

**The Effects of Public Opinion on the Choices Justices Make**

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## **Abstract**

By accounting for the decision-making contexts, the multidimensionality of public opinion and the heterogeneity in the preference-behavior relationship, we clarify the role of ideology, public opinion, and their impact on Supreme Court decision-making. Where previous examinations of public opinion's effects on Supreme Court decision-making have been mixed, we find strong and robust evidence that popular sentiment does indeed influence the choices justices make. The relationship is conditional on the institutional status (divided or unified government) and the ideology of the justice (liberal and conservative). The manner in which constraints such as public opinion is evinced in behavior suggests that ideology is not constant as has been previously modeled; rather the influence of public opinion works to accentuate the impact of ideology when both are reinforcing. In other words, popular sentiment functions as a tool for the justices to vote in accordance with their policy preferences.

The goal of this paper is to fuse three different literatures in a comprehensive examination of public opinion's influence on Supreme Court decision-making. By taking into account governmental contexts, the multidimensionality of popular sentiment as well as the possible heterogeneity in the preference-behavior relationship, this paper seeks to clarify the relationship between public opinion, the role of ideology, and their impact on the choices justices make. The results, overall, comport with our theoretical expectations. We find evidence suggesting that public opinion does indeed matter in the choices justices make. As opposed to several of the previous examinations in this area of judicial politics, the results are quite strong and robust. Moreover, the effects of public opinion are conditional on the context in which the decisions are made. Specifically, we find that in instances of unified government—where judicial discretion within the separation of powers is theoretically low—public opinion becomes a tool and a means for the justices to make decisions in accordance with their policy preferences. Moreover, where judicial discretion is high (in times of divided government), the impact of public opinion dissipates and the justices vote in a manner that comports well with the attitudinal model and in line with what judicial ideologies would predict. In sum, while public opinion may indeed matter, it matters in instances where that influence reinforces what pure sincere voting would have predicted.

### **The Public Opinion Divide**

There are two opposing schools of thought regarding the effects of public opinion on Supreme Court decision-making. One argues that public opinion should indeed influence the choices justices make (e.g., Mishler and Sheehan 1993, 1996; Stimson and McGuire 2004) and the other suggests that popular sentiment should not have either a systematic or significant impact (e.g., Norpoth and Segal 1994). For every argument for public opinion impacting judicial decision-making at the nation's highest court, there is an equally valid and legitimate counterargument.

First, with neither the power of the purse nor the sword, the Court is reliant on the coordinate branches of government to carry out its decisions. Without the support of the legislature or the executive, the Court truly can be considered the least dangerous branch. Because of this constitutionally-induced restriction on the judiciary, the justices must engage in rational anticipation (Stimson et al. 1995), where

the Supreme Court must anticipate the congressional and presidential reactions to their decisions.

Because it is assumed that the two duly elected branches are responsive to the wills of popular sentiment, the justices, too, must adhere to public opinion.

An attack on this conception is that rational anticipation is too many steps removed from the decision-making process. This theory requires the justices to not only forwardly forecast the possible reactions of the coordinate branches of government, but, in doing so, be responsive and sensitive to popular sentiment. It must be queried: Why would the justices—if they lack the purse or the sword—not simply take into account congressional or presidential preferences regardless of public opinion? There is much evidence that the Court does indeed show deference, directly, to the coordinate branches of government. While debate exists in the separation of powers literature as to whether and to what degree the Court is constrained (see Spiller and Gely, 1992; Segal, 1997; Segal and Spaeth, 2002; Bergara et al., 2003), previous research concludes that the Supreme Court defers to the executive and the federal government when either participating as a litigant (i.e., Segal, 1990; Sheehan et al., 1992; Ulmer, 1985) or filing an *amicus curiae* brief (i.e., Segal 1988). Adherence to public opinion on the part of the justices, after accounting for the preferences of Congress and the President, should be attenuated—if not muted—under the conceptualization of rational anticipation.

Therefore, any adherence to public opinion on the part of the justices is indirect at best. The indirect effect of public opinion, in theory, is evinced when the Court shows deference to a coordinate branch of government. Because the majoritarian institutions of Congress and the Presidency must adhere to public opinion, any deference to these other branches evinces public opinion influencing the choices justices make, albeit indirectly. Norpoth and Segal (1994) provide empirical evidence suggesting that public opinion does indeed have an effect—at least, indirectly through the nomination process. Known as the replacement hypothesis (Funston 1975), this indirect influence suggests that the impact of public opinion is seen primarily through the nomination and confirmation process. In other words, justices being placed on the bench by popularly elected officials should be at least somewhat representative of public

opinion *at the time of their nomination*. Thus, as presidents and Senators replace justices on the Court, public opinion should be mirrored through the policy preferences of the justices.

Second, as a corollary to the first, deviation too far and for too long from public opinion can indeed lead to a tenuous position where public support for the justices and perceptions of the Court's legitimacy may decrease. As the case with the Four Horsemen striking down much of the New Deal legislation, the Court's decisions stood in opposition to legislative and executive efforts. Of course, this moment in history led to President Roosevelt's endorsement of a proposal to modify the Court by increasing the number of justices. This, of course, was before the switch in time that saved the nine. With this example, it is clear that where the justices are clearly out of step with public opinion can have drastic consequences for perceptions of the Court's role as final arbitrator and adjudicator of the law.

On the other hand, the justices at the Supreme Court—being institutionally insulated—should not have to and do not adhere to public opinion (Norpoth and Segal, 1994; Segal and Spaeth 1993, 2002). With life tenure and no direct electoral accountability, the justices do not have to respond to popular sentiment. As evinced during the New Deal, only when the justices deviate for *prolonged* periods of time does the legitimacy of the Court begin to decrease. Barring such extended deviations from public opinion, support for the Court (and in turn its legitimacy in the eyes of citizens) tends to be stable.<sup>1</sup> Popular support for the Court has remained higher and with fewer fluctuations than either of the two electorally accountable branches of government. Moreover, in most cases, public attention to and the polity's knowledge of Supreme Court decisions have been arguably low. Given these factors, the choices justices make can theoretically be shielded from the ebb and flow of popular sentiment.

Third, the justices themselves have suggested that public standards—ever-evolving and changing—serve as guides in their decisions. Even in their opinions, the justices have noted that they will continue to look towards public opinion for the appropriateness of their decisions regarding the standards, as just one example, for cruel and unusual punishment. On the flip side of this argument is the fact that

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<sup>1</sup> For a clear example of this trend, see Hibbing and Larimer in Dodd and Oppenheimer eds. *Congress Reconsidered* 8<sup>th</sup> ed. (2005).

the justices also in their opinions have expressed resistance to adhering to public opinion. They have noted, for example, in the abortion cases that majoritarian support for the overturn of *Roe v. Wade* (1973) is not a valid reason to deviate from the core principles of that decision and precedent. This is supported by the viewpoint that the justices—being insulated from the coordinate branches of government and popular elections—are supposed to defend civil rights and liberties from a possibly tyrannical majority. In other words, because the justices are not directly accountable to public opinion, the Supreme Court is amply equipped to protect minority interests.

Despite the plethora of arguments on either side of this debate, there are examples where the Court does feel pressure from public opinion. *Korematsu v. United States* (1944) often stands as *the* example of where popular sentiment clearly played a role in the Court's decision-making. The Court, arguably, caved under the immense pressure from public outcries for increased national security; as such, majoritarian sentiment influenced the judges to accept an egregious violation of personal freedom based on inherent racism. The question, however, of impact on Supreme Court decision-making should not be placed in such isolated instances as *Korematsu* or the New Deal; such an examination of the question would be nonfalsifiable and subject to idiosyncratic observations. Therefore, the question must be asked: Does public opinion have a systematic and significant impact on Supreme Court decision-making?

