

How Public Opinion Constrains the U.S. Supreme Court

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Although scholars increasingly acknowledge a contemporaneous relationship between public opinion and Supreme Court decisions, debate continues as to why this relationship exists. Does public opinion directly influence decisions or do justices simply respond to the same social forces that simultaneously shape the public mood? To answer this question, we first develop a strategy to control for the justices' attitudinal change that stems from the social forces that influence public opinion. We then propose a theoretical argument that predicts strategic justices should be mindful of public opinion even in cases when the public is unlikely to be aware of the Court's activities. The results suggest that the influence of public opinion on Supreme Court decisions is real, substantively important, and most pronounced in nonsalient cases.

In the final analysis it is simply not clear whether the Court responds to public opinion, or shapes public opinion, or whether it responds to the same sort of factors that themselves shape public opinion. (Gibson 1990, 290)

Does public opinion influence Supreme Court decisions? The answer to this question holds implications for the debate over how justices decide cases, the sources of the Court's legitimacy and how that may be threatened, and the extent to which the Court acts as a majoritarian or countermajoritarian institution. Yet, despite the theoretical and normative importance of understanding the relationship between public opinion and the Supreme Court, Gibson's (1990) words still resonate. A vast literature documents an empirical association between public opinion and judicial decisions (Flemming, Bohte, and Wood 1997; Giles, Blackstone, and Vining

2008; Link 1995; McGuire and Stimson 2004; Mishler and Sheehan 1993, 1994, 1996; Stimson, MacKuen, and Erikson 1995). But, scholars continue to debate whether the justices, and thus the Court's outputs, actually respond to the public's preferences (Giles, Blackstone, and Vining 2008; Norpoth and Segal 1994; Segal and Spaeth 1993, 2002).

The intellectual foundation for much of the current debate regarding the influence of public opinion on the Court's decisions follows the prescient, but contradictory, words of Alexander Hamilton. In part, Hamilton viewed the Court as "an excellent barrier" against "the encroachments and oppressions of the representative body" that could serve "as an essential safeguard against the effects of occasional ill humors in the society" (Hamilton [1788] 1961, 433, 438). According to this perspective, the institutional design of the Supreme Court insulates the justices from public opinion. Any relationship between public

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opinion and the Supreme Court appears because the justices' preferences change in response to the same social forces that influence the public. Thus, the justices' voting behavior is largely a product of their own ideological preferences (Segal and Cover 1989; Segal and Spaeth 2002), but these attitudes are not fixed (Baum 1988; Epstein, Martin, Quinn, and Segal 2007; Ulmer 1973, 1981). The social forces that shape public opinion also influence the justices' preferences. This "attitudinal change" hypothesis corresponds with the writings of the legal realist and former Supreme Court Justice Benjamin Cardozo, who once remarked, "[t]he great tides and current which engulf the rest of men do not turn aside in their course and pass the judge by" (1921, 167–68).

Yet, Hamilton's ([1788] 1961, 465) observation that the Court has "no influence over either the sword or the purse" lends support to a second perspective, which views the relationship between public opinion and the Supreme Court as evidence of the justices' strategic considerations. According to this "strategic behavior" hypothesis, the justices must take into account how elected officials and the general population will react to, and interpret, their decisions.¹ With 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 (Epstein and Knight 1998; McGuire and Stimson 2004; Mishler and Sheehan 1993, 1996; Murphy 1964).

To our knowledge, only Giles, Blackstone, and Vining have offered a test of the conflicting accounts of why Supreme Court decisions appear to correspond with public opinion. Their analysis of individual justice votes supports the attitudinal change argument. They conclude that "the direct linkage between public opinion and the voting behavior of justices. . . does not arise from the justices' strategic concerns over maintaining legitimacy and compliance among the public. . . the most likely explanation. . . is through the mechanism of attitude change" (2008, 303). Consistent with this conclusion, prior literature that shows a direct relationship between public opinion and judicial decisions—at the individual and aggregate level—acknowledges that changing social forces may be the causal mechanism driving both (Flemming, Bohte, and Wood 1997; Link 1995; Mishler and Sheehan 1996). In other words, the observed

relationship between public opinion and the Supreme Court might be spurious.

Despite their considerable theoretical and empirical contributions, prior studies have been limited by an inability to model these alternate mechanisms. In fact, a primary reason for the continuing debate between the strategic behavior and attitudinal change perspectives is that neither approach has explicitly controlled for the social forces thought to influence both public opinion and Supreme Court justices. We advance this debate by controlling for the justices' attitudinal change that stems from these social forces. We also develop new theoretical predictions for when justices should consider public opinion. In contrast to previous literature, we argue that even for *nonsalient* cases, repeatedly issuing judgments that deviate from the public's preferences risks attracting negative attention from the news media, the public, and other branches of government. For salient cases, by contrast, we show that justices may face the strongest incentive to ignore public opinion.

The article proceeds in two parts. First, we develop a strategy to control for the social forces that influence both the public and Supreme Court justices. Thus, we offer the first direct test of the competing notions of public opinion's impact on judicial decision making. The analysis indicates that while social forces indeed influence the justices' ideology, controlling for these factors, public opinion maintains a statistically significant effect on the Court's decisions. We then investigate whether public opinion's influence occurs in salient or nonsalient cases. In this section of the article, we argue that strategic justices should be mindful of public opinion even when the public is unlikely to be aware of the Court's activities. The subsequent analysis of salient and nonsalient cases confirms expectations. Together, the two analyses suggest that public opinion's influence on Supreme Court decisions is real, substantively important, and most pronounced in nonsalient cases.

Analyzing Strategic Behavior and Attitudinal Change

In this section, we seek to clarify the relationship between public opinion and Supreme Court decisions by evaluating whether public opinion influences the Court's decisions even when controlling for the social forces that shape both the public and the justices. Our theoretical priors align with the strategic behavior argument. This is not to say that the Court, itself, is a strategic actor. Rather, we argue that individual justices have an institutional

¹Our use of the label "strategic behavior" follows Giles, Blackstone, and Vining (2008). Mishler and Sheehan (1996, 174) refer to the "political adjustment" hypothesis and McGuire and Stimson (2004, 1019) refer to "rational anticipation."

incentive to think about the context in which they make decisions, and this context includes public opinion. As a result, the (collective) Court outputs should reflect public opinion.²

