The Chief Justice and Judicial Legitimacy Evidence from the Influence of Public Opinion

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The Chief Justice and Judicial Legitimacy Evidence from the Influence of Public Opinion

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ABSTRACT

The Chief Justice is viewed as the leader of the Supreme Court. In their position of leadership, many—including the Chief Justice—believe it is incumbent upon the Chief Justice to maintain and enhance the Court’s institutional legitimacy. This paper hypothesizes that because the Chief Justice is concerned with the Court’s legitimacy, he will be influenced by public opinion to a greater extent than the Associate Justices. Analysis of Supreme Court decision-making between 1952 and 2016 supports this hypothesis.

KEYWORDS

Judicial behavior; Supreme Court; Chief Justice; legitimacy

Fred Vinson led the Supreme Court as Chief Justice between 1946 and 1953. By nearly all measures, the tenure of Chief Justice Vinson represents the zenith of the Supreme Court’s conservatism (Bailey 2013). During the Chief Justiceship of Vinson, the Court issued conservative decisions on civil liberties, criminal procedure, and labor relations (Pritchett 1969; Urofsky 1998). If the Chief Justiceship of Fred Vinson represents the zenith of the Supreme Court’s conservatism, the Chief Justiceship of Earl Warren who led the Supreme Court as Chief Justice between 1953 and 1969 represents the zenith of the Court’s liberalism (Bailey 2013). During Chief Justice Warren’s tenure, the Supreme Court issued liberal decisions advancing Civil Rights, civil liberties, criminal procedure, and ballot access and equality (Belknap 2005).

While it is reasonable to posit that the Vinson Court was conservative because the Justices composing the Court were themselves very conservative and that the Warren Court was liberal because the Justices composing the Court were themselves very liberal, it is hard to escape that during each Court, public mood was at its most ideological extreme (Stimson 1998). During the Chief Justiceship of Vinson, the public mood indicator was at its most conservative and during Warren’s Chief Justiceship the public mood indicator was at its most liberal. Considering the counter-majoritarian nature of the Court, the strong alignment between public mood and the Court might be somewhat surprising and scholars have long wrestled with the extent to which the Supreme Court is influenced by public opinion.

Further, it is hard to escape that during each period, the Chief Justice seemingly led the Court in their respective ideological directions. For example, of the 42 majority opinions Chief Justice Vinson wrote during his tenure on the Court, 69% were conservative decisions and of the 170 majority opinions Chief Justice Warren wrote during his tenure, 77% were liberal decisions (Spaeth et al. 2018). Considering the Chief Justice’s leadership status, their stewardship of the
Court may be less surprising. Yet, that the Chief Justice’s leadership of the Court pushed the Court in ways that aligned with public opinion at the time does potentially provide interesting insight into the decision-making calculus of the Chief Justice. As leader of the Court, the Chief Justice is seen as responsible for maintaining and enhancing the Court’s legitimacy and prestige (Danelski and Ward 2016). Existing research shows many ways in which the Chief Justice uses his authority to maintain and enhance the Court’s legitimacy and prestige (Vining and Wilhelm 2012; Fettig and Benesh 2016; Mark and Zilis 2018).

One way the Chief Justice can maintain and enhance the Court’s legitimacy, unexamined in existing research, is by following public opinion. When the Court strays from public opinion, the public tends to view the Court more negatively and is more likely to support making institutional changes to the Supreme Court, and Congress is more likely to introduce Court curbing legislation (Clark 2009, 2011). Thus, by following public opinion, the Court can avoid these negative consequences. Yet, the incentive likely is not uniform for each Justice. Baum (1994) articulates that Justices have various goals based on their institutional position and unique personalities and psychologies. Due to their leadership position and perceived responsibility for the Court’s institutional standing, I hypothesize that the Chief Justice will be influenced by public opinion to a greater extent than the Associate Justices. This is because the goal of maintaining the Court’s legitimacy is more salient for the Chief Justice. I test and find support for this hypothesis using data from the Spaeth Supreme Court database and the public mood indicator developed by Stimson (1998). Specifically, I analyze Supreme Court decision-making between 1952-2016. The results to this study have implications for judicial behavior and the processes through which the Justices—and especially the Chief Justice—weigh different considerations when making their decisions.