Previous empirical examinations, overall, conclude that public opinion does indeed matter. Unfortunately, most have been victims to statistical complications that cast doubt on the validity of their conclusions. The problems in examining the question of public opinion's impact on the Supreme Court include: small sample (Mishler and Sheehan, 1996)<sup>2</sup>, modeling and specification grounds (see Mishler and Sheehan 1993, and a response from Norpoth and Segal 1994), empirical results that that do not

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<sup>2</sup> They examine the five most moderate justices serving a minimum of 12 terms from 1953 to 1992. By selecting justices' term liberalism scores, the result is problematically small sample, where the time series range from an *n* of 11 to 23, which is hardly appropriate for maximum likelihood estimation that includes an autoregressive parameter.

comport with the relevant theory (i.e., Mishler and Sheehan 1993)<sup>3</sup>, and scant and quite small evidentiary support (i.e., Flemming and Wood 1997).<sup>4</sup>

Also, while both views have ample theoretical and some empirical support, acceptance of only one school of thought or the other is an oversimplification of the relationship the justices have with popular sentiment. We opine that public opinion does indeed matter systematically and significantly, but that influence is conditional on the institutional contexts in which justices make their decisions. As Bickel (1962) notes, the Court must rest its decision on great and widely accepted principles. This is especially true, if the justices make decisions that are counter to the preferences of the coordinate branches of government. If the Court has the support of public opinion on its side, the legislature and the executive, despite preferring alternative outcomes, theoretically should adhere to the Court's decisions because their respective constituents, too, prefer such an outcome.

Public opinion should factor into the decision-making process when the justices—in order to vote in accordance with their policy preferences—require the support of popular sentiment to maintain the legitimacy and to foster acceptance of the Court's decisions. In instances of divided government, the Court does not face serious opposition from the coordinate branches and there is no serious threat of overturning or outright noncompliance with the Court's decisions. The institutionally-induced partisan divide provides the justices the opportunity to choose their most preferred outcome. When the other branches are unified in terms of partisanship, the likelihood of congressional overturns or presidential noncompliance rises if the justices vote consistently with their respective ideologies, but counter to that of

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<sup>3</sup> There is even possible conflict among supporters of public opinion operating as a direct impact on Supreme Court decision-making. Mishler and Sheehan (1993) argue that the justices are indeed impacted by public opinion. Estimating a yearly time series where the dependent variable is the percent liberal decisions in a given term, the authors find that public opinion—as measured through public mood—does indeed have a direct impact on the choices justices make. . . at a five-year lag. Unfortunately, this specification runs counter to the idea of rational anticipation. The significance of a five-year lag in public mood justified theoretically as an influence on Court decision-making raises the question: why would the Court adhere to public opinion that has no current effect on the coordinate branches of government, which supposedly are responsive to contemporaneous public opinion?

<sup>4</sup> The authors find that public mood does indeed seem to have a direct impact on the choices justices make. The effect is a striking one; the conclusion is that a 29 percent change in public mood leads to a one percent change in Court liberalism. In other words, the coefficient in each of the models, offered in the Flemming and Wood (1997) examination, resembles something close to zero, or virtually zero.

executive or legislative preferences. Under unified government, the justices, if they are to vote sincerely, must make their decisions in line with public opinion. Without the support of public opinion, Congress and the President can indeed make attempts to counter the justices' decisions.

### **A Bit of a Bad Mood**

In almost all of the examinations of public opinion and the Supreme Court, the measure employed has been public mood, which is a composite measure generated through survey marginals (see Stimson, 1999). While public mood serves as arguably the dominant measure used, the survey questions employed to generate such a composite measure of popular sentiment are mainly based on economic sentiment, spending preferences, and perceptions of the economy or government use of funds (Best 1999). Despite protestation and providing evidence to the contrary (Stimson 1999), there has been a challenge that public preferences are not unidimensional as constructed here. Research in political science as well as political psychology suggest that there are two dimensions to public opinion—economic and social (e.g., McClosky and Zaller 1984). Generated primarily from survey items designed to tap preferences on government spending and financial policy, public mood in actuality measures public opinion as liberalism on the economic dimension. As such, Best (1999) suggests that because of the survey construction method public mood does not account for the second dimension to public opinion, or mood—social liberalism. Constructing a measure from survey questions to tap the social dimension of public mood, or “social mood”, the author provides convincing evidence that popular sentiment is not as unidimensional as the construction of public mood suggests; rather, the two dimensions of mood are quite distinct elements of public opinion.

We replicate the Best (1999) measurement strategy and create a measure for social mood. Social mood, per the instructions from and utilizing the program provided by Stimson (1999), is constructed from various questions regarding social and racial policy from various sources; we obtain questions from the General Social Survey (GSS), American National Election Study (ANES), Gallup and the CBS/NY

Times polls.<sup>5</sup> Figure 1 graphically presents a comparison between public mood and social mood.<sup>6</sup> Both variables are measured so that increasing values suggest increasing liberalism in public opinion. For public mood, given its construction, increasing values translate into increasing economic liberalism; for social mood, increasing values imply increasing social liberalism. As Figure 1 depicts, social mood and public mood are indeed two distinct elements in popular sentiment.

[Figure 1 here]

Previous examinations, by employing public mood, have ignored the possible multidimensionality of public opinion. While social mood has never been employed in empirical models of judicial decision-making, there are two possible hypotheses that arise. First, social mood should have a direct impact on Supreme Court decision-making. Several of the justices, themselves, have articulated or supported the Preferred Freedoms Doctrine, arguing that civil liberties and civil rights questions are of utmost importance to the Supreme Court. In other words, a measure primarily based on economic liberalism (public mood) should only lead to a spurious correlation, when used in models of Supreme Court decision-making, focusing on civil liberties and rights questions. The question can be phrased: why would preferences for military spending and the size of government *directly* influence the choices justices or judges make regarding racial discrimination or free speech questions?

Second, we suggest that both public mood and social mood can have an impact, but that effect is conditional on the judicial ideology. Although both dimensions of mood can function contemporaneously and possibly have reinforcing effects, liberals and conservatives base decision-making and evaluations on different dimensions (Conover and Feldman 1981). The spend-and-save/individualism (economic) dimension is primarily salient among conservatives, while the egalitarian (social) dimension is particularly salient for liberals (McClosky and Zaller 1984; Feldman and Zaller 1992). Depending on their ideology, there exists the possibility that the justices, too, respond to different types of public

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<sup>5</sup> For a complete list of the survey items used to generate this measure of social mood, please see the Appendix.

<sup>6</sup> Given the evidence presented in Best (1999), we need not construct a new measure to tap the economic dimension of popular sentiment; rather, public mood is a measure tapping economic mood.

opinion. Liberals may be more responsive to the social dimension while conservatives follow the economic dimension of public opinion. Therefore, we hypothesize that public mood impacts the choices conservative justices make. On the other hand, liberal justices should be influenced by social mood.

### **Heterogeneity in Judicial Decision-Making**

Also, we also seek to clarify the means through which public opinion's influence on Supreme Court decision-making may be evinced. The influence of popular sentiment can function through two mechanisms. On the one hand, public opinion must impact the liberalism (behavior) of a given justice, and on the other, it can also mitigate or accentuate the impact of ideology (preferences) on those vote choices. While both go hand-in-hand, the overall shift in vote liberalism as well as the effect of policy preferences are two distinct mechanisms of public opinion evincing influence on the choices justices make. First, popular sentiment must change the overall propensity of a justice to vote in a particular way. The public's preferences, if shifting, must induce the justices to do the same; in other words, increasing conservatism on the part of public opinion, for example, must lead to increasing conservatism on the part of the justices, *ceteris paribus*.

Second, public opinion can also mediate the impact of policy preferences on the eventual vote choice (preference-based behavior); in other words, public opinion may accentuate or attenuate the effect of ideology on the eventual voting behavior. Few of the previous examinations in judicial decision-making have accounted for this possible heterogeneity in the preference-behavior relationship (i.e., Bartels 2006); Martin (2001) discusses a similar impact on representatives and senators operating under chamber and separation-of-powers constraints. A conclusion that can be drawn from these examinations is that there is heterogeneity in the preference-behavior relationship. In other words, the impact of ideology is not constant as has been previously modeled in almost every empirical examination employing a measure of policy preferences. Rather, there are circumstances, or contexts, that may increase or decrease the influence of policy preferences on the choices justices make.

The conventional wisdom in judicial politics suggests that judicial decision-making does not occur in a proverbial vacuum. For the purposes of this paper, the influence of public opinion is

conditional on the decision-making contexts under which justices cast their votes. Recall, we specifically argue that judicial discretion is highest when the coordinate branches of government are divided based on partisanship. In this decisional context, the justices are free to vote in accordance with their policy preferences because the fear of overturn or noncompliance is lower when compared to instances of unified government.