Importantly, this strategic behavior argument does not necessarily make strong assumptions about the public's knowledge of the Supreme Court. We contend that the strategic behavior argument only requires that the public *might* notice decisions that run counter to public opinion. From this perspective, Court decisions that deviate from public opinion may be newsworthy precisely because they ignore the public. Thus, unpopular decisions increase the probability that negative news about the Court will come to the attention of the typically inattentive public. Although the Court enjoys high levels of "diffuse support" (Caldeira and Gibson 1992, 658) and media often reflect a "positivity bias" depicting the Court in a positive light (Gibson, Caldeira, and Spence 2003), negative news and unpopular decisions can erode public support for the Court (Durr, Martin, and Wolbrecht 2000; Gibson, Caldeira, and Spence 2003, 555; Grosskopf and Mondak 1998; Hoekstra 2000; Posner 2008, 274). It follows that decisions ignoring the prevailing tides of public mood risk alienating the mass public, inciting negative reactions from the elected branches of government, and perhaps compromising the Court's institutional legitimacy (Epstein and Knight 1998; McGuire and Stimson 2004; Mishler and Sheehan 1993, 1996; Murphy 1964). Thus, in order to protect the Court's esteemed legitimacy, strategic justices (through their collective decisions) should avoid repeatedly issuing deviant rulings that have the potential to incite negative reactions from the media and mass public.³ Below, we develop our strategy for testing this

²This perspective assumes that justices can gauge whether public opinion is moving in a liberal or conservative direction. We believe this is an easy task. Public opinion moves systematically and predictably, and numerous indicators, such as election results, polls, and media reports, provide clues about the general state and direction of public opinion (Erikson, MacKuen, and Stimson 2002; Page and Shapiro 1992; Stimson 1991). Furthermore, public opinion on issues as diverse as crime, race, welfare spending, military spending, and environmental protection moves in tandem (Stimson 1991). Even if justices only consider public opinion in the most general sense, their assessment will automatically reflect opinion movement on specific issues. Finally, Court decisions indicate that the justices have thought about indicators of the public mood. Within the context of interpreting the Eighth Amendment, Justice Rehnquist points to "laws passed by legislatures and the practices of sentencing juries" as indicators of "national consensus" (*Atkins v. Virginia* 2002).

³This conception of strategic judicial behavior follows previous research on legislative behavior (Key 1961; Stimson 1991). Stimson (1991) argues that as long as policymakers do not stray too far from public opinion—that is, they remain within the public's "zone of acquiescence"—the public would rather pay attention to

strategic behavior hypothesis while controlling for the justices' attitudinal change.

Variables and Measures

The dependent variable reflects the percentage of liberal decisions each term, among all cases that reversed the lower court's ruling. We utilize only reversals because prior research shows that reversals provide the most theoretically and empirically valid measures of the ideological content of the Court's decisions (McGuire and Stimson 2004; McGuire et al. 2009).⁴

We analyze the annual percentage of liberal reversals (as opposed to individual case outcomes or justice votes) for several reasons.⁵ First, the strategic behavior argument hinges on public perceptions of case outcomes. Thus, the case outcome is of particular theoretical importance.

things other than politics. If policymakers stray outside of this zone, however, the media may bring the deviation to light, igniting the public's ire. Although not explicitly, Mishler and Sheehan (1993, 89) and McGuire and Stimson (2004, 1019) apply a similar logic to the study of judicial decisions. Similarly, legal scholars have referred to the concept of a "boundary of consensus" (Gillman 2004; Klarman 1996). This argument does not assume that individuals have a preferred decision outcome. Instead, the argument implies that individuals could notice if a decision coincided with an unpopular extreme. The Court's ruling in *Griswold v. Connecticut* (1965) against a state ban on the use of contraceptives by married couples offers a relevant example. Even if most individuals could not articulate a preferred contraception policy, we concur with Klarman (1996) that in 1965 most Americans opposed an outright contraception ban.

⁴It is worth noting, however, that public opinion has a statistically significant effect on the Court's decisions when we analyze all cases. See the Supporting Information File on the *AJPS* website for further discussion of the logic of using reversals and the statistical results when including all cases. The data come from the original Supreme Court Judicial Database (Spaeth 2006). Following previous research that analyzes reversals (McGuire and Stimson 2004; McGuire et al. 2009), the unit of analysis is the docket number, in conjunction with split votes (anal = 0, 1, or 4), for all orally argued cases (decision type = 1, 5, 6, 7). A reversal indicates that the petitioning party received a favorable disposition on the merits (win = 1).

⁵Prior to analyzing all issue areas together, we examined the percentage of liberal reversals for Criminal Procedure, Civil Rights, First Amendment, Economic Activity, and Judicial Power cases. These issue categories comprise approximately 80% of all the Supreme Court's cases. A Cronbach's alpha of 0.79 indicates that the series shares much longitudinal variance, providing empirical support for the decision to analyze all cases together. Furthermore, while not a direct test of public opinion's influence, these similarities across issue areas are consistent with the strategic behavior hypothesis that shifts in the public's liberalism or conservatism influence judicial decisions. By contrast, for the attitudinal hypothesis to predict these similarities, justices would have to update their specific ideologies, such as civil rights and economic attitudes, in a uniform manner in response to prevailing social currents. While not impossible, this would require that Supreme Court justices rely on a very generic type of ideological updating.

Second, an analysis of individual votes may misrepresent strategic behavior. Suppose eight justices rely exclusively on legal or personal ideology but the justice who casts the deciding vote in a 5–4 decision does so, at least in part, because he or she perceives the alternative conflicts with prevailing public sentiment. In this scenario, although the case outcome is due, in part, to considerations of public opinion, an analysis of individual votes will be dominated by personal and legal considerations. Such a finding is undoubtedly important, but it does not portray the relationship between public opinion and the Court's policy outputs. In other words, even though the posited mechanism that links public opinion to the Court's outputs is via the individual justices, an individual-level analysis may not capture the hypothesized relationship. This distinction is especially important because theoretically and normatively we are interested in whether the Court's tangible policy outputs reflect public opinion. Finally, we aggregate case outcomes because the strategic behavior argument typically posits a dynamic effect on the justices' decisions (e.g., Giles, Blackstone, and Vining 2008; McGuire and Stimson 2004; Mishler and Sheehan 1993). Thus, changes in public opinion provide the critical variation that we expect justices to consider and an aggregate measure of the Court's case outcomes each term allows us to test this prediction.

Of course, the Court's decision making involves a two-stage process: decisions to grant a petition for review and then disposition on the merits. Therefore, it is possible that the Court may strategically adhere to public opinion at the agenda-setting stage by accepting or rejecting cases that will avoid deviant rulings. However, we argue that only measuring the Court's final policy outputs (and therefore not accounting for the justices' decisions to deny review) does not pose a problem for our analysis. Our argument does not hinge on *when* public opinion influences the Court, but rather that the justices' final decisions reflect public opinion. Our dependent variable should incorporate strategic behavior that might occur at either stage of the judicial process.⁶ Controlling for the justices' ideology and the social forces that influence them, we expect the Court to issue a greater percentage of liberal (conservative) decisions when public opinion becomes more liberal (conservative).

