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Signature:

Leeann Bass

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Covering the Court:
The Impact of a Modern Era of Journalism

By

Leeann Bass
Doctor of Philosophy

Political Science

Jeffrey Staton, Ph.D.
Advisor

Tom Clark, Ph.D.
Committee Member

Micheal Giles, Ph.D.
Committee Member

Jeffrey Staton, Ph.D.
Committee Member

Accepted:

Lisa A. Tedesco, Ph.D.
Dean of the James T. Laney School of Graduate Studies

Date

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By

Leeann Bass
Master of Arts, Emory University, 2014
Bachelor of Arts, University of North Carolina at Chapel Hill, 2009

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Abstract

Covering the Court: The Impact of a Modern Era of Journalism By Leeann Bass

Public support is crucial to the institutional legitimacy of the U.S. Supreme Court. However, in recent years, public support for the Court has gone through periods of instability or decline. This dissertation presents a theory of how changes in the American media environment lead to changes in beliefs about the legitimacy of the Court among the American public. By presenting the Court as politicized, modern media undermine the Supreme Court's image as a neutral, unbiased arbiter of important societal disputes. Through elite interviewing and text analysis of an original dataset of over 100,000 news stories about the Supreme Court, I demonstrate that there are differences in the way that legacy and modern news sources produce news, leading to systematic variation in the information that the audiences of different news outlets receive about the Court. Thus, the types of coverage noted by both existing observational and experimental studies as detrimental to public support for the Court does exist, and it is growing more prevalent over time. These findings have important implications for the continuing authority of the Supreme Court and ultimately the rule of law in American society.

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For
James P. Bass & Kathryn Deuser

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Chapter 1

Introduction

1.1 Public Support and the United States Supreme Court

The United States Supreme Court serves several vital functions in American government and society. As the federal court of last resort, the Supreme Court is the final arbiter of constitutional and statutory disputes in the United States. From defining detailed points of the U.S. Tax Code to determining the constitutionality of limitations on civil rights and liberties, the U.S. Supreme Court rules on issues which affect all aspects of American life. As politics has increasingly become more and more “judicialized,” it often falls to the Court to resolve important societal disputes in the face of structural obstacles to action by the elected branches, or in the absence of their political will (Shapiro 1994, Whittington 2005). Most importantly, the Court acts as a check on the power of Congress and the president through its use of judicial review.

As the apex of the United States judiciary, the Supreme Court is the cornerstone of the rule of law in American democracy, constraining the other branches against excesses, guarding fundamental individual rights, overseeing the administration of civil and criminal justice, and ensuring that the laws are impartially and equally applied.

Despite exercising these critical duties, the Court faces a fundamental problem: it lacks any inherent power to implement or enforce its decisions. As Alexander Hamilton famously explained in *The Federalist* No. 78, the Court “has no influence over either the sword or the purse...and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment” (Hamilton 1788). Rather, the Supreme Court depends on lower courts, as well as Congress and the president, to follow through on its judgments. A substantial body of research in political science and law has found that it is the support of the public for the high court in a democracy that forces the elected branches to respect the high court’s decisions (Carrubba 2009, Clark 2011, Friedman 2009, Hall 2010, Staton 2010, Stephenson 2004, Vanberg 2005). If the Supreme Court’s decisions conflict with the preferences of legislators or executive actors, the Court must rely on the American people to pressure their elected representatives into compliance. Furthermore, individual-level support for the Court’s authority is what induces ordinary Americans to respect a ruling of the Court with which they disagree, fostering broad-based compliance of diffusely-implemented decisions. As Alexis de Tocqueville observed in *Democracy in America*, “The power of Supreme Court Justices is immense, but it is power springing from opinion. They are powerful so long as the people consent to obey the law; they can do nothing when they scorn it” (Tocqueville, Mansfield and Winthrop 2002).

Thus, without public support, the Court's decisions may be ignored, rendering it impotent and ultimately threatening the rule of law in American society.

1.2 Instability in Support for the Supreme Court

However, public support for the Court has been unstable and largely declining in recent decades. As Figure 1 shows, recent polls find that only about half of Americans now support the Court. A survey conducted by the Pew Research Center periodically since 1985 reveals that respondents have increasingly indicated that they have an “unfavorable” (gray line) as opposed to “favorable” (black line) overall view of the Supreme Court since the mid-1990s.¹ The percentage of “unfavorable” responses reached a high of 43 percent in 2015 while the percentage of “favorable” responses dropped to a low of 48 percent in the same year. Furthermore, when asked whether they “approve” (black line) or “disapprove” (gray line) of “the way the Supreme Court is handling its job,” respondents to a Gallup poll conducted annually since 2000 increasingly “disapprove.”² Approval has fallen from a high of 62 percent in 2000 and 2001 to a low of 42 percent in 2016, while disapproval has risen from a low of 25 percent in June 2001 to 52 percent in July 2016. Taken together, these surveys indicate that discontent with the Supreme Court has reached unprecedented levels. Although the conventional wisdom among scholars of the Supreme Court is that the Court is “bulletproof” and can do little to significantly damage its public esteem in

¹Question wording: “How favorable is your view of the Supreme Court?” “Don’t know” responses are not shown.