The Supreme Court and public opinion

From the perspective of its institutional design, the Supreme Court is structured to be a non-majoritarian institution (Bickel 1962; Graber 1993). That is to say, there are few formal mechanisms through which the public can hold the Court accountable. First, consider the nomination and confirmation process. The president nominates individuals to the Supreme Court and the Senate confirms them. While there is evidence that public opinion influences how Senators vote on nominees and that voters hold Senators accountable for their votes on nominees, ultimately the public must make decisions based on nominees presented to them rather than getting the opportunity to select nominees themselves (Overby et al. 1992; Kastellec, Lax and Phillips 2010; Kastellec et al. 2015; Badas and Simas 2021; Bass, Cameron and Kastellec 2020). In this selection system, the consequences of Supreme Court nominations are faced by Senators and the president rather than the Justices themselves. Further, once confirmed, nominees serve life-long terms. On average, modern Supreme Court justices serve over twenty-four years (Calabresi and Lindgren 2005). Decades long terms mean that even if the public consented at the time of confirmation, that consent certainty dissipates over the course of a justice’s tenure. Thus, at the point nomination and confirmation, there is no expectation that the nominees themselves will be influenced by majoritarian pressures.

However, there is some tension between the Court’s institution design and the incentive for the justices to engage in non-majoritarian behavior. While the Court does have counter-majoritarian potential, that potential is likely diminished by its institutional weaknesses. The framers of the constitution perceived the Court as the least dangerous branch of government (Hamilton, Madison and Jay 1788/1982). This was because the Court has “neither force nor will” and instead has to rely on its judgments to convince other political institutions and the public to accept and implement its decisions (Johnson and Canon 1984). Thus, in order to be influential and see that its decisions have efficacy, the Court must maintain its institutional legitimacy (Caldeira 1986).
Yet, due to its counter-majoritarian institutional structure, the Court’s legitimacy is not replenished through regular elections like the legislative and executive branches. Rather, the Court must abandon its non-majoritarian inclination and be attentive to majoritarian considerations in order to maintain its legitimacy. To this point, a long line of research has analyzed in what ways the Court is attentive to or works in concert with majoritarian considerations (Dahl 1957; Sala and Spriggs 2004; Bailey and Maltzman 2011; Hall and Ura 2015; Clark 2011; Yates 2002).

One majoritarian consideration the Court may take into account is public opinion. The Court may be attentive to public opinion because the mass public is frequently tasked with accepting and implementing the Court’s decisions (Johnson and Canon 1984; Hall 2013). Further, the public’s response may send signals to other political institutions about whether or not they should challenge the Court’s decisions (Ura and Wohlfarth 2010; Clark 2011; Hall 2014b). Based on the importance of the mass public in implementing the Court’s decisions and maintaining the Court’s legitimacy, scholars have long been interested in whether or not the Court is influenced by public opinion.

These studies take many forms. For example, many seek to establish a correlation between measures of public opinion and judicial votes. In this vein, Marshall (1989, 2009) collected public opinion polls on issues that appear before the Supreme Court and compares the public’s preferences to how the Court decided the cases. In his research, Marshall finds that the Supreme Court tends to issue decisions congruent with majority preferences. Specifically, he finds a match between the majority’s preferences and the decisions of the Supreme Court in about 67% of cases (Marshall 1989, 2009). Understanding there are biases in what issues are being asked about in public opinion surveys, Epstein and Martin (2010) establish that the Court’s decisions correlate with the generalized measures of public mood (Stimson 1998). Specifically, when the public becomes more liberal (conservative), the probability of the Court making liberal (conservative) decisions increases.

Other studies seek to establish whether the Court is influenced by public opinion directly or indirectly. A direct relationship would imply that the Court is attentive to public and follows it for strategic reasons (Epstein and Knight 1998). An indirect relationship would imply that the is not attentive to public opinion but the Court’s decisions merely correlate with public opinion. There would be correlation because the Justices are selected by a political system that represents majoritarian considerations or that the same forces that shift the preferences of the mass public, also shift the preferences of the Justices. Each the direct and indirect account of public opinion as some degree of support in the current literature.

Mishler and Sheehan (1993, 1996) find that public opinion “shapes the subjective norms of individual justices thereby potentially influencing their decisions.” McGuire and Stimson (2004) find evidence that at the term-level, public mood influences Supreme Court decision-making such that when the public becomes more conservative or liberal, the percentage of conservative or liberal decisions the Court makes in a given term increases. Flemming and Wood (1997) find that individual Justices update their ideologies term-to-term to be more aligned with public opinion. Bryan and Kromphardt (2016) find that Justices are more likely to cast counter-attitudinal votes when public opinion is against their preferred outcome. Bryan (2014) presents a secondary avenue for the direct influence of public opinion. She argues the Justice’s strategically select cases for review in which their anticipated decisions will align with public opinion. Casillas, Enns and Wohlfarth (2011) account for social factors that are thought to shape public opinion and find independent of these factors, that public opinion directly influences the Court’s decisions.