Fusing this argument with theory of heterogeneity in the preference-behavior relationship, we offer two possible expectations regarding the impact of divided government on the effect of ideology on the votes justices cast. First, because of the ability to vote their policy preferences, the justices may experience an accentuation in the impact of ideology. Second, there is only so much more room for ideological voting to increase. It may be the case that an extreme liberal justice simply cannot vote any more liberally than what her ideology would predict. Therefore, the second possibility is that there is no significant increase in the impact of ideology when making decisions under divided government. Again, compared to divided government, judicial discretion is lower when the two other branches are unified. Thus, unified government may attenuate the impact of ideology on a given justice's liberalism. Because the justices are theoretically constrained under unified government, the ability of preferences to influence eventual behavior decreases.

Another argument we advance is the fact that different types of justices should be receptive to different dimension of popular sentiment, but this relationship is conditional on the decision-making context (unified or divided government). In general, we opine that public opinion's impact should be insignificant or—at the very least—mitigated when justices make decisions under divided government. But, in instances of unified government we expect public opinion to play a significant role not only in the final outcome, but also in the impact of policy preferences on that final outcome. Public mood (economic liberalism) should have a systematic and significant impact on the choices conservative justices make. Increasing liberalism in public mood should lead conservative justices to vote increasingly liberal and can also attenuate the impact of ideology. Social mood should have a similar effect for liberals. As such,

increasing liberalism in social mood should lead liberal justices to vote increasingly liberal and can also accentuate the impact of ideology on those vote choices.

Above, we have discussed several of the previous examinations regarding public opinion and Supreme Court decision-making as well as our theoretical contributions and refinements to that literature. Overall, there are several things this paper hopes to add to the discussion. First, the two schools of thought can be perceived as all or nothing; in other words, public opinion either has an effect or it does not. We argue, instead, that the influence of popular sentiment is *conditional* on the alignment of the coordinate branches of government—whether they are divided or unified.

Second, previous measures of public opinion employed in almost every analyses examining popular sentiment and judicial decision-making captures only one dimension, or aspect, of public opinion. Public mood, as it is constructed, almost exclusively taps economic liberalism. While it can also be stated that public mood should not matter in civil liberties and rights cases, we do not take such a view. Rather, we borrow from the political psychology, ideology and values literatures, arguing that economic liberalism and social liberalism operate on two different dimensions. Public mood should influence the choices conservative justices make; social mood (liberalism), as a measure of public opinion, should impact the behavior and the policy preferences of liberal justices.

Third, most accounts of public opinion have not accounted for the possible heterogeneity in the preference-behavior relationship. We account for two mechanisms through which public opinion can influence the choices justices make. First, public opinion should indeed affect the overall propensity for a given justice to vote liberally or conservatively. Second, in doing so, popular sentiment can also influence the impact of ideology on that eventual vote choice. Incorporating both possible mechanisms provides a more complete picture of Supreme Court decision-making. In doing so, this paper seeks to clarify the relationship public opinion and the justices, account for the multidimensionality of popular sentiment, and the manner in which the possible influence should be evinced.

## **Data and Methods**

In order to test our hypotheses, we examine all civil rights and civil liberties cases from 1953 to 2004.<sup>7</sup> The dependent variable is the percentage of liberal votes cast by each justice per term.<sup>8</sup> We opt to employ a hierarchical model (Raudenbush and Bryk 2002; Skrondal and Rabe-Hesketh 2004), nesting justices (level-1) *within* years (level-2). Given the fact that measures of public opinion and institutional context vary only by year, this is an appropriate and methodologically rigorous approach to examining the influence of public opinion on judicial behavior. After coding the relevant variables discussed below, the model contains 36 justices voting across a 52 year period yielding 471 observations.<sup>9</sup> The structural model can be written as follows:

$$\begin{aligned}
 \text{(Level-1 equation)} \quad \% \text{ Liberal Vote}_{it} &= \pi_{0t} + \pi_{1t} \text{Liberal Justice}_{it} + \pi_{2t} \text{Conservative Justice}_{it} + e_{it} \\
 \text{(Level-2 equations)} \quad \pi_{kt} &= \beta_{k0} + \beta_{k1} \text{Divided Government}_t + \beta_{k2} \text{Post-Warren Court}_t \\
 &\quad + \beta_{k3} \text{Social Mood}_t + \beta_{k4} \text{Public Mood}_t \\
 &\quad + \beta_{k5} \text{Divided Government}_t * \text{Social Mood}_t \\
 &\quad + \beta_{k6} \text{Divided Government}_t * \text{Public Mood}_t + r_{kt}
 \end{aligned}$$

where  $k$  ranges from 0 to 2. Please note that we have specified random parameters in each of the level-2 equations.  $r_{0t}$ , which is the random component, is to control for unobserved heterogeneity in the response,

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<sup>7</sup> We reshaped the Spaeth U.S. Supreme Court Database, where the justice's votes in each case became the unit of analyses for all years in the sample; cases were selected where *analu* equaled 0, *dec\_type* equaled 1, 6, or 7, and *value* was equal to or less than 6.

<sup>8</sup> McGuire and Stimson (2004) argue that the reason for a tenuous or "null" finding in previous examinations of public opinion impact is due to the measure employed as the dependent variable. First, Supreme Court liberalism should not be a function of liberal decisions overall; rather, Supreme Court liberalism is a function of the liberal decisions in instances where the Supreme Court reverses a lower court decision. The reason for this, as the authors explain, is "complex" (1024). First, litigants strategically petition for certiorari and must calculate the probabilities that they will lose. Given this, when litigants are correct, the Court should reverse the lower court decision. When litigants are wrong, the Court affirms. As such, strategic litigants must be sensitive to the ideological shifts in the Court. Increasing Court liberalism should lead to increasing liberal litigant petitioning for certiorari and vice versa. Accurate estimates of litigant calculations of the Court's prevailing ideology thus are captured in the percent liberalism of cases where the Court reverses. We opt not to specify the dependent variable as such, for several reasons. First, their theory rests on the idea that justices do not grant review in cases where they wish to affirm the decision of the lower court. Perry (1992) argues that justices do indeed participate in aggressive grants where they wish to affirm the lower court decision AND have a high likelihood of support from at least a bare majority of justices to achieve a favorable outcome on the merits. Second, their theory also discounts the value of all decisions the Supreme Court hands down. It is not simply those cases where the Court reverses the lower court decision, but also where they affirm that constitutes Supreme Court liberalism.

<sup>9</sup> In order to avoid the problem of terms not nesting neatly within years, each term is treated as a year plus one. In other words, the 1960 term is treated as the Court's liberalism in 1961.

while  $r_{1t}$  and  $r_{2t}$  are specified to control for unobserved causal heterogeneity of ideology. Ideology of the justice is measured via the Segal-Cover scores for perceived ideology of the justice at the time of nomination (Segal and Cover 1987). For simplicity in interpretation of the cross-level interactions, we operationalize ideology as a three category dummy variable. For the variable *Liberal Justice*, the three most liberal justices each term, based on the Segal-Cover scores, are coded 1, 0 otherwise. The three most conservative justices are coded 1, 0 otherwise for the variable *Conservative Justice*. We, obviously, expect *Liberal Justice* to have a positive relationship with the dependent variable, which again is the percentage of liberal votes of a given justice in a term; the reverse is true for *Conservative Justice*. Thus, the excluded category for the ideological dummies, are those justices that are the three, comparatively, moderate justices on the Court for a given term.<sup>10</sup> We also note that, as the excluded category, the effects for moderate justices are the baseline effects found in the random intercept ( $\pi_{0t}$ ) and effects for liberal and conservative justices are to be interpreted relative to moderate justices.