⁶The possibility that the Court's strategic consideration of public opinion could enter at the agenda-setting or the merits stage (or both) provides an additional rationale for our decision to focus on case outputs as opposed to individual justices' votes. Focusing on justices' votes does not account for the justices' behavior at the agenda-setting stage. By contrast, if the justices selected a case with the public's mood in mind, focusing on the case outcome will be more likely to reflect this consideration.

For our measure of public opinion we use Stimson's Policy Mood, which incorporates information from hundreds of public opinion survey questions asked at repeated time points in order to provide a longitudinal measure of the public's mood (Stimson 1991). Because the opinion questions are all political in nature, the measure captures the public's shifting preferences along the standard liberal–conservative political dimension. Nearly all studies of the relationship between the Supreme Court and public opinion rely on Stimson's measure of mood (e.g., Giles, Blackstone, and Vining 2008; McGuire and Stimson 2004; Mishler and Sheehan 1993). The time period of analysis extends from the 1956 to 2000 term.⁷

Controlling for Social Forces

The attitudinal change hypothesis contends that the same social forces that shape the mass public also influence Supreme Court justices. Thus, the dynamic relationship between public opinion and Supreme Court decisions is spurious—social forces cause both. We have suggested, however, that in addition to the effect of social forces on judicial ideology, the Court's outputs should stay aligned with public opinion as justices make decisions, in part, to avoid attracting negative attention. Here, we offer a direct test of the relationship between public opinion and case outcomes. Our analysis proceeds in two steps. First, we set out to account for the forces that move the public mood. Then, controlling for these social forces, we test whether the relationship between mood and Supreme Court decisions remains significant.

Since the attitudinal change argument posits that social forces indirectly influence Supreme Court decisions, operating through the justices' preferences over time, controlling for the justices' ideology would automatically control for the influence of social forces. Unfortunately, we cannot rely on existing measures of ideology for this purpose. The Segal–Cover scores provide one important measure of ideology (Segal and Cover 1989; Segal et al. 1995). These scores are based on editorials about the justices during their nomination process. However, since the

⁷Following Flemming and Wood (1997) and Giles, Blackstone, and Vining (2008), we begin our analysis with the 1956 term. These authors note the anomalously high turnover of justices between 1953 and 1955, which could affect inferences about the Court's overtime behavior. Our measure of public opinion also leads us to start in 1956. Although we have observations for mood starting in 1953, the first few years in the series are not based on as many survey questions as the rest of the series. Thus, again consistent with prior research (Erikson, MacKuen, and Stimson 2002; Stimson, MacKuen, and Erikson 1995), we choose to begin the analysis in 1956. We end the analysis in 2000 because the policy liberalism series ends in this year.

measure does not include any information after a justice is confirmed, by definition, it cannot account for the social forces that might shape justices after they join the Court. In the following analysis, we rely on the Segal-Cover median scores to control for the justices' ideology, as measured at the time of confirmation, but we are fully aware that this measure does not control for contemporaneous social forces.

The Martin-Quinn scores provide a second prominent measure of justice ideology (Martin and Quinn 2002). These scores offer the advantage of providing a dynamic, contemporaneous measure of the justices' revealed preferences. For our purposes, however, the scores are problematic because they are based on actual judicial votes. Since we seek to explain Supreme Court decisions, using the Martin-Quinn scores as a control variable could introduce a circularity problem, potentially producing inconsistent estimates. Two-stage least-squares (TSLS) offers a potential solution in this scenario. TSLS generates predicted values of the endogenous predictor (i.e., the Martin-Quinn measure of ideology) by regressing these variables on exogenous instruments. The predicted values serve as instrumental variables, which are not endogenous to the dependent variable.⁸ In the present case, if we can identify the social forces that move mood, we can use these as exogenous instruments for the dynamic change in justice ideology that stems from social forces. The Martin-Quinn median scores will serve as the contemporaneous measure of justice ideology that we intend to instrument.

This strategy depends on our ability to identify the social forces that move public opinion. "Social forces" sounds like a broad, almost immeasurable, concept. But, we actually know a lot about the forces that move the public's mood. The nation's political currents are one force that moves mood (Durr 1993; Erikson, MacKuen, and Stimson 2002; Stimson 1991, 2004). As policy moves in a liberal or conservative direction, the public responds thermostatically by adjusting opinion in the opposite direction (Wlezien 1995). We utilize two measures of national policy: the percent of the federal budget spent on military spending and a measure of policy liberalism. Policy liberalism, which was created by Erikson, MacKuen, and Stimson (2002) and updated by Kelly (2005), codes Mayhew's (1991) updated list of crucial policy laws as liberal or conservative. The result is a longitudinal indicator of whether national policy is moving in a liberal or conser-

vative direction.⁹ The public's policy mood also responds to changes in the economy (Durr 1993), as increases (or decreases) in unemployment prompt more (or less) liberal preferences and increases (or decreases) in inflation trigger more (or less) conservative preferences (Enns and Kellstedt 2008; Erikson, MacKuen, and Stimson 2002; Stevenson 2001). Thus, we include both of these objective economic indicators.¹⁰ Research also suggests that policy mood responds to long-term social trends, such as the level of inequality (Kelly and Enns 2010) and the crime rate (Grant and Habel 2008). We use the Gini Index as a measure of inequality and the homicide rate as a measure of crime.¹¹

Not surprisingly, several of these social forces variables are correlated. If our goal was to isolate the determinants of mood, this might pose a problem. Our purpose, however, is more basic. We simply want to obtain measures of the social currents that, together, account for the variation in mood. To assess whether we have accomplished this task, we regress mood on the lagged values of these six variables. The six variables account for a substantial 76% of the variance in mood. Perhaps more importantly for our purposes, the residuals from this model are white noise. In other words, these predictors account, statistically, for all of the systematic variance in mood.¹² These variables will serve as the instruments for the component of justice ideology that is influenced by social forces. Certainly, Supreme Court justices' ideological preferences depend on factors beyond contemporary political, economic, and social trends. Our goal, however, is not to account for all of the variation in the justices' ideology. Rather, we want to account for the attitudinal change that is a function of the social forces that also influence the public. Using these instruments in the TSLS framework will accomplish this goal.

⁹Mayhew's updated list of important laws can be found at <http://pantheon.yale.edu/~dmayhew/>. For a detailed discussion of the policy liberalism coding, see Erikson, MacKuen, and Stimson (2002, 328–36) and Kelly (2005, 872). We would like to thank Nate Kelly for providing us with this updated series. Budget data come from the Policy Agendas Project (<http://www.policyagendas.org/datasets/index.html>).

¹⁰Data come from the United States Bureau of Labor Statistics. Inflation represents the percent change in the annual Consumer Price Index. Unemployment represents the annual percent unemployed.