Contrary to studies that find a direct effect of public opinion, Norpoth and Segal (1994) find that influence of public opinion is indirect and occurs through new appointments and the ideological composition of the Court. They argue that elected presidents represent public opinion and thus when they nominate Justices, the ideologies of those Justices tend to reflect public opinion. Thus, it is not as if the Justices are consciously influenced by public opinion. Likewise, Stimson
finds that most of the effect previously attributed to the influence of public opinion dissipates when accounting for the ideological composition of the Court. Therefore, their research supports the notion that the Justices’ ideologies represent public opinion through the nomination process. Giles, Blackstone and Vining Jr (2008) analyzed the influence of public mood on individual Justices and found that only 20% of Justices were influenced directly by public opinion and the others were influenced indirectly through attitude change. This research suggests that the extent to which previous studies have found public opinion to be a significant influence is likely overstated. Instead, the same dynamics that influence public opinion also influence the ideological composition of the Court.

Further, contrary to both literatures on direct and indirect influence, Johnson and Strother (2021) argue there is little evidence that the Court is influenced by public opinion. Instead, they posit that many of the findings related to public opinion’s influence on the Court’s decision-making are limited to the Warren Court era (Johnson and Strother 2021).

Taken together, the existing research is somewhat divided on the influence of public opinion. Many studies show that public opinion influences the Justices’ decision-making directly, but that influence does not affect all Justices equally. This suggests that there is heterogeneous influence of public opinion on the individual Justices based on various individual-level variables. Despite this, relatively few studies have examined how individual-level attributes of the Justices shape their likelihood of being influenced by public opinion. However, there are a few exceptions. Owens and Wohlfarth (2017) find that Circuit Court judges with previous electoral experience are more likely to follow public mood than Circuit Court judges without electoral experience. Bryan and Kromphardt (2016) find that individual responsiveness to public opinion – as defined as willingness to cast non-attitudinal votes – is conditional upon political salience, such that individual Justices are more likely to follow public opinion when the issue involved in the case is politically salient. Enns and Wohlfarth (2013) find that the swing Justice is more likely to be influenced by the public mood than the other Justices. Gillion (2013, chapter 3) finds political protests—which can be viewed as a dimension of public opinion—influence individual Justices differently. This research suggests that individual-level attributes do influence the Justice’s willingness to follow public opinion and indicates that further research in this area is warranted.

The Chief Justice and public opinion

An individual-level attribute that has been ignored in existing research is whether a Justice’s responsiveness to public opinion varies between the Chief Justice and the Associate Justices. This omission is noteworthy as there are compelling theoretical reasons to believe that the Chief Justice will be influenced by public opinion to a greater extent than the Associate Justices. Baum (1994) argues that Justices have multiple goals and that these goals go beyond influencing policy. Based on their institutional position, the Chief Justice has a greater incentive to prioritize the Court’s institutional legitimacy. The Chief Justice is often referred to as the first among equals. This captures the notion that while the Chief’s vote counts the same as the eight Associate Justices, the Chief Justice does have additional responsibilities that the other eight Associate Justices do not have. The Chief Justice is the Court’s administrative leader. For example, the Chief Justice presides over the Judicial Conference of the United States and submits an annual report on the state of the federal judiciary to Congress. The Chief Justice is also the Court’s managerial leader. In this role, the Chief Justice leads oral arguments, facilitates the Court’s weekly conference, and, when in the majority, assigns authorship of the Court’s opinions. Finally, the

The models below do not control for prior electoral experience. At the Supreme Court level there are few Justices who had previous electoral experience. During the period analyzed only three Justices had electoral experience: Harold Burton, Hugo Black, and Earl Warren.
Chief Justice is viewed as the symbolic leader of the Court and to this point the Court tends to take the Chief’s name (i.e., the Roberts’ Court). In their position of symbolic leader, the Chief Justice is often viewed as responsible for maintaining the Court’s prestige and legitimacy (Fettig and Benesh 2016).