*Divided Government* is a dummy variable coded 1 if the majority party in either chamber of Congress and the President do not share the same party affiliation, 0 otherwise. *Public Mood* is simply the measure constructed and provided by Stimson (1999).<sup>11</sup> Again, *Social Mood*, per the instructions from and utilizing the program provided by Stimson (1999), is constructed from various questions regarding social and racial policy from various sources; we obtain questions from the GSS, ANES, Gallup and the CBS/NY Times polls. Both variables are measured so that increasing values suggest increasing liberalism in public opinion. For *Public Mood*, given its construction, increasing values translates into increasing economic liberalism; for *Social Mood*, increasing values implies increasing social liberalism. Both measures of mood—public and social—are mean-centered and lagged one year. Again, we use the lag of public opinion to avoid the trappings of the republican schoolmaster argument. First, it is

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<sup>10</sup> Please note that we tried several specifications of the dummy variable construction (including specifying those justices that are one standard deviation away from the mean of a given term) as well as employing the continuous measure where the Segal-Cover score is centered at .5. The substantive results do not change.

<sup>11</sup> Estimates of *Public Mood* are available at <http://www.unc.edu/~jstimson/>. Dr. Stimson's website also provides the *Wcalc* software used to create our measure of *Social Mood*.

unreasonable to expect decisions made today to impact public opinion last year. Second, if there is a systematic effect of public opinion on judicial decision making, given the time in which it takes cases to be accepted and then decided, it is reasonable to expect some lag between public opinion and the tenor of decisions.

Please note from the structural model that all level-2 variables are cross-level interacted with each of the ideology dummies. This is to test our proposition that heterogeneity in the preference-behavior relationship exists. Before we explain the theoretical expectations from the cross-level interactions, the baseline should be considered. Recall that the excluded category for ideology is moderate; these are the three justices that are comparatively moderate in a given term. As such, each of the coefficients for the variables—*Divided Government*, *Public Mood* and *Social Mood*, represent the impact of each on moderate justices. If Mishler and Sheehan's (1996) conclusions are correct in that moderate justices should be the critical members on the Court required in maintaining legitimacy, then these moderate justices should shift with popular sentiment. Moreover, theoretically, these are the justices most likely to shift with public opinion. For either *Social Mood* or *Public Mood*, the impact must be in the positive direction as well as significant and systematic; in other words, increasing liberalism in either public mood or social mood should lead to increasing percent liberal votes for a given justice. The impact of either measure of popular sentiment should be relatively sizable.

Returning to the cross-level interactions, public opinion, as we hypothesize, should reinforce the impact of policy preferences on the percentage of liberal votes cast in a given term, when both indicate similar outcomes. As it has been specified in the structural model, the cross-level interaction between *Social Mood* and *Liberal Justice* should be positive. This indicates that increasing social liberalism in popular sentiment accentuates the impact of ideology.

While we have no direct expectations for the cross-level interactions between *Public Mood* and *Liberal Justice*, there are several theoretical expectations. First, it does not matter and the coefficient for the interaction is statistically indistinguishable from zero, which would conform to expectations derived from either the conception that public mood—because it is a measure of economic liberalism—should not

matter in civil liberties and civil rights cases or the conception that liberals and conservatives react differently for different dimensions. The latter conception, which we suggest it might, requires two components: (1) the cross-level interaction between *Conservative Justice* and *Public Mood* is significant and (2) the interaction between *Conservative Justice* and *Social Mood* must be indistinguishable from zero. Second, the other theoretical expectation is that public mood affects the impact of policy preferences on the eventual vote choice—significantly and systematically—without regard to judicial ideology. This outcome would be supportive of previous findings that public opinion affects the choices justices make (i.e., Mishler and Sheehan 1993, 1996).

Moreover, the decisions the Court makes do not happen necessarily in isolation. Political contexts do indeed matter. We hypothesize that divided government offers that opportunity. Under unified government, we should see higher levels of constraint because both branches are aligned under the same partisanship. As such, we expect that the cross-level interactions between *Liberal Justice* and *Divided Government* and *Conservative Justice* and *Divided Government* to be positive and negative, respectively. This implies that, when the branches are divided, judicial discretion increases and sincere voting becomes far more likely; as such we should see a polarizing effect between liberals and conservatives.

We also specify two three-way interactions where *Divided Government*, *Public Mood* and each ideology dummy are interacted. Another set of interactions is specified with *Divided Government*, *Social Mood* and each ideology dummy are interacted. We specify these to test for any possible heterogeneity or shift in the impact of ideology due to public opinion when judicial discretion is high. According to the Bickel (1962) argument that the Court relies on great principles, the justices should rely less on public opinion when they need not base the support of generally accepted principles (which we take to mean popular sentiment) to maintain legitimacy. When the justices are constrained by the coordinate branches of government (we take to mean unified government), they rely on public opinion to justify deviating. As such, these three-way interactions should be insignificant, suggesting that public opinion does not influence the choices justices make when their discretion to vote sincerely is high.

Lastly, as a control variable, we include a *post-Warren Court* dummy variable. With the shift from the arguably liberal Warren Court to the more conservative period under Chief Justices Burger and Rehnquist, we expect that there should be an overall shift in the negative direction after Chief Justice Warren is replaced. We also test whether there has been a shift in the impact of ideology. With an increase in number of dissenting opinions filed post-Warren, it may be the fact that justices were freer to vote in accordance with their policy preferences. As a result, we include a cross-level interaction between the *post-Warren Court* dummy and each of the judicial ideology dummies. If there is indeed increasing ideological voting, there should a positive coefficient for the interaction between *Liberal Justice* and the *post-Warren Court* dummy. The reverse is true for the coefficient for the interaction between *Conservative Justice* and the *post-Warren Court* dummy; we expect it to be negative if there is an increase in ideological voting after Warren left the Court.

## **Results and Discussion**

We estimated the model using full maximum likelihood. Table 1 presents the estimates, the variance components for the random coefficients, and the estimated standard deviation of the error term at Level 1.<sup>12</sup> Please note that the variance components for the model are not significant. This basically suggests that there is little unobserved variation in voting (from the intercept) or in the effects of ideology (from the slopes for liberal and conservative) from year to year.<sup>13</sup> This is not surprising and actually reassuring when considering the predictive power of ideology on Supreme Court decision-making. Being liberal or conservative has roughly the same effect between years. By modeling the state of government captured in the *Divided Government* variable and public opinion through *Social* and *Public Mood*, we are capturing most of the important year-level heterogeneity.

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<sup>12</sup> The estimated model uses the proportion of liberal votes by a justice for each term. Thus the coefficients are (and should be) less than 1. When discussing the model and the results, we will refer to the percent of liberal votes. The results can be transformed simply by multiplying coefficients and standard errors by 100 to see the effects of divided government, for example, on the percent of liberal votes.

<sup>13</sup> Given the null findings for the variance components, one might suggest we estimate the model simply using ordinary least squares (OLS). These results are presented in Appendix E and are nearly identical to the multilevel model results in Table 1. We present the multilevel model here, despite null findings for the variance components, because it explicitly models the hierarchical nature of the data.

[Table 1 here]

Now we turn to the discussion of the substantive results. As Table 1 indicates, there is a moderate degree of support for the contention that there is indeed constraint on judicial decision-making by the coordinate branches of government. Under unified government, there is no difference between moderate and liberal justices—both groups cast liberal votes 68.4 percent of the time during the Warren Court and 54.5 percent of the time after the Warren Court. Under divided government, moderates vote liberally in the same proportions, but liberal justices become far more liberal. Periods of divided government bring an increase of 7.2 percentage points in the share of liberal votes cast by liberal justices; in other words, liberals are constrained by the composition of the other two branches, making decisions accordingly.

What is strange, as we will note several more times in this paper, is the seeming obstinance of conservative justices. Regardless of the type of government, public opinion, or even the passage of time conservatives are unwavering in the effects of their ideological predispositions. During the Warren Court, conservative justices could be expected to vote on the conservative side of civil rights and liberties cases 56.9 percent of the time, a percentage that drops to 43 percent with the confirmation of Warren Burger as Chief Justice.

[Table 2 here]

The model presented in Table 1 includes numerous cross-level interactions involving social and public mood, which forbids the direct interpretation of the coefficients. We offer instead Table 2, which presents the total effects of both types of public opinion as well as the joint standard error for each of our three ideological categories. Looking first at liberal justices, there is a clear effect of divided government on liberalism, as described above. Social mood also has an effect on the decision making of liberal justices—an effect that is twice as large when coordinate branches are unified than when they are divided. Specifically, an increase of one standard deviation in social mood (5.5 points more liberal) causes the percent of liberal votes to increase by 5.5 points under unified government and by 2.75 points under divided government. Note also that in Table 1, the effect of public mood was significant and negative for

liberal justices. When this is added to the baseline effect, as shown in Table 2, the effect of public mood is not significant. These results support the argument that liberals do indeed adhere to public opinion that is based on the egalitarian (social) dimension of ideology.