¹¹The Gini Index data come from the United States Census Bureau, and the homicide data come from the Bureau of Justice Statistics.

¹²The nonsignificant Ljung-Box Q statistic ($p = .39$) indicates the residuals are white noise.

⁸TSLS also uses the other predictors in the model as instruments to ensure that the instrumental variable does not correlate with the residual from the second stage of the regression.

Does Public Opinion Constrain the Court?

The previous section detailed how TSLS allows us to account for the variance in the justices' ideology that stems from social forces. Here we test whether, after controlling for this attitudinal change as well as the Court's ideological composition at the time of confirmation, public mood influences Supreme Court decisions. We estimate the subsequent models using single-equation error correction models (ECM). The ECM provides a conservative empirical test of our argument and a general model that is appropriate with both stationary and nonstationary data (De Boef and Keele 2008). The ECM also allows us to differentiate between short-term and long-term causal effects. Short-term effects occur if a change in the predictor variable produces an immediate (yet permanent) change in the dependent variable. Long-term effects, by contrast, indicate that the past value of the predictor influences current and future values of the dependent variable through an equilibrium relationship.

Our dependent variable is the annual percentage of liberal Court decisions, among all reversals. Mood and the social forces variables follow the calendar year. Since the Court term begins in October, these measures slightly precede the Court-related variables. Although the measures overlap in October, November, and December, mood and social forces also incorporate information from the preceding nine months. This decision stems partly from necessity; most of the social forces variables are only measured annually. The lag also offers the analytic advantage of ensuring that causality indeed flows in the direction we describe.¹³

The ECM estimates a coefficient for the differenced and lagged value of each predictor. Thus, in the first stage of the regression, we use the social forces indicators as instruments to estimate predicted values for both changes in and the lagged value of the Court's revealed preferences. The dependent variable in this stage of the regression is the Martin-Quinn median (Martin and Quinn 2002).¹⁴ As detailed above, we adopt this strategy to account for the changes in justice ideology that stem from the same social forces that influence mood. In this first-stage regres-

sion (not shown), the R^2 for the differenced and lagged Martin-Quinn scores equal .52 and .73, respectively. The amount of variance explained supports the claim that the same social forces that move the mass public also influence Supreme Court justices.¹⁵ This is an important result that is consistent with the attitudinal change model. This evidence does not, however, rule out the possibility of a direct effect of mood. Our primary question is whether, after controlling for the influence of social forces on justice ideology, mood exerts a statistically significant effect on Supreme Court decisions.

Table 1 reports the results of the second stage of the TSLS regression.¹⁶ For each variable, we report the expected immediate and long-term impact. For variables with a significant long-term influence, we also report the long-run multiplier (LRM), which reflects the total expected change (in both the short and long run combined) in the percentage of liberal Supreme Court decisions for each unit shift in the predictor variable. The error correction rate informs us of how quickly the dependent series adjusts in future time periods to the long-run impact of each independent variable at time t .

The data illustrate that, even after controlling for the influence of social forces, public mood has both a significant short- and long-run influence on the Court's decisions.¹⁷ The significant short-term effect suggests that as prevailing public sentiment shifts in a liberal direction, the Court responds by issuing a greater proportion of liberal judgments at term t . We expect that a one-unit shift of mood in the liberal direction will produce an immediate 1.59-unit increase in the proportion of liberal reversals. The significant long-run impact of mood on the Court suggests that public opinion also has an effect that is distributed over future time periods. The error correction rate of 0.83 indicates the speed at which this long-term effect takes place. We expect that 83% of the long-run impact of public mood will influence the Court at term $t+1$ (0.72), an additional 83% of the remaining

¹⁵Because justices may respond to social forces at a different rate than the mass public, we estimated the first-stage regressions with various lagged and contemporaneous specifications. In no case did the specification substantively alter the importance of mood in the second-stage regression.

¹⁶A Ljung-Box Q test indicates we cannot reject the null hypothesis that the residuals are white noise ($p = .18$), thus serial correlation is not a problem.

¹⁷To ensure that our results are not sensitive to model specification, we estimated a variety of different models, including a measure of mood that is contemporaneous with the Court term, estimating mood with additional lags, and directly controlling for all social forces variables. These results are reported in the Supporting Information File available on the *AJPS* website. The results reinforce all findings reported in Tables 1 and 2.

¹³To further assess whether causality runs in the direction we posit, we estimated a Vector Autoregressive Model that includes case outcomes, Court ideology, and public opinion. The results are consistent with the expectation that public opinion "Granger causes" changes in Supreme Court liberalism ($p = 0.021$). The results do not imply reverse causality ($p = 0.240$) (lag length selected based on Akaike's information criterion).

¹⁴To facilitate interpretation, we recoded the Martin-Quinn scores to correspond with the Segal-Cover scores. Thus, higher values reflect more liberal preferences. We also standardized both measures to a mean of 0 and a standard deviation of 1.

TABLE 1 The Influence of Public Opinion on Supreme Court Decisions While Controlling for Attitudinal Change, 1956–2000

<i>Short-Term (Immediate) Effects</i>	
Δ Public Mood	1.59* (0.78)
Δ Court Ideology	12.48* (4.29)
Δ Social Forces (IV)	2.78 (3.00)
<i>Long-Term Effects</i>	
Public Mood _{t-1}	0.87* (0.42)
Court Ideology _{t-1}	9.68* (3.10)
Social Forces (IV) _{t-1}	0.98 (2.14)
<i>Error Correction Rate</i>	
Percent Liberal _{t-1}	-0.83* (0.15)
Constant	-6.03 (25.14)
<i>Long-Run Multiplier</i>	
Public Mood	1.05* (0.51)
Court Ideology	11.66* (2.82)
R ²	.53
N	45

The dependent variable represents the change in the percentage of liberal decisions issued by the Supreme Court during each term, among all reversals.

* $p < .05$ (one-tailed tests); standard errors in parentheses.

effect will transpire at term $t+2$ (0.12), and so on until the total long-run effect has been distributed. Therefore, the Court's long-term responsiveness to public mood occurs rather quickly, as 97% of the total long-run effect of public opinion at term t will be manifested in the justices' behavior after just two terms.

Overall, the LRM of 1.05 reflects the total substantive influence of mood—combining both the short- and long-run effects—on the Court's case outcomes.¹⁸ Substantively, the LRM implies that the Court will exhibit roughly a 1% increase in the proportion of liberal reversals for every 1% shift of public mood in the liberal direction. When observing a standard deviation (4.02) shift of

¹⁸See De Boef and Keele (2008) for a discussion of the LRM and how to compute it and its standard error.

public opinion in the liberal direction at term t , we expect the Court's aggregate liberal behavior to increase a total of more than 4%.