How the Chief Justice handles his leadership role and maintains the Court’s institutional standing influences his reputation and legacy (Danelski and Ward 2016). One way Chief Justices typically work to do this is by using their state of the federal judiciary addresses to request budgetary support for policies aimed at aiding the federal courts efficiency and institutional capacity (Vining and Wilhelm 2012; Hughes, Vining Jr and Wilhelm 2017). In another study, Resnik and Dilg (2006) report that the Chief Justice uses the state of the federal judiciary address to defend the Court against partisan attacks. Further, the Chief Justice will frequently use their judiciary addresses as an opportunity to discuss matters of public opinion. For example, Chief Justice Burger would often include a section titled “Public Perception” that discussed the importance of the Court and lawyers maintaining the confidence of the public (Burger 1984). More recently, Chief Roberts used his end of the year report to ask that his judicial colleagues “continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach” (Roberts 2019).

Beyond the federal judiciary addresses, the Chief Justice use their other formal powers in ways to enhance the Court’s legitimacy. For example, Haynie (1992) finds that the Chief Justice uses authority over opinion assignment to promote consensus. Research has demonstrated that unanimous Court decisions are more likely to be positively treated by lower courts and less likely to be overridden by Congress (Hansford and SpriggsII 2006). There is also evidence in some contexts that consensus can lead to greater public acceptance of a Court decision (Salamone 2014, 2018). Other scholars have found that the Chief Justice uses authority over opinion assignment to attempt to preemptively respond to external threats and maintain the Court’s efficiency (Maltzman and Wahlbeck 1996; Maltzman, Spriggs and Wahlbeck 2000; Li forthcoming). Thus, existing evidence provides support for the notion that the Chief Justice cares about the Court’s institutional legitimacy and uses their position in ways that promote and protect that institutional legitimacy.

Beyond the Chief Justice’s formal leadership activities, scholars are increasingly interested in other ways Chief Justices work to increase the Court’s prestige and legitimacy. Williams and Smith (2018) argue that the Justices strategically attend the president’s State of the Union in hopes of enhancing the Court’s legitimacy through positivity biases (See Gibson and Caldeire (2009) for further detail on positivity bias). They find that the Chief Justice is more likely to attend than the Associate Justices and attribute this to the Chief Justices greater concerned with maintaining the Court’s legitimacy (Williams and Smith 2018). In another study, Mark and Zilis (2018) provide evidence that the Chief Justice is much more responsive to Congressional Court curbing legislation than the Associate Justices. Specifically, as more Court curbing legislation is introduced, the Chief Justice is less likely to strike down legislation than the Associate Justices. They reason that because the Chief Justice is more concerned about the Court’s institutional legitimacy, the Chief Justice has a greater incentive to respond to Court curbing legislation.

In all, research indicates that the Chief Justice’s institutional position of leadership results in greater attention to the Court’s legitimacy and prestige and in this position the Chief will use their authority as Chief and their regular authority as a Justice to advance the Court’s legitimacy and prestige. Unexamined by current research is how the Chief Justice may respond to public opinion.

Research conducted by Bartels and Johnston (2013) shows that those who are ideologically distant from the Court, view the Court as less legitimate. Christenson and Glick (2015, 2019) use panel data to show that the mass public views the Court more negatively after the Court issues decisions with which they agree. In other studies, Badas (2019a) finds that the mass public is
more likely to support institutional changes to the Supreme Court when they perceive the Court as ideologically distant from them. This research demonstrates that when the Court issues decisions that are at odds with the preferences of the mass public, there are negative consequences for the Court. These consequences include being viewed as less legitimate, being viewed as a political rather than legal institution, and the public becoming more supportive of Court curbing legislation. Badas (2016) finds that individuals view the Court as politically motivated when the Court issues decisions with which they disagree and motivated by legal considerations when the Court issues decisions with which they agree. Armaly (2020) individuals who suffer policy defeats view the Court as procedurally unfair, even if the decisions are framed as fair and apolitical. Thus, it appears that public disagreement with the Court’s decisions harms the Court’s legitimacy and limits the extent to which the is viewed as apolitical and procedurally fair.

While Gibson and Nelson (2015) push back against the conclusions of much of this research on policy disagreement and legitimacy. Their results do demonstrate a negative effect of disagreement on legitimacy (Gibson and Nelson 2015, 169). Their main contention rather is whether the effect of disagreement is strong enough to merit a serious concern for the Court’s legitimacy. However, considering the negative consequences of diminished legitimacy (Caldeira and Gibson 1992; Gibson 2008), it seems likely that the Chief Justice would be attentive to any amount of diminished legitimacy. Thus, one way the Court can maintain its institutional legitimacy is by more often than not, ensuring their decisions follow the preferences of the mass public. By doing so, the Court will prevent the negative consequences that are associated with an ideologically distant mass public.