With respect to the dimension of opinion that is important, moderate justices are the opposite of liberal justices. Where liberals respond to the social dimension, moderates respond to the individualism/economic dimension. Furthermore, there is always some adherence on the part of moderate justices to public opinion. The difference between the effects of public mood under unified and divided government is small (about 0.001) and not statistically significant. A one standard deviation increase in public mood, roughly 4.5 points, causes an increase of the same magnitude in the percent of liberal votes cast by moderate justices. We find the most credible explanation of this to be the argument presented in Mishler and Sheehan (1996). Given that there is at least some importance in the maintenance of legitimacy, moderates, who by definition are less extreme in their preferences, are more able to respond to public opinion.

Finally, we note again that conservative justices are largely unmoved by public sentiment. Under both divided and unified government, neither social nor public mood attain conventional levels of statistical significance. These relationships are further depicted in Figure 2, which plots the percent liberal votes for liberal, moderate, and conservative justices under varying conditions: when both mood measures are at their mean values, when social mood increases by one standard deviation, and when public mood increases by one standard deviation. Figure 2 also separates the effects of unified from divided government. The results are as described above; note the lack of movement in conservative justices and the relatively larger shifts between categories of public opinion under unified government.

[Figure 2 here]

We now address two important questions that follow from these results. First, why do liberal and moderate justices respond to public opinion, particularly under periods of unified government? Second, why do conservative justices never seem to respond at all?

[Figures 3, 4, and 5 here]

Figures 3, 4, and 5 place the relevant government actors in common space (Poole 1998; Epstein et al. 2007). Specifically, each graph plots the average common space median for the President, the House, the Senate, and the three ideological groups of justices for selected periods of time. The first (Figure 3) is the period of unified Democratic government between 1961 and 1968. The second (Figure 4) represents unified Democratic government between 1977 and 1980. The final figure (Figure 5) shows unified Republican government between 2001 and 2004.<sup>14</sup> In all three figures, there is a box around the coordinate branches representing what would be an acceptable policy space for both the President and Congress. Without delving into the mathematics of spacial models, it can be reasonably assumed that the President and each chamber of Congress would agree to a policy between their respective ideal points. For at least the latter two periods, one can see why liberal and moderate justices respond to public opinion.

During the Carter Administration, both groups fall outside the acceptable policy space and are on the liberal side of the common space. During the first term of Bush's presidency, both groups are well outside the acceptable policy space and relatively close to one another. In this period especially, liberal and moderate justices would need to rely on public opinion given their distance from the President and Congress. Deciding close to their own ideal points runs a greater risk of reaction by the other branches unless there is a public demand for more liberal policy. During the Kennedy and Johnson Administrations, both groups are within the policy space. In this case, there is no need for a discretion argument. It may be that the justices respond to a public opinion that is in line with the preferences of the coordinate branches. It may also be that justices are simply voting sincerely. Situations like this become especially difficult to disentangle, given the proximity of the justices to the President and both chambers of Congress. Couple this with the observation that lagged public opinion in both measures becomes more

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<sup>14</sup> We are aware that Republicans did not hold the majority in the Senate between June 2001 and November 2002, but the first term of the Bush presidency presents one of the few examples of (near) unified Republican government that spanned an entire presidential term. In our sample the only other example of unified Republican government is between 1953 and 1954 under President Eisenhower.

liberal over the first half of this period and it becomes nearly impossible to say that justices are voting with public opinion over their sincere preferences.

These observations also help us understand why conservative justices are so unresponsive to public opinion. Looking first at Figure 3, during the Kennedy and Johnson years, liberal and moderate justices could form a large enough coalition to hold a majority of the Court and are relatively close to the coordinate branches, making such collusion safer. Conservative justices could respond to increasing liberalism in the public, but why would they? They are already in a disadvantaged position. The most rational strategy would be to vote sincerely, hoping that two moderates could be swayed. On the one hand, if no one moves, the liberal outcome wins. On the other, if conservatives move, the liberal outcome wins. Given the low probability of a conservative outcome, rationality should predict sincere voting. The same logic applies to the Carter years. Here, all groups are outside of the acceptable policy space, but liberals and moderates are much closer than conservatives. Finally, the Bush years are to conservative justices what the Kennedy and Johnson years were to liberal and moderate justices. Despite the existence of unified government, conditions are ideal for sincere voting on the part of Scalia, Thomas, and Rehnquist, who should have no fear of being overturned by the President and Congress.

### **Conclusion**

This paper has attempted to rectify and reconcile several of the major critiques of previous examinations looking at the influence of public opinion on Supreme Court decision-making. We suggested that several of the empirical problems come from small sample, scant empirical findings and complications with specification. Theoretically, the two major camps have focused mainly on an all or nothing conception of public opinion's impact. We provide a theoretical middle ground by integrating conceptualizations of constraint and heterogeneity in the preference/behavior relationship. First, we argue that justices are more likely to vote in accordance with public opinion when they are reinforcing. We find a moderate degree of evidence for this proposition. As public opinion becomes more liberal, the justices do tend to vote more liberally.

But, this is not the complete picture. We also specified a model that incorporates the conception that justices make decisions conditional on the ideological, or partisan, alignment of the coordinate branches of government. Basing our arguments on Bickel (1962), we opined that justices rely on public opinion when they are constrained and seek to deviate. In instances of unified government, we find such a relationship. Public Opinion—whether it is social or public mood—matters in the choices justices make under unified government. But, when their discretion is high, the justices are more able to vote sincerely within this institutional context and therefore reliance on public opinion dissipates.

Moreover, we argued the dominant measure of public opinion is not necessarily wrong; rather, we suggest that public mood does not capture the full picture. Being primarily constructed on measures of economic liberalism, we suggest, following Best (1999), that perhaps there are two dimensions to public opinion—social and economic—and, based on the political psychology literature, offer that liberal and conservative justices subscribe to each differently. We find evidence here to support such a claim.

When discretion is high—where there is divided government, we find no evidence that public opinion meaningfully constrains the choices justices make. When there is no pressure from a unified government, these are the instances where judicial discretion is highest. It is also in these instances, if public opinion is to be a significant influence on the choices justices make, where we should find systematic impact of public opinion. We, however, do not.

In sum, we have attempted to fuse theoretical expectations, drawing from several different literatures. Our results comport to theoretical expectations that the justices do indeed subscribe to public opinion. But, this relationship is dependent on the type of public opinion and ideology of the justices, as well as the context in which these decisions are made.

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## **APPENDIX A**

### **Questions from the General Social Surveys Cumulative File 1972-2004**

#### **ABDEFECT**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...there is a strong chance of serious defect in the baby? (Yes)

#### **ABHLTH**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...the woman's own health is seriously endangered by the pregnancy? (Yes)

#### **ABNOMORE**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...she is married and does not want to have any more children? (Yes)

#### **ABPOOR**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...the family has a very low income and cannot afford any more children? (Yes)

#### **ABRAPE**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...she became pregnant as a result of rape? (Yes)

#### **ABSINGLE**

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...she is not married and does not want to marry the man? (Yes)

#### **BUSING**

In general, do you favor or oppose the busing of black and white children from one school district to another? (Favor)

#### **CAPPUN**

Do you favor or oppose the death penalty for persons convicted of murder? (Oppose)

#### **DIVLAW**

Should divorce in this country be easier or more difficult to obtain than it is now? (Easier)

**GRASS**

Do you think the use of marijuana should be made legal or not? (Legal)

**HOMOSEX**

Do you think sexual relations between two adults of the same sex is always wrong, almost always wrong, wrong only sometimes, or not wrong at all? (Not Wrong at All)

We are faced with many problems in this country, none of which can be solved easily or inexpensively. I'm going to name some of these problems, and for each one I'd like you to tell me whether you think we're spending too much money on it, too little money, or about the right amount.