²Question wording: Do you approve or disapprove of the way the Supreme Court is handling its job?” “No opinion” responses are not shown.

the long term, these trends call into question this prevailing outlook (Farganis 2012, Gibson and Caldeira 2011). From a scholarly standpoint, this is also consequential because much of the judicial politics literature cites as fact that support for the U.S. Supreme Court is consistently high and stable, and that such unwavering support distinguishes it from many other high courts around the world (Gibson 2007, Gibson, Caldeira and Spence 2003, Gibson, Caldeira and Baird 1998). Citizens should also be concerned, as this instability and decline in support may at some point affect the ability of the Court to perform its duties.

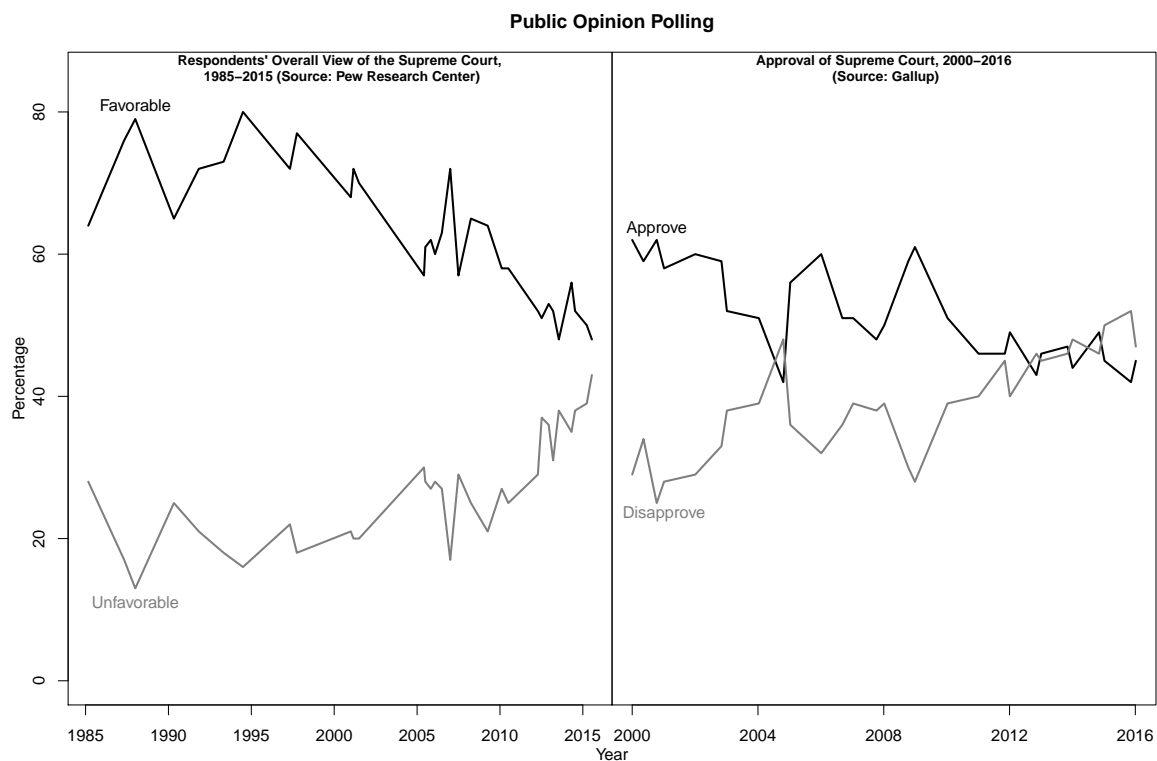


Figure 1.1: Poll responses to questions about views of the Supreme Court from the Pew Research Center, 1985-2015, (left) and Gallup, 2000-2016, (right).

1.3 Perceptions of Judicial Impartiality in a Changing Media Environment

One reason that support for the Supreme Court is unstable and declining may be that Americans are increasingly questioning the justices' impartiality. Shapiro (1981) explains that impartiality is essential to conflict resolution. As the basic structure of conflict resolution consists of two disputants and one mediator, a tribunal must prove that it is not "two against one," or biased in favor of one disputant over the other, in order to maintain its legitimacy. This comports with psychological explanations of why people obey the law, namely that individuals respect laws and court rulings if they perceive them to be reached by a fair process (Engstrom and Giles 1972, Tyler 2006).

Recent evidence suggests that individuals are viewing the Court in ideological or partisan terms more and more (Bartels and Johnston 2