Directly, ensuring the Court’s decisions are aligned with the public has the benefits of maintaining legitimacy, and the perception that the Court is a legalistic institution. Further, there are indirect benefits following public opinion. Clark (2009) demonstrates that when the Court is unpopular, Congress pursues more legislation aimed at limiting the Court’s authority. Further, Clark (2009) finds that when the Court is unpopular, it is unable to ignore Court curbing legislation and the Justices update their decision-making to be more aligned with the preferences of Congress. However, when the Court is popular and it faces Court curbing legislation, the Justices understand the Court has the institutional legitimacy and prestige to push back and there is little evidence that a popular Court updates their decision-making behavior in the face of Court curbing legislation (Clark 2009). Thus a popular Court avoids the negative consequences that come with unpopular decisions—diminished legitimacy and greater support for institutional changes—and indirectly better situates itself in separation of powers conflicts with Congress. Thus, these provide a strong incentive for the Court to be aligned with public opinion. Yet, this incentive should not be equal for all Justices (Baum 1994). The Chief Justice is viewed as the leader of the Court and as such is seen as the individual primarily concerned with maintaining the Court’s institutional legitimacy. Thus, in order to maintain the Court’s legitimacy, the Chief Justice has a greater incentive to follow public opinion than the Associate Justices, who likely prioritize other goals such as policy influence. Based on this reasoning, I posit Hypothesis 1.

Hypothesis 1. The Chief Justice will be influenced by public opinion to a greater extent than the Associate Justices.

Data and analysis

Supreme Court decision-making 1952–2016

To test Hypothesis 1, two data sources are used. The first source is the Spaeth Supreme Court database (Spaeth et al. 2018). The Spaeth data include information on each fully briefed and orally argued case decided by the Supreme Court between 1937 and the present. The second source is the public mood indicator, developed by Stimson (1998). The public mood indicator is
a composite measure estimated yearly from survey responses and captures the general ideological preferences of the mass public on a conservative to liberal spectrum. Theoretically, the public mood indicator can range from zero—indicating a very conservative mass public—to 100—indicating a very liberal mass public. Data on the public mood indicator are available between 1952 and 2016. For simplicity, the public mood indicator is rescaled to with the range of 0 and 1. The rescaled mean is .511 and the standard deviation is .235. I opt to use contemptuous mood, rather than lagged mood. The justification for not including a lag is that strategic accounts of public opinion’s influence on the Court suggest a contemporaneous effect rather than a lagged effect (Giles, Blackstone and Vining Jr 2008). This is because if Justices are seeking to avoid negative reactions from the public or other institutions, they must attend to the preferences of the public or those other institutions as they are today, rather than a prior preference (Giles, Blackstone, and Vining Jr 2008). Once these data are merged, the analysis presented here includes data on each Justice’s vote in all fully briefed and orally argued cases between 1952 and 2016. This is a total of 70,798 Justice votes across 7,913 cases.

The dependent variable analyzed is a binary indicator which captures whether a Justice voted for the liberal outcome in any given case or not. The key independent variables are whether the Justice was the Chief Justice—coded 1— or an Associate Justice—coded 0—and the public mood indicator. Since Hypothesis 1 anticipates an interactive effect between the Chief Justice variable and the public mood variable, an interaction term is included. The interaction term will determine whether the effect of pubic opinion functions differently for the Chief Justice and the Associate Justices. If the analysis finds support for Hypothesis 1, the interaction for Chief Justice and public mood will be positive and greater in magnitude than the effect of public mood on the Associate Justices.

In addition to the independent variables of interests, the analysis here accounts for other factors that may influence a Justice’s likelihood of voting for the liberal position. Judicial politics scholars have long noted the primacy of ideology in judicial decision-making (Pritchett 1941). Simply put, liberal Justices tend to vote for liberal outcomes and conservative Justices tend to vote for conservative outcomes (Segal and Spaeth 2002). Thus, I control for the Justice’s Segal-Cover ideology score (Segal and Cover 1989). Segal-Cover scores are more appropriate in this context than Martin and Quinn (2002) scores because the scores are estimated using the Justices’ votes thus they introduce endogeneity to models predicting liberal or conservative outcomes (Martin and Quinn 2005; Ho and Quinn 2010).