Consistent with expectations, the variable accounting for the Court's ideological composition (using the Segal-Cover scores) also displays both a significant short- and long-run influence on the Court's decisions. A one-point shift in the median justice's ideal point in the liberal direction produces an immediate 12.48% increase in the proportion of liberal reversals. Furthermore, given a similar change in the Court's composition, we expect a long-run increase of 9.68%, distributed over future time periods. The LRM indicates that the total impact of a standard deviation shift of the Court's ideology in the liberal direction yields approximately an 11.5% increase in the proportion of liberal reversals. Due to different measurement scales, the magnitude of this effect is much closer to the effect of mood than the coefficients suggest. A standard deviation shift in the Court's ideology is expected to produce a total shift in case outcomes just 2.75 times greater than the expected change for a standard deviation change in mood. The positive coefficient for the social forces variable is consistent with the attitudinal change model, but the relationship is not statistically significant.¹⁹ Overall, these results provide compelling evidence that public opinion serves as an important constraint on the Court's outputs, independent of the broader forces that influence both public mood and the Court.

Nonsalient and Salient Cases

The above relationship between Supreme Court outcomes and public opinion provides strong evidence that justices consider public opinion in some decisions. An important remaining question is whether the justices are simply responding to public opinion on a small subset of cases. One view of strategic behavior holds that if justices follow public opinion, this relationship should only exist

¹⁹Despite the nonsignificant coefficient, we cannot conclude that attitudinal change does not influence case outcomes. As we note above, our measures of social forces account for a substantial portion of the variance in the Court's revealed preferences over time. Furthermore, as we report in the Supporting Information File (available on the *AJPS* website), when we estimate the model without the Segal-Cover scores, this instrumented social forces variable becomes significant. In other words, we are unable to statistically identify what portion of the effect of justice ideology on case outcomes reflects the justices' ideology at the time of confirmation and what portion reflects attitudinal change. The key point for our analysis, however, is that controlling for *both* measures of ideology, public opinion maintains a statistically significant and substantively important influence on the Court's outputs.

for those few politically salient cases occurring each term (Giles, Blackstone, and Vining 2008, 296). According to this perspective, justices face no incentive to consider the public's preferences when the mass public does not tune in to the Court. For salient cases, however, strategic justices should anticipate and follow the public's preferences in order to maintain institutional legitimacy.²⁰ This formulation of the strategic behavior argument views the public as a monitor of salient judicial decisions. If the Court's decisions do not follow the public's preferences, the monitorial public (and the policymakers whose electoral fortunes depend on this public) will ignore decisions and perhaps lose confidence in the Court. We contend, however, that if justices strategically consider public opinion, these considerations should be evident for *nonsalient* cases and perhaps not evident for salient cases. We detail the theoretical considerations that support these predictions below. Following Epstein and Segal (2000), we identify salient cases as those reported on the front page of the *New York Times* the day following the decision.

First, we consider expectations for salient decisions. We acknowledge that the probability of a Court decision attracting significant attention is surely greatest in cases that are presumed to be more salient to the public. Additionally, the initial rulings on salient issues can influence public opinion (Johnson and Martin 1998). Thus, justices' interests in maintaining institutional support might lead to heightened attention to public opinion in these cases. The justices, however, must also balance the incentive to accommodate popular will against their desire to see case decisions reflect their own goals and preferences. Salient cases commonly involve issues where justices face the strongest competing desire to follow legal considerations or their personal ideology (Bartels n.d.; Unah and Hancock 2006), and their personal policy preferences are likely to be more clearly defined in salient cases (Maltzman, Spriggs, and Wahlbeck 2000). If the Court's reservoir of diffuse support enables the justices to endure negative attention in select cases, they should arguably utilize that capital when deciding issues where their individual preferences are likely to have the greatest intensity. Such a scenario should disproportionately occur in cases presumed to be politically salient. As a result, justices should be most likely to ignore public opinion and follow legal considerations or their personal ideology in the few highly salient cases they encounter each term.

In addition to the competing influence of the justices' personal preferences, in some instances, a case may *be-*

come salient because the Court's decision deviates, or is expected to deviate, from public opinion (Slotnick and Segal 1998, 81). Evidence suggests that politically controversial case outcomes attract significantly more attention from the media (Flemming, Bohte, and Wood 1997; Fleming, Wood, and Bohte 1999; Haider-Markelm, Allen, and Johansen 2006). Thus, a decision to ignore public opinion when disposing of a case, perhaps due to the justices' desire to strictly follow their own personal or legal preferences, will likely increase the probability of stirring up the discord that the news media will find attractive. In these instances, salient cases will *not* reflect public opinion; case salience would be endogenous to straying from public opinion.

For nonsalient cases, however, we contend that the Court's outputs *will* reflect popular opinion. At first, this expectation is quite surprising. Past research has predicted that public opinion, if it influences Supreme Court justices, should do so for salient decisions when the public is more likely to be aware of the outcome. However, we show that many factors may lead justices to *perceive* that repeatedly issuing unpopular decisions—for nonsalient cases—risks compromising the Court's institutional legitimacy. In other words, even if a case does not originally attract public attention, the outcome may receive attention at a future time period. Accordingly, considering public opinion in nonsalient cases may help preserve the Court's reservoir of diffuse support, allowing increased latitude to issue decisions that might contradict public opinion in select salient cases that hold clearer political or personal significance.

A Perceived Cost to Ignoring Public Opinion for Nonsalient Cases

In this section, we evaluate our contention that the effect of public opinion on the Supreme Court should be evident among nonsalient cases. If the justices knew with certainty that a specific decision would never attract attention, there would be no reason to expect strategic consideration of public opinion on these nonsalient cases. However, for most cases we believe there is a nontrivial probability that media will draw attention to prior nonsalient rulings, or series of rulings, that deviated from public opinion. It may be that in some issue areas it takes multiple unpopular decisions to attract media attention. For example, even though Tushnet notes, "no one besides the justices really cares about federalism" (2005, 277), following *Federal Maritime Commission v. South Carolina State Ports Authority* (2002), the *New York Times* headline "At the Court, Dissent over States' Rights Is Now War" called

²⁰As previously mentioned, Giles, Blackstone, and Vining (2008) do not find evidence that individual justices employ this type of strategic consideration.

attention to the increasingly vocal dissent against repeated rulings in favor of states' rights.²¹ Alternatively, the implications of the decision or the level of potential dissatisfaction may not be immediately apparent. Consider, for example, *Hudson v. Michigan* (2006) and *Herring v. United States* (2009), two "nonsalient" rulings during the Roberts Court on the "exclusionary rule" that failed to make the front page of the *New York Times*. It took two weeks after the nonsalient *Herring* before the *New York Times* highlighted the Court's expansion of permissible search and seizures with a front-page story (Liptak 2009). Additionally, even if a specific case never makes the news, pundits regularly incorporate nonsalient cases into their overall assessments of the Court. These scenarios suggest that justices cannot assume that an unpopular but little-known case outcome will remain permanently unknown to the public.