**NATARMS**

Spending on the military, armaments, and defense? (Too Much)

**NATCITY**

Spending on solving the problems of the big cities? (Too Little)

**NATEDUC**

Spending on improving the nation's education system? (Too Little)

**NATENVIR**

Spending on improving and protecting the environment? (Too Little)

**NATHEAL**

Spending on improving and protecting the nation's health? (Too Little)

**NATFARE**

Spending on welfare? (Too Little)

**NATRACE**

Spending on improving the conditions of blacks? (Too Little)

**PORNLAW**

Should there be laws against the distribution of pornography? (Legal)

**RACFEW**

Would you yourself have any objection to sending your children to a school where a few of the children are black? (No)

**RACHAF**

Would you yourself have any objection to sending your children to a school where more than half of the children are black? (No)

**RACMAR**

Do you think there should be laws against marriages between blacks and whites? (No)

**RACMOST**

Would you yourself have any objection to sending your children to a school where more than half of the children are black? (No)

**RACOPEN**

Suppose there is a community-wide vote on the general housing issue. There are two possible laws to vote on. Which law would you vote for? (Cannot refuse to sell to someone because of race)

**RACSEG**

White people have a right to keep blacks out of their neighborhoods if they want to, and blacks should respect that right (Disagree Slightly or Disagree Strongly)

## APPENDIX B

### Questions from the ANES Cumulative File 1952-2004

#### HOUSENES

1964,1968-1972,1976: Which of these statements would you agree with:

1. White people have a right to keep Negroes out of their neighborhoods if they want to
2. Negroes have a right to live wherever they can afford to, just like anybody else

1966: Some people say that Negroes should be allowed to live in any part of town they want to. How do you feel? Should Negroes be allowed to live in any part of town they want to, or not?

(Blacks have a right to choose)

#### SCHOOLNES

1958: The government in Washington should stay out of the question of whether white and colored children go to the same school. Do you have an opinion on this or not? (IF YES) Do you think the government should do this?

1962: How about this statement, 'The government in Washington should see to it that white and colored children are allowed to go to the same schools.' Do you have an opinion on this or not?" (IF YES) Do you agree that the government should do this or do you think that the government should not do it?

1964-1986,1990 and later: Some people say that the government in Washington should see to it that white and black (before 1972: Negro)children go (1964-1970: are allowed to go) to the same schools. Others claim this is not the government's business. Have you been concerned (1986,1990: interested) enough about [in] this question to favor one side over the other?" (IF YES) "Do you think the government in Washington should ---

(Government should see to it that children attend the same schools)

#### SEGNES

1964, 1968-1972, 1976-1978: Are you in favor of desegregation, strict segregation, or something in between?

(Desegregation)

### **BUSNES**

1972-1976, 1980, 1984: There is much discussion about the best way to deal with racial problems. Some people think achieving racial integration of schools is so important that it justifies busing children to schools out of their own neighborhoods. Others think letting children go to their neighborhood schools is so important that they oppose busing. Where would you place yourself on this scale, or haven't you thought much about this?

(1, 2, or 3 on a 7 point scale)

### **JOBSNES**

1964, 1968, 1972, 1986-1988, 1992, 1996, 2000, 2004: Some people feel that if black people (1964,1968: negroes) are not getting fair treatment in jobs, the government in Washington ought to see to it that they do. Others feel that this is not the federal government's business. Have you had enough interested in this question to favor one side over the other? (IF YES:) How do you feel? Should the government in Washington see it that black people get fair treatment in jobs (1986 AND LATER: or is this not the federal government's business) 1964,1968,1972: or should the government in Washington leave these matters to the states and local communities?)

(See to fair treatment)

### **PRAYNES**

1964-1968, 1980, 1984: Some people think it is all right for the public schools to start each day with a prayer. Others feel that religion does not belong in the public schools but should be taken care of by the family and the church. Have you been interested enough in this to favor one side over the other? (IF YES) Which do you think--schools should be allowed to start each day with a prayer or religion does not belong in the schools?

(No religion in schools)

## APPENDIX C

### Questions from Gallup Polls

#### ABDFCTGAL

8/62, 12/65, 9/69

Do you think abortion operations should or should not be legal in the following cases... where the child may be born deformed? (Legal)

3/82, 12/84

Do you approve or disapprove of abortion under the following circumstances...where it is likely that the child would be born physically handicapped? (Approve)

#### ABHLTHGAL

8/62, 12/65, 9/69

Do you think abortion operations should or should not be legal in the following cases... where the health of the mother is in danger? (Legal)

3/82, 12/84

Do you approve or disapprove of abortion under the following circumstances...where the mother's health is at risk by the pregnancy? (Approve)

#### ABNOGAL

9/69

Do you think abortion operations should or should not be legal in the following cases...where the parents simply have all the children they want although there are no major health or financial problems involved in having another child. (Legal)

4/78

Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if she is married and does not want any more children? (Yes)

3/82, 12/84

Do you approve or disapprove of abortion under the following circumstances... where a married couple do not want to have any more children? (Approve)

**ABSINGGAL**

3/82, 12/84

Do you approve or disapprove of abortion under the following circumstances... where the woman is not married? (Approve)

**CAPGALLUP**

11/53, 4/56, 15/57, 3/60, 1/65, 5/66, 6/67, 1/69, 11/71, 3/72, 11/72, 4/76, 3/78, 2/81

Are you in favor of the death penalty for persons convicted of murder? (No)

**EDSEGGALLUP**

5/54, 6/54, 1/55, 4/55, 11/55, 12/56, 7/57, 9/57, 6/59, 6/61

The US Supreme Court has ruled that racial segregation in all public schools is illegal. This means that all children, no matter what their race, must be allowed to go to the same schools. Do you approve or disapprove of this decision? (Approve)

4/63 (by the National Opinion Research Center, University of Chicago)

Do you think white students and negro students should go to the same schools or to separate schools?

(Same schools)

**GRASSGALLUP**

10/69, 3/72, 1/73, 4/74, 5/79, 6/80, 10/82, 6/85, 11/87, 8/88, 9/95, 10/00, 11/03

Do you think the use of marijuana should be made legal or not? (Yes)

## APPENDIX D

### Questions from CBS/NY Times Polls

#### ABCBSNY

9/90, 9/91, 8/92, 10/95, 1/98, 11/99, 10/00, 3/01, 8/03, 11/04

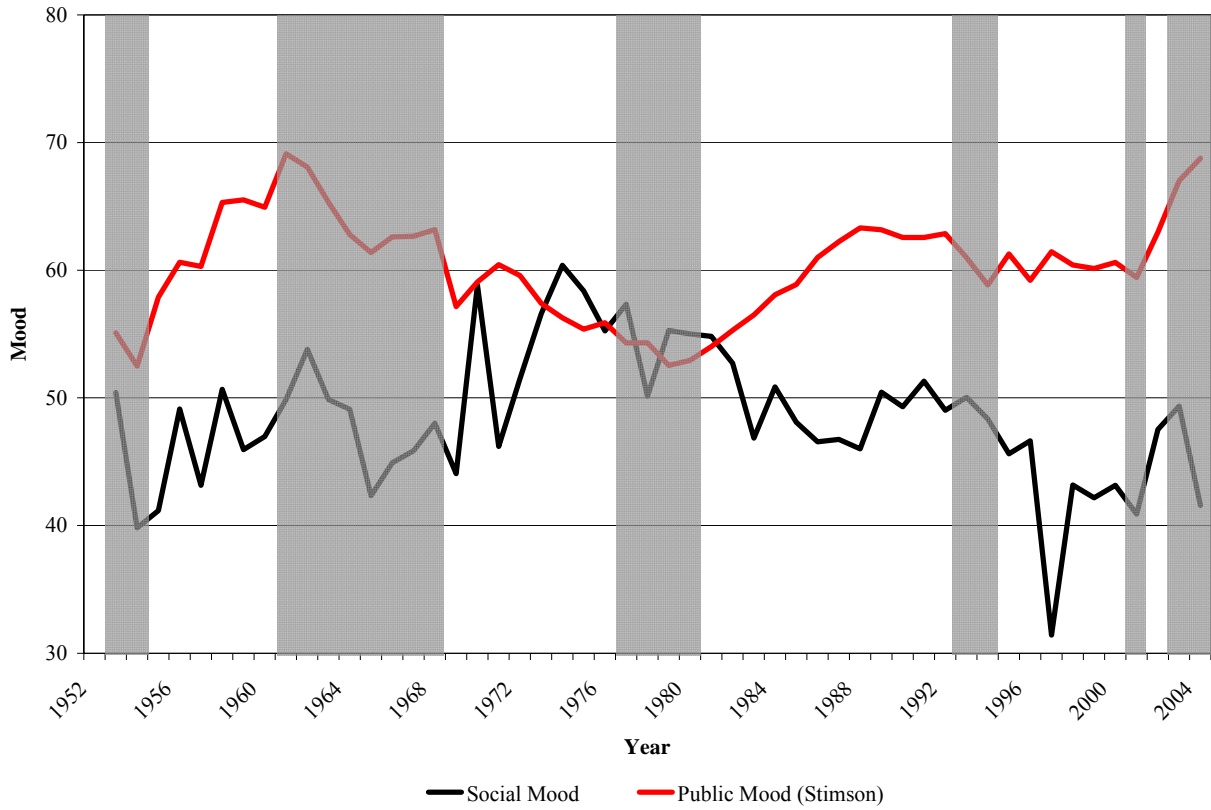
Which of these comes closest to your view? 1) Abortion should be generally available to those who want it, or 2) Abortion should be available but under stricter limits than it is now, or 3) Abortion should not be permitted? (Available to all)