Another line of research has demonstrated the strong influence the Solicitor General has on Supreme Court decision-making. This influence is so strong that the Solicitor General is often referred to as the Tenth Justice (Caplan 1987). Specifically, the Justices view the Solicitor General as a key information source and are likely to defer to their arguments (Black and Owens 2012b). Thus, the analysis here includes two binary indicators. One that captures whether the Solicitor General advocates for the conservative outcome and a second which captures whether the Solicitor General advocates for the liberal outcome. The omitted category is the Solicitor General does not participate in the case.

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3Summary statistics for all variables is presented in the online appendix.
4For more information on how the Spaeth database makes these determinations, please see the codebook at Spaeth et al. (2018). Generally speaking, decisions that favor civil liberties, civil rights, labor unions, individuals over corporate or government entities, are categorized as liberal.
5Considering there has only been five Chief Justices during the period analyzed, some readers may be concerned that any observed effect is due the relatively small number of individuals who have served as Chief just may chance is a selection of individuals who may be more inclined to follow public opinion. To address, I conduct permutation tests (Heß 2017). Specifically, I re-estimate the model presented in Table 1 one thousand times reassigning the Chief Justiceship at random each term. In less than 1% of simulations was the randomized effect greater than the observed effect. More information is available in the appendix.
6For the reader who want to see results with Martin-Quinn scores, these are presented in the appendix. The results are replicated using the Martin-Quinn scores.
When selecting cases for review, the Supreme Court typically grants certiorari to lower court cases that it wants to reverse (Black and Owens 2012). In total, the Supreme Court tends to reverse the lower court in sixty-five percent of cases (Spaeth et al. 2018). Thus, this analysis controls for the ideological direction of the lower court’s decision. Specifically, a binary indicator is included which takes the value 1 if the lower court’s decision was conservative and 0 otherwise.

Even with these control variables included, it may be the case that unobserved or unaccounted for case-level contextual factors may influence the Justice’s voting behavior. To account for this possibility, I estimate a multilevel mixed effects logistic regression model with random effects by case (Mark and Zilis 2018). In addition, the model includes natural Court level-fixed effects and issue area-fixed effects (Clark 2009; Hall 2014a; Mark and Zilis 2018). The model also includes clustered standard errors by Court term. Such a modeling approach accounts for case-level contextual features while allowing more accurate estimation of Justice level—specifically whether the Justice is the Chief Justice—effects. The multilevel mixed effects logistic regression model results are displayed in Table 1.

Since Hypothesis 1 posits an interactive relationship, the simplest way to evaluate an interactive effect in a logistic model is to present them graphically (Brambor, Clark and Golder 2006). A graphical presentation of the results is displayed in Figure 1. The left pane displays the

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Table 1. Logit Regression Model Predicting Liberal Vote.

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Justice</td>
<td>−0.478**</td>
</tr>
<tr>
<td></td>
<td>(0.170)</td>
</tr>
<tr>
<td>Public Mood</td>
<td>−0.0355</td>
</tr>
<tr>
<td></td>
<td>(0.217)</td>
</tr>
<tr>
<td>Chief Justice × Public Mood</td>
<td>1.065**</td>
</tr>
<tr>
<td></td>
<td>(0.362)</td>
</tr>
<tr>
<td>Segal-Cover Ideology</td>
<td>2.632***</td>
</tr>
<tr>
<td></td>
<td>(0.113)</td>
</tr>
<tr>
<td>US Liberal</td>
<td>0.118</td>
</tr>
<tr>
<td></td>
<td>(0.160)</td>
</tr>
<tr>
<td>US Conservative</td>
<td>−0.575***</td>
</tr>
<tr>
<td></td>
<td>(0.104)</td>
</tr>
<tr>
<td>Lower Court Conservative</td>
<td>1.450***</td>
</tr>
<tr>
<td></td>
<td>(0.0866)</td>
</tr>
<tr>
<td>Senate Median DW-Nominate</td>
<td>−0.700</td>
</tr>
<tr>
<td></td>
<td>(0.877)</td>
</tr>
<tr>
<td>House Median DW-Nominate</td>
<td>0.932</td>
</tr>
<tr>
<td></td>
<td>(0.495)</td>
</tr>
<tr>
<td>Natural Court Fixed-Effects?</td>
<td>Yes</td>
</tr>
<tr>
<td>Issue Area Fixed-Effects?</td>
<td>Yes</td>
</tr>
<tr>
<td>Constant</td>
<td>−2.297***</td>
</tr>
<tr>
<td></td>
<td>(0.194)</td>
</tr>
<tr>
<td>Observations</td>
<td>70755</td>
</tr>
</tbody>
</table>

Standard errors in parentheses.