Organized interest groups may also play a role in bringing previously nonsalient decisions to the public's attention. Wlezien and Goggin (1993) show that Supreme Court decisions on abortion can influence interest group activities at future time points. It is not hard to imagine that such a relationship also exists for some nonsalient cases.²² For example, consider the National Urban League press release (May 2, 2006) referring to the Voting Rights Act Reauthorization and Amendments Act of 2006. The press release stated, "Among other things, the bill reauthorizes and restores Section 5 to the original congressional intent that has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*."²³ Similarly, reporting on the "Top Issues That Shaped the Quality of Aging in America" in 2000, an AARP press release referred to the nonsalient *Reeves v. Sanderson Plumbing Products, Inc.* as "a landmark decision for victims of age discrimination in the workplace."²⁴ Even when the Supreme Court makes a ruling that does

not initially attract attention, *some of the time*, media and organized interests draw attention to the case. This fact alone might be sufficient for justices to consider the context of their decisions and prevailing public opinion in nonsalient cases. To behave otherwise would risk inciting negative attention at some point in the future. Of course, the incentives for considering public opinion would be even stronger if evidence showed that the accumulation of deviant opinions in nonsalient cases in fact reduces support for the Court.²⁵ We turn to this point next.

Durr, Martin, and Wolbrecht (2000) show that public support for the Supreme Court declines when the Court deviates from public opinion on salient decisions. Our interest here is whether we can uncover similar evidence for nonsalient cases. Such a result would suggest that justices ignoring public opinion on nonsalient cases risk compromising institutional support. To evaluate whether public support for the Supreme Court ebbs and flows in response to how closely the Court's decisions align with public opinion, we must generate measures of these concepts. For our measure of support for the Supreme Court, we rely on data from the General Social Survey (GSS). Specifically, for each year of the GSS from 1973 to 2000, we subtract the percentage of respondents who support Congress "some" or a "great deal" from the corresponding percentages who support the Supreme Court.²⁶ This measurement strategy has the advantage of identifying increases and decreases in support for the Supreme Court that are unique to the Court and not simply indications of a more general pattern of increased or decreased support for government (Durr, Martin, and Wolbrecht 2000;

²¹Just one year later, in *Nevada Department of Human Resources v. Hibbs* (2003) the Court reversed course, ruling against the State of Nevada's contention that it was immune from lawsuits pursued under the Family and Medical Leave Act, with Chief Justice Rehnquist, the architect of the Court's "federalism revolution," writing the majority opinion. The legal scholar Robert Post commented, "it shows that the majority was very aware of not taking this too far and provoking a public reaction against the court for undoing really important civil rights legislation" (quoted in Greenhouse 2003).

²²This assertion parallels Scherer, Bartels, and Steigerwalt's (2008) finding that when lower court nominees are ideologically extreme, interest groups sound a "fire alarm," bringing information to senators and making the nomination politically salient.

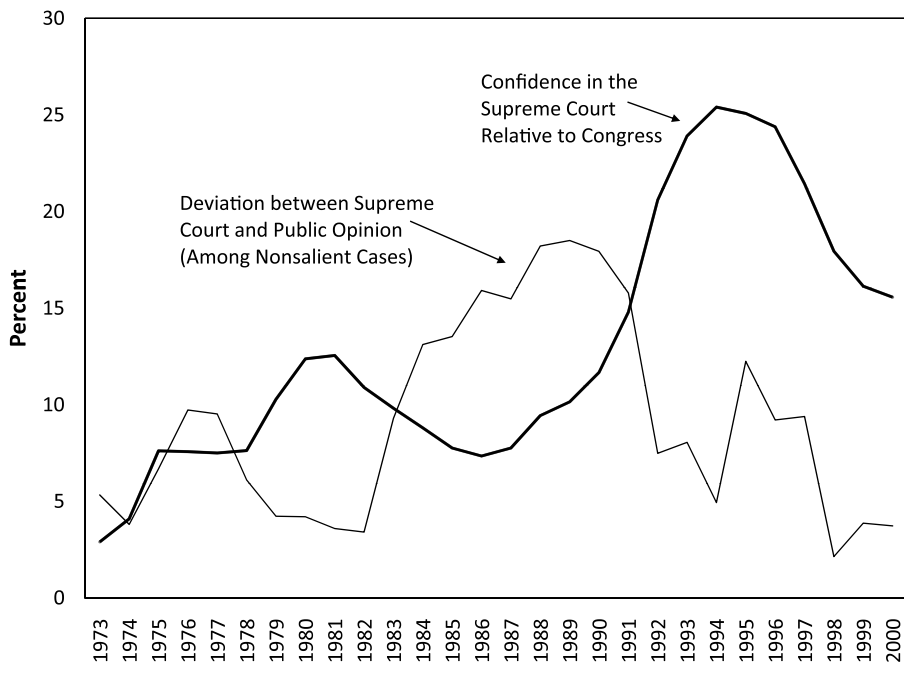
²³Press release accessed from <http://www.nul.org/pressreleases/2006/2006PR325.html>.

²⁴Press release accessed from <http://www.aarp.org/press/2000/nr121100.html>.

²⁵Such a relationship would in no way require the public to be aware of the details of these decisions. The public is largely ignorant about economic theory and facts, yet holds highly informed expectations about the state of the economy (Erikson, MacKuen, and Stimson 2002). Similarly, without being able to provide information about candidates or the campaign, many voters systematically select the candidate who aligns with their preferences. The seeming incongruence between factually uninformed citizens and meaningful public opinion has been explained by the theory of online processing, which holds that countervailing impressions, such as good news or bad news, are incorporated into summary evaluations even when facts and arguments are poorly understood and discarded (Lodge, McGraw, and Stroh 1989; Lodge, Steenbergen, and Brau 1995). It would not be surprising if individuals relied on an online tally when evaluating the Supreme Court (Mondak and Smithey 1997, 1122).

²⁶Gibson, Caldeira, and Spence (2003) correctly note that the GSS confidence measure is an imperfect measure of public support for the Court that reflects both diffuse and specific support. This concern should be attenuated here because we are evaluating increases and decreases in support for the Court and not the absolute level of either diffuse or specific support. Furthermore, the GSS question wording provides the most consistent measure suitable for a time series (Ura and Wohlfarth 2010). In years when the GSS was not asked, we rely on linear interpolation to estimate the missing value.

