): 87–101.
- Mishler, William, and Reginald S. Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *Journal of Politics* 58(1): 169–200.
- Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.
- Owens, Ryan J. 2010. "The Separation of Powers and Supreme Court Agenda Setting." *American Journal of Political Science* 54(2): 412–27.
- Page, Benjamin, and Robert Y. Shapiro. 1983. "Effects of Public Opinion on Policy." *American Political Science Review* 77(1): 175–90.
- Poole, Keith T., and Howard Rosenthal. 1997. *Congress: A Political-Economic History of Roll Call Voting*. New York: Oxford University Press.
- Price, Vincent, and Anca Romantan. 2004. "Confidence in Institutions, Before, During, and After 'Indecision 2000'." *Journal of Politics* 66(3): 939–56.
- Rosenberg, Gerald N. 1992. "Judicial Independence and the Reality of Political Power." *Review of Politics* 54(Summer): 369–98.
- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. Chicago: University of Chicago Press.
- Sala, Brian R., and James F. Spriggs. 2004. "Designing Tests of the Supreme Court and the Separation of Powers." *Political Research Quarterly* 57(2): 197–208.
- Scott, Kevin M. 2006. "Understanding Judicial Hierarchy: Reversals and the Behavior of Intermediate Appellate Judges." *Law & Society Review* 40(1): 164–91.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
- Segal, Jeffrey A., and Chad Westerland. 2005. "Congress, the Supreme Court, and Judicial Review." *American Journal of Political Science* 55(1): 89–104.
- Segal, Jeffrey A., Chad Westerland, and Stephanie A. Lindquist. 2011. "Congress, the Supreme Court, and Judicial Review: Testing a Constitutional Separation of Powers Model." *American Journal of Political Science* 55(1): 89–104.
- Shapiro, Martin. 1964. *Law and Politics in the Supreme Court: New Approaches to Political Jurisprudence*. New York: Free Press.
- Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions." *American Journal of Political Science* 38(3): 673–96.
- Songer, Donald R., and Reginald S. Sheehan. 1990. "Supreme Court Impact on Compliance and Outcomes: *Miranda* and *New York Times* in the United States Courts of Appeals." *Western Political Quarterly* 43(2): 297–316.
- Soroka, Stewart N., and Christopher Wlezien. 2010. *Degrees of Democracy*. New York: Cambridge University Press.
- Spiller, Pablo T., and Rafael Gely. 1992. "Congressional Control or Judicial Independence: The Determinants of U.S. Supreme Court Labor-Relations Decisions." *Rand Journal of Economics* 23(4): 463–92.
- Stimson, James A. 1999. *Public Opinion in America: Moods, Cycles, and Swings*. 2nd ed. Boulder, CO: Westview Press.
- Westerland, Chad, Jeffrey A. Segal, Lee Epstein, Charles M. Cameron, and Scott Comparato. 2010. "Strategic Defiance and Compliance in the U.S. Courts of Appeals." *American Journal of Political Science* 54(4): 891–905.

Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

The first section presents robustness checks for the models in Table 1. The second section presents an analysis of the differential effects of public opinion on aggregate

Supreme Court decision making. The third section presents figures with conditional marginal effects rather than average marginal effects. The fourth section presents additional analysis of external influence on the

Supreme Court in nonsalient cases. The fifth section presents the coding procedure for vertical and lateral cases, as well as additional robustness checks with alternative coding decisions.