* *p < 0.05, ** *p < 0.01, ***p < 0.001.

---

7Some scholars analyze only cases in which the Supreme Court reverses the lower court’s decision (McGuire and Stimson 2004; McGuire et al. 2009; Casillas, Enns and Wohlfarth 2011; Enns and Wohlfarth 2013). Some scholars argue that reversals provide the most valid measure of the ideological content of the Supreme Court’s decisions (McGuire et al. 2009). In the appendix, I estimate the models using only cases in which the Supreme Court reversed the lower court. The results are substantive similar to those presented here which use all merits cases.

8Some readers may be concerned about then potential for collinearity between the natural court fixed effects and the public mood. To assuage this concern, I reestimate the models in the appendix with no natural court fixed effects. The results are substantively similar.

9Some readers may be interested in whether the results are replicated when using Chief Justice fixed-effects. This is because as Johnson and Strother (2021) show, the influence of public opinion may be limited to the Warren Court. In the appendix, I re-estimate the models with Chief Justice fixed-effects rather than natural court fixed-effects. The key results replicate.
predicted probabilities of a liberal vote across the range of public mood. The shaded regions of the left pane in Figure 1 represent a significant difference ($p < .05$, two-tailed test) between the Chief Justice and the Associate Justices’ probability in casting a liberal vote. Thus, the results support the argument of Hypothesis 1, which argues the Chief Justice will be more influenced by public opinion than the Associate Justices. For example, going from the most conservative mood to the most liberal, the Chief Justice’s probability of casting a liberal vote increases by .118 ($p < .05$, two-tailed test) while the Associate Justice’s probability of casting a liberal vote hardly changes across the range of public mood ($-.009$, $p > .10$, two-tailed test). These results indicate that on average the Chief Justice is influenced by public opinion and that the Associate Justices are not influenced by public opinion. The right pane of Figure 1 displays the marginal effect of being Chief Justice across the range of public mood to easily summarize the differences between the Chief Justice and Associate Justice.

Another way to demonstrate the substantive significance of the effect that public mood has on the Chief Justice’s decision-making is use the predicted probabilities derived from Table 1 to display the predicted number of liberal votes the Chief Justice would cast in an average term and compare this to the expected liberal vote of an Associate Justice under different levels of the public mood. During the period under study, the Supreme Court heard an average of 130 cases per term. Table 2 displays the predicted liberal votes by the Chief Justice and Associate Justice by a liberal mood and a conservative mood, with all other variables held constant. When the public mood is one standard deviation more liberal than the mean, the Chief Justice would be expected to make roughly 5 more liberal votes than the Associate Justices and when the mood is one

### Table 2. Predicted liberal votes in average 130 case term.

<table>
<thead>
<tr>
<th>Public mood</th>
<th>Chief Justice</th>
<th>Associate Justice</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>.74</td>
<td>70.2</td>
<td>65.26</td>
<td>4.94</td>
</tr>
<tr>
<td>.28</td>
<td>62.79</td>
<td>65.52</td>
<td>-2.73</td>
</tr>
</tbody>
</table>

.74 and .28 represent a standard deviation movement around the mean level of public mood.
standard deviation more conservative than the mean it would be anticipated that the Chief Justice casts roughly 3 more conservative votes than the Associate Justices. These results demonstrate that the Chief Justice is more influenced than the Associate Justices by the public mood and further detail the substantive effect that the public mood has in their decision-making.

Thus, these results indicate that the Chief Justice is influenced by the public mood to a greater extent than the Associate Justices providing support for Hypothesis 1. These effect sizes are comparable to the effect sizes of other external factors’ influences on Supreme Court’s decision-making. For example, these effect sizes are similar to those found in studies on influence of amicus briefs, Court curbing legislation, and oral arguments on the Court’s decision-making (Collins 2004; Mark and Zilis 2018; Johnson, Wahlbeck and Spriggs 2006). Further, considering the strength of the evidence that demonstrates Justices are primarily motivated by their ideological beliefs (Segal and Spaeth 2002), it is noteworthy to find effects of external considerations at all.