FIGURE 1 How Relative Confidence in the Supreme Court Corresponds with the Deviation between Nonsalient Supreme Court Decisions and Public Opinion, 1973 to 2000



Ura and Wohlfarth 2010).²⁷ To generate our measure of how closely the Court corresponds with public opinion, we regress the percentage of nonsalient liberal decisions on public mood.²⁸ We then use the absolute value of the residual to measure how closely the Court's output corresponds to public opinion. The residual offers a direct measure of how far the observed value of Supreme Court liberalism for nonsalient cases deviates from what we would expect of the Court's decisions based on public opinion alone. We do not control for other variables because we are measuring how the public's confidence in the high court responds to the degree to which the Court's outputs conform to public opinion, not the reasons why the decisions deviate (or do not deviate) from popular will. We expect that as the deviation between the Court and public opinion increases (or decreases), the public's relative confidence in the Court will decrease (or increase).

²⁷The substantial correlation between approval of the Supreme Court and Congress ($r = .50$) suggests that evaluations of both institutions reflect general assessments of government and reinforces the importance of isolating the over-time variation that is unique to the Court. We do not evaluate support for the Court relative to presidential approval because Durr, Martin, and Wolbrecht (2000) show the two series are independent.

²⁸As with the previous analysis, we rely on reversals. Public mood corresponds with the Court term.

Figure 1 plots these two series, using a three-year moving average. We utilize a moving average to smooth out sampling error, which would exaggerate differences in the two series. For the subsequent statistical analysis of these series, we report results for both the smoothed series and the raw data.

The patterns in Figure 1 correspond closely with expectations. First, notice that confidence in the Court is always positive, indicating that in every survey, more respondents supported the Supreme Court than Congress. This result is consistent with the idea that the Court maintains high levels of "diffuse" support (Caldeira and Gibson 1992). However, when the deviation between the Supreme Court's nonsalient decisions and public opinion decreased in the late 1970s, we see confidence in the Court increase. Then, through the 1980s as the Court increasingly deviates from public opinion, confidence in the Court relative to Congress decreases. In the late 1980s, the Court begins to realign with public opinion and confidence again begins to rise. The last few years of the series are surprising because the Court appears aligned with the public and confidence is decreasing. Overall, however, we observe the expected inverse relationship between support for the Court and the deviation between the Court's nonsalient decisions and public opinion. To

more thoroughly evaluate these patterns, we also conduct Granger causality tests to determine if previous values of the Court's deviation from public opinion predict current levels of support for the Court. Using both the smoothed series in Figure 1 and the raw data, deviations "Granger cause" confidence ($p < .05$). Furthermore, this result holds when we control for the Court's deviations from public opinion on salient cases.²⁹ Lagged values of both salient *and* nonsalient deviations predict future levels of confidence in the Court.

We cannot say with certainty that support for the Court changed because members of the public noticed that the Court's nonsalient decisions were more or less aligned with their preferences. Such an analysis is beyond the scope of this article. But, we believe the evidence presented above supports our claim that justices should *perceive* that ignoring public opinion carries a risk. Confident that justices have reason to believe that repeatedly ignoring public opinion in nonsalient cases is costly, we now directly test the relationship between public opinion and the Court's decisions in salient and nonsalient decisions. The expectation that justices consider public opinion for nonsalient cases carries important implications for both how public opinion influences the Court's outputs and the extent of the public's influence. On one hand, this prediction implies that the public's influence may extend to a much broader range of cases than previously thought. On the other hand, consistently considering public opinion in nonsalient cases may help preserve institutional support for the Court, perhaps allowing the Court to deviate from public opinion in certain highly salient cases where the justices may attach a stronger legal or ideological importance.

The Influence of Public Opinion on Nonsalient Cases

For the subsequent analysis, we generate two separate time series to account for the impact of public opinion on the Court's case outcomes. One dependent variable measures the proportion of liberal reversals among only nonsalient cases while we compute the second series using just salient cases. As noted above, we classify salient cases as those reported on the front page of the *New York Times* the day following the decision (Epstein and

²⁹Granger tests based on Vector Autoregressive Models. Lag lengths selected based on likelihood-ratio tests and Akaike's information criterion. Because the Court term starts in October and the GSS is typically conducted in February, March, or April, the survey year is matched with the term starting in October of the previous year.

TABLE 2 The Influence of Public Opinion on Salient and Nonsalient Supreme Court Decisions While Controlling for Attitudinal Change, 1956–2000

	Nonsalient	Salient
<i>Short-Term (Immediate) Effects</i>		
Δ Public Mood	1.68* (0.79)	1.24 (1.81)
Δ Court Ideology	11.37* (4.41)	10.47 (10.03)
Δ Social Forces (IV)	2.56 (2.98)	7.49 (8.03)
<i>Long-Term Effects</i>		
Public Mood _{<i>t</i>-1}	0.88* (0.42)	0.71 (0.96)
Court Ideology _{<i>t</i>-1}	8.37* (3.09)	16.90* (5.73)
Social Forces (IV) _{<i>t</i>-1}	-0.01 (2.15)	9.20* (5.09)
<i>Error Correction Rate</i>		
Percent Liberal _{<i>t</i>-1}	-0.77* (0.15)	-1.27* (0.15)
Constant	-11.05 (25.42)	31.02 (58.32)
<i>Long-Run Multiplier</i>		
Public Mood	1.14* (0.56)	0.56 (0.76)
Court Ideology	10.87* (3.11)	13.31* (4.20)
Social Forces (IV)	-0.01 (2.79)	7.24* (4.36)
R ²	.49	.64
N	45	45

The dependent variable represents the change in the percentage of salient and nonsalient decisions issued by the Supreme Court during each term, among all reversals. * $p < .05$ (one-tailed tests); standard errors in parentheses.

Segal (2000).³⁰ As our independent variables, we again use public mood, the Segal-Cover measure of justice ideology, and the social forces instrumental variable for contemporaneous ideology.

Table 2 reports the results of our analysis for both nonsalient and salient cases.³¹ Column 1 reports the regression results among only nonsalient cases. Similar

³⁰We used the *Supreme Court Compendium* (Epstein, Segal, Spaeth, and Walker 2007) to update Epstein and Segal's (2000) salience data, which are available at <http://epstein.law.northwestern.edu/research/salience.html>.

³¹For both models, a nonsignificant Ljung-Box Q test indicates that serial correlation is not a problem.

to the analysis of all cases, for nonsalient cases our results display the important influence of mood. Here we see that public mood exhibits a significant influence on the justices in both the long and short run. The short-term effect shows that a one-unit shift of mood in the liberal direction produces an expected 1.68% increase in the Court's liberal behavior. The error correction rate indicates that 77% of the long-run effect of mood will occur at term $t+1$ (0.68) and an additional 77% of the remaining effect will influence the Court at term $t+2$ (0.16). Therefore, 94% of the total long-run effect of public opinion at term t will be manifested in the justices' behavior after just two terms. The LRM suggests a 1.14% increase in the Court's liberal behavior for every unit change of public mood in the liberal direction. Substantively, we expect a standard deviation shift of public mood in the liberal direction to produce a total 4.58% increase in the proportion of liberal reversals among nonsalient cases.