10/96, 12/97

Which of these comes closest to your view? 1) Abortion should be generally available to those who want it, or 2) Abortion should be available, but under stricter limits than it is now, or 3) Abortion should be against the law except in cases of rape, incest, and to save the woman's life, or 4) Abortion should not be permitted at all? (Generally available)

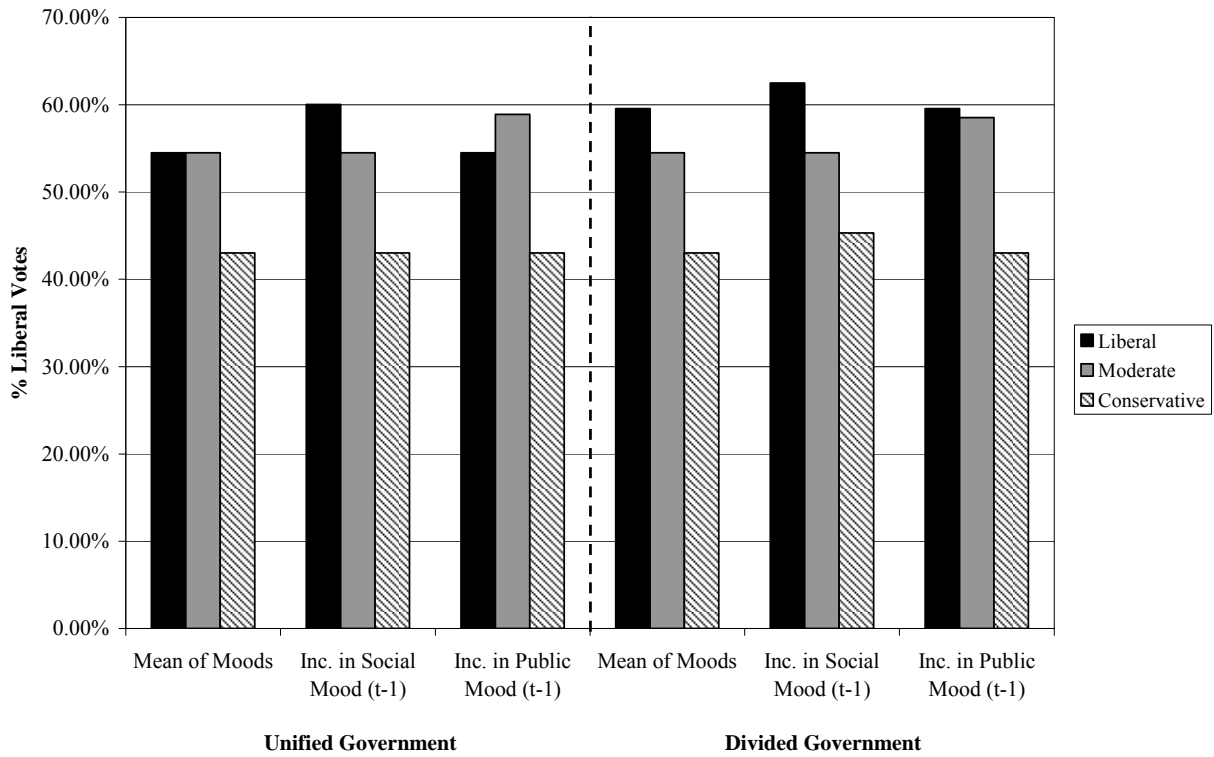
**APPENDIX E**

<b>Table E1</b>		
<b>OLS Estimates</b>		
<i>Variable</i>	<i>Coef.</i>	<i>Std. Error</i>
<i>Moderate Justices (Baseline)</i>		
Intercept	0.686***	0.020
Divided Government	-0.021	0.021
Burger Dummy	-0.140***	0.028
Social Mood (t-1)	-0.001	0.002
Public Mood (t-1)	0.011***	0.002
Divided Gov. x Social Mood (t-1)	0.003	0.004
Divided Gov. x Public Mood (t-1)	0.000	0.005
<i>Liberal Justices</i>		
Intercept	-0.009	0.022
Divided Government	0.072***	0.026
Burger Dummy	0.038	0.035
Social Mood (t-1)	0.011***	0.002
Public Mood (t-1)	-0.015***	0.004
Divided Gov. x Social Mood (t-1)	-0.007*	0.004
Divided Gov. x Public Mood (t-1)	0.005	0.006
<i>Conservative Justices</i>		
Intercept	-0.113**	0.052
Divided Government	0.007	0.054
Burger Dummy	-0.071	0.065
Social Mood (t-1)	-0.001	0.008
Public Mood (t-1)	-0.008	0.006
Divided Gov. x Social Mood (t-1)	0.004	0.009
Divided Gov. x Public Mood (t-1)	0.006	0.012
<i>Model Statistics</i>		
R <sup>2</sup>	0.332	—
F (20, 50)	48.22	0.000
	<i>Justices</i>	<i>Years</i>
Observations (n = 462)	29	51
* p < 0.1, ** p < 0.05, *** p < 0.01		
These are the estimation results for the model presented in Table 1 using ordinary least squares with cluster-adjusted standard errors.		



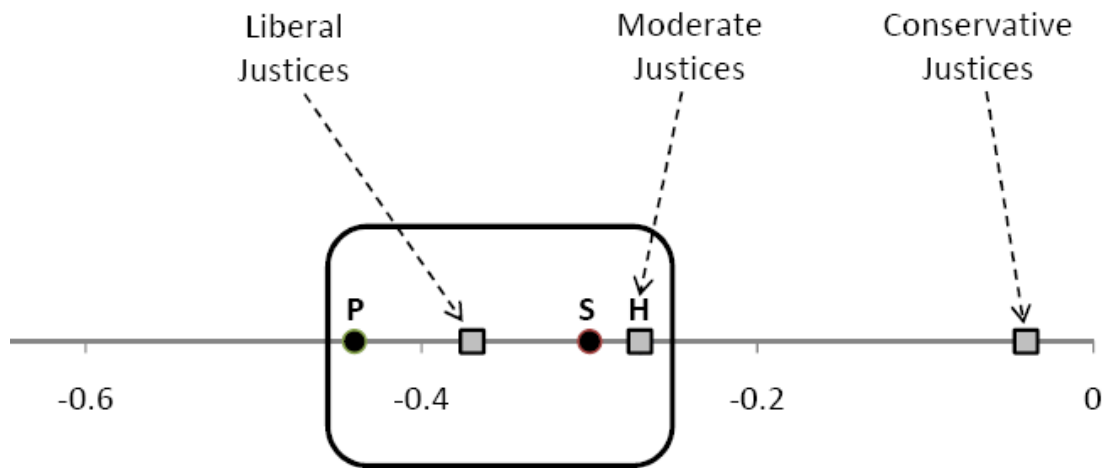
**Figure 1. Social and Public Mood**

Note: Shaded regions of the graph are periods of unified government. The first two are periods of unified Democratic government (1961 to 1968 and 1977 to 1980). The last period is unified Republican government (2001 and 2003 to 2004).