**Implications and conclusions**

The Supreme Court is as designed a counter-majoritarian institution. Yet to be influential, the Court must maintain its legitimacy among the mass public. This gives the Justices an incentive to be majoritarian in their decision-making, despite the Court’s counter-majoritarian institutional design. However, this incentive should not be equal among the Justices (Baum 1994). The Chief Justice is viewed as the Court’s leader and in this position the Chief is viewed as responsible for maintaining the Court’s legitimacy. This provides the Chief Justice a greater incentive to engage in majoritarian decision-making. Based on this theory, this paper hypothesized that the Chief Justice should be influenced by public opinion to a greater extent than the Associate Justices. Using data from the Spaeth Supreme Court database, this paper finds support for this hypothesis and demonstrates that the Chief Justice is influenced by public opinion to a greater extent than the Associate Justices. This is true when analyzing the Court’s decision-making behavior broadly between 1952 and 2016.

The finding that the Chief Justice is more influenced by public opinion than the Associate Justices has implications for multiple literatures. First, the results have implications for strategic accounts of judicial decision-making. Baum (1994, 1997, 2014) has criticized strategic accounts of judicial decision-making for being under-theorized. Specifically, Baum (1994, 1997, 2014) claims that strategic accounts largely assume that the Justices will respond to constraints and external factors in a similar fashion. Due to the large variation in the Justices’ personalities, psychologies, and institutional positions, such accounts provide an inaccurate or limited theoretical account of how and when the Justices will engage in strategic behavior. Some researchers have heeded Baum’s concern and began to theorize how individual Justices respond to strategic considerations (Enns and Wohlfarth 2013; Mark and Zilis 2018). This manuscript adds to this developing area of research by providing a theory and evidence supporting this theory that the Chief Justice will be more likely to engage in strategic behavior that promotes a majoritarian Court. Future research on the strategic behavior of the Justices should consider the role of the Chief Justice and their unique institutional position. Doing so will create more nuanced theoretical accounts of the Court’s strategic behavior and move the literature forward toward a better understanding of judicial behavior.

Second, scholarship on public opinion’s influence on the decision-making of the Supreme Court have come to conflicting conclusions. Some of this research finds that public opinion strongly influences the Justices’ behavior while other research finds that the influence of public opinion is more limited or restricted to a small percentage of Justices. The results presented here support the latter view of the influence of public opinion. While this paper finds a positive and significant effect of public opinion on the Chief Justice’s decision-making, the slope for Associate Justices was not statistically distinguishable from zero. This suggests that the Associate Justices...
are, on average, not influenced by public opinion. This result bolsters the argument advanced by Johnson and Strother (2021), who argue that at the aggregate-level, the Court is less influenced by public opinion than recent scholarship suggests. Thus, the influence of public opinion may be isolated to the Chief Justice and a smaller subset of Associate Justices depending on their institutional positions (Enns and Wohlfarth 2013). Future scholars should continue to theorize how institutional positions and other individual-level attributes affect a Justice’s willingness to follow public opinion and other external factors.

The results of this study also have implications for current debates surrounding the Court’s legitimacy and Chief Justice Roberts. After two highly polarized nominations to the Supreme Court, commentators have questioned whether the Court can maintain its legitimacy and institutional prestige (Beauchamp 2018). Many of these commentators have specifically mentioned that Chief Justice Roberts is now responsible for ensuring the Court maintains its legitimacy in the aftermath of these polarized confirmation hearings (Kendall and Bravin 2018). There are also reports that Chief Justice Roberts perceives himself as “the custodian of the Supreme Court’s prestige, authority, and legitimacy” (Liptak 2012). The results presented in this manuscript suggest that because he is more attuned with the Court’s need for legitimacy, Chief Justice Roberts will be more likely to be influenced by public opinion than the Associate Justices. There are a few salient examples that highlight this point. In the context of National Federal of Independent Business v. Sebelius (2012), there is evidence that Chief Justice Roberts switched his vote from invalidating the Affordable Care Act to upholding it due in-part over concerns about potential fallout from the public (Crawford 2012). Likewise, in Department of Commerce v. New York (2018) it has been reported that Chief Justice Roberts initially voted to allow the Trump administration to ask a citizenship question on the 2020 census and then switched his vote to disallow it after considering how such a decision might influence the Court’s image among the public (Biskupic 2019). Based on this, it appears that Chief Justice Roberts’ decision-making is influenced to an extent by the public and their potential response to the Court’s decisions.

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