Aside from the public mood predictor, the Court's ideological composition also exhibits a significant impact on policy outcomes in cases perceived to be nonsalient. As the ideological complexion of the Court shifts in the liberal direction, we expect the justices to issue a greater proportion of liberal reversals. This effect is statistically significant in both the short and long run. Overall, we expect that a standard deviation shift of the median justice's ideal point in the liberal direction will lead the Court to increase its aggregate liberal behavior by almost 11% (based on the LRM of 10.87). Importantly, the estimated influence of justices' ideology is just 2.4 times the estimated influence of public opinion. The predictor accounting for the short-term influence of social forces is positive but not statistically significant.³²

Column 2 reports the regression results for the dependent series consisting of only salient cases. The effect of public mood is not statistically significant for cases that appear on the front page of the *New York Times*. The long-term effect of the Court's ideology as well as the long-term influence of social forces do emerge as significant predictors. The magnitude of the error correction rate in this model suggests that, following just one term, the Court's behavior almost completely adjusts to changes in ideology and social forces at term t .³³ The Court's ide-

ological preferences illustrate a significant long-term relationship with its case outcomes. A conservative shift in the Court at term t predicts a smaller proportion of liberal reversals distributed at term $t+1$. Consistent with previous research, the estimated effect of the Court's ideological composition appears larger among salient cases compared to nonsalient rulings (Bartels 2008; Unah and Hancock 2006).³⁴ Furthermore, unlike the results in Table 1, the measure of social forces does exhibit a statistically significant long-run influence on the Court among salient cases. This result reinforces the importance of the Court's ideological composition on decisions among cases perceived to be politically salient, as both ideology at the time of confirmation and changing ideology (in response to social forces) influence the Court's output.

The question emerges, should we conclude that public opinion does not influence the Court's outputs for salient decisions? This interpretation is consistent with the results in column 2 and with the argument that justices face the strongest incentive to follow their legal or ideological considerations in salient cases. As we noted previously, however, sometimes the nature of a ruling can influence whether a case receives media attention. Thus, the reason a case appears on the front page of the *New York Times* may be due to the fact that it deviates from public opinion. Acknowledging this possibility, if ideological decisions (that ignore public opinion) attract news coverage, the results—both the strength of the ideology measures and the lack of result for public opinion—would be endogenous to the measure of salience. This possibility does not negate our findings regarding the general influence of public opinion on Supreme Court decisions. Whether we analyze all reversals or nonsalient reversals, public opinion *and* the Court's ideology both influence case outcomes. However, current measures of case salience limit our ability to draw firm conclusions about what drives Supreme Court decision making on salient cases.³⁵

³⁴The influence of the Court's ideology at term $t+1$ is significantly different between salient and nonsalient cases ($p < .10$, one-tailed test), but we cannot conclude that the total effects (e.g., the long-run multipliers) are statistically different.

³⁵*Congressional Quarterly's* list of significant cases offers another potential measure of case salience. CQ's list, however, does not attempt to measure case salience at the time of decisions. Thus, the retrospective nature of the coding suggests that the CQ salience measure might pose a greater potential endogeneity problem than the *New York Times*-based measure. Further complicating the interpretation, the expected effects of mood are not statistically different across salient and nonsalient cases.

³²Again, as reported in the Supporting Information File, we are unable statistically to differentiate the independent role of ideology at the time of confirmation and attitudinal change.

³³Because the error correction rate indicates the proportion of the long-term effect that occurs in each subsequent time period, an absolute value greater than 1 seems surprising. Statistically, what this value implies is that the relationship between current and lagged values of the dependent variable is negative.

Conclusions and Implications

Klarman observes that Supreme Court justice, “rarely hold views that deviate far from dominant public opinion” (2004, 6). Our goal has been to explain why this pattern exists. To date, even those who argue that the Court responds to public opinion have acknowledged that the empirical relationship between public opinion and Court decisions may be spurious, as both may respond to the same social forces (Flemming, Bohte, and Wood 1997; Link 1995; Mishler and Sheehan 1996). We argue, however, that the public mood directly constrains the justices’ behavior and the Court’s policy outcomes, even after controlling for the social forces that influence the public *and* the Supreme Court.

Our findings make several contributions to the debate over public opinion and judicial policy. First, we attempt to overcome what has been the primary obstacle to effectively evaluating how public opinion might directly affect the U.S. Supreme Court. We develop an empirical strategy to control for the impact of the broader societal currents that shape the attitudes of both justices serving on the high court and the mass public. Next, we have offered a unique theoretical proposition specifying why the justices, in balancing the incentive to follow public opinion against their own preferences, should be consistently mindful of the public’s mood in cases presumed to be nonsalient. For salient cases, by contrast, we find that the Court is much more likely to act as a counter majoritarian force and decide along ideological lines. While this result is consistent with our theoretical expectations, the current analysis does not allow us to conclude whether the Court is ignoring public opinion on these high-profile cases or whether the news coverage that made these cases salient reflects the Court’s deviation from public mood. We also offer initial suggestive evidence that confidence in the Court corresponds with how closely nonsalient decisions align with public opinion. In other words, the public’s awareness of the Court’s behavior and the justices’ incentives to consider the context of public opinion may be greater than previously thought. We believe these are important avenues for future investigation.

The results also carry important implications for the role of the Supreme Court in American politics. In a recent letter to Congress, the Justice Department, and the White House, a group of prominent law professors, practitioners, and former judges urge considerable reforms to the selection of the high court’s members, including regular biennial appointments of new justices to the Court.³⁶

³⁶Available from www.scotusblog.com/wp/wp-content/uploads/2009/02/judiciary-act-of-2009.doc.

The stated motivation for this particular proposal follows the contention that, “appointments to the Court are made so infrequently as to diminish the likelihood that the Court’s many important policy decisions will reflect the moral and political values of the contemporary citizens they govern.” Proposals of this nature demonstrate the persistence of a belief that as the tenure of justices increases, so do the antidemocratic tendencies of the Court. We hope our results help refine this debate. It is important to note that the justices’ collective political preferences exhibit the greatest impact on case outcomes among both salient and nonsalient cases. Thus, we concur with Giles, Blackstone, and Vining (2008) that the degree of responsiveness to public mood (in our view through strategic behavior *and* attitudinal change) may not provide the requisite accountability that many critics of the federal judicial selection system seek. Yet, not only do justices have reason to believe that ignoring the public may compromise public confidence in the Court, but also the Court’s decisions—at least for nonsalient cases—consistently respond to changes in public opinion. The prevailing tides of public sentiment create an active, meaningful constraint on many of the tangible policies that emanate from the U.S. Supreme Court.

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