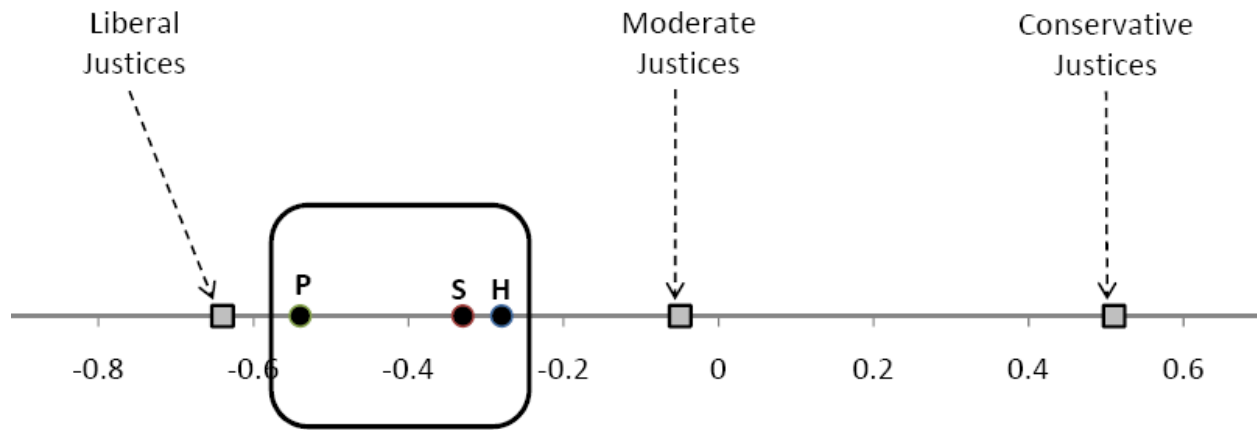
**Figure 2. The Effect of Ideology on Voting Patterns (By Mood)**

Note: The voting percentages are based on the intercepts since the Burger Court (the sum of the intercept and the effect of the Burger dummy). During the Warren Court, all of the bars would simply increase by 13.9 percentage points. Increases in both mood variables are by one standard deviation, which for social mood is 5.8 points and for public mood is 4.3 points.



**Figure 3. Common Space Scores (1961-1968)**

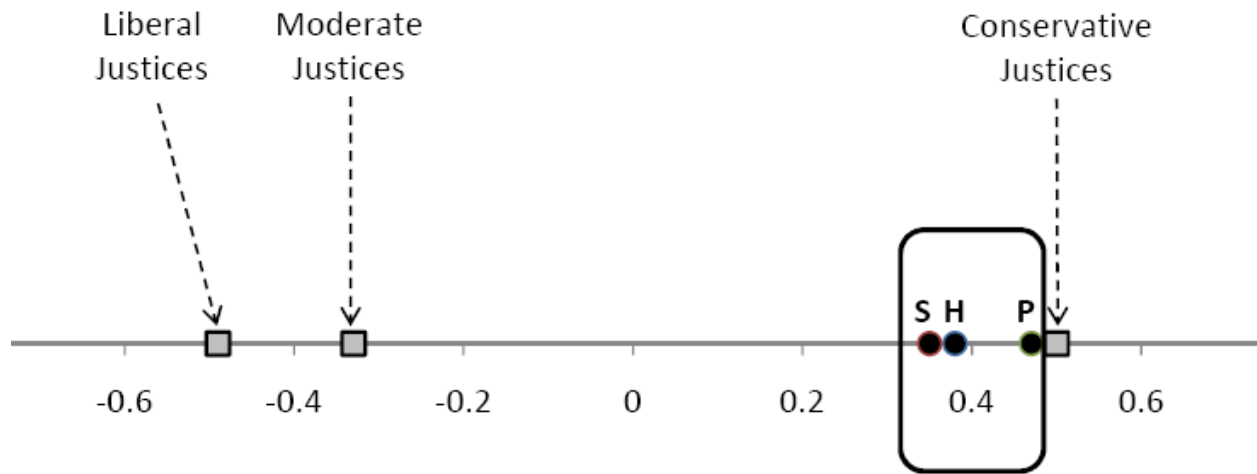
Note: Dark circles denote the coordinate branches and are labeled by the letters appearing above them. “P” stands for President, “S” in this case stands for Democrats in the Senate, and “H” for Democrats in the House. The box around the branches is a graphical approximation of the acceptable policy space to the President and Congress. Also note that increasing common space values denote increasing conservatism.



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**Figure 4. Common Space Scores (1977-1980)**

Note: Please see the footnote to Figure 3, whereas the specifics of this graph are the same as in Figure 3.



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**Figure 5. Common Space Scores (2001-2004)**

Note: This Figure is the same as Figures 3 and 4 except the Senate and the House common space medians are for Republicans, not Democrats.

**Table 1**  
**Multilevel Model Estimates**

<i>Variable</i>	<i>Coef.</i>	<i>Std. Error</i>
<i>Moderate Justices (Baseline)</i>		
Intercept	0.684***	0.020
Divided Government	-0.021	0.020
Burger Dummy	-0.139***	0.027
Social Mood (t-1)	-0.001	0.002
Public Mood (t-1)	0.011***	0.002
Divided Gov. x Social Mood (t-1)	0.002	0.004
Divided Gov. x Public Mood (t-1)	-0.001	0.005
<i>Liberal Justices</i>		
Intercept	-0.008	0.022
Divided Government	0.072***	0.026
Burger Dummy	0.037	0.034
Social Mood (t-1)	0.011***	0.002
Public Mood (t-1)	-0.015***	0.004
Divided Gov. x Social Mood (t-1)	-0.007*	0.004
Divided Gov. x Public Mood (t-1)	0.005	0.006
<i>Conservative Justices</i>		
Intercept	-0.115**	0.050
Divided Government	0.007	0.051
Burger Dummy	-0.071	0.062
Social Mood (t-1)	-0.001	0.008
Public Mood (t-1)	-0.008	0.006
Divided Gov. x Social Mood (t-1)	0.003	0.009
Divided Gov. x Public Mood (t-1)	0.005	0.011
<i>Variance Components</i>		
	<i>Std. Dev.</i>	$\chi^2$ ( <i>p-value</i> )
Intercept (Moderates)	0.012	29.43 (.93)
Liberal Justices	0.017	23.47 (.99)
Conservative Justices	0.075	42.42 (.45)
Level 1 $\sigma^a$	0.179	1.35 (.99)
	<i>Justices</i>	<i>Years</i>
Observations (n = 462)	29	51
* p < 0.1, ** p < 0.05, *** p < 0.01		
<sup>a</sup> 0.179 is the estimated standard deviation of the individual level (level 1) error term. The $\chi^2$ statistic presented is for a test of the homogeneity of this standard deviation. The null hypothesis, which we fail to reject, is that the error term is homoskedastic.		

<b>Table 2</b>						
<b>The Total Effects of Mood by Type of Government</b>						
<i>Variable</i>	<i>Liberal Justices</i>		<i>Moderate Justices</i>		<i>Conservative Justices</i>	
	<i>Joint <math>\beta</math></i>	<i>Joint SE</i>	<i>Joint <math>\beta</math></i>	<i>Joint SE</i>	<i>Joint <math>\beta</math></i>	<i>Joint SE</i>
Unified Gov.						
Intercept Shift <sup>a</sup>	0.017	0.022	—	—	-0.115**	0.050
Social Mood (t-1)	0.010**	0.003	-0.001	0.002	-0.001	0.007
Public Mood (t-1)	-0.004	0.004	0.011**	0.002	0.003	0.006
Divided Gov.						
Intercept Shift	0.051**	0.023	-0.021	0.020	-0.015	0.044
Social Mood (t-1)	0.005**	0.002	0.002	0.003	0.004	0.002
Public Mood (t-1)	0.000	0.004	0.010**	0.004	0.008	0.008
** p < 0.05						
Note: Moderate justices under unified government are the base category; there is no shift in the intercept because the estimate of this category is the intercept (0.684 during the Warren Court, 0.545 since the Burger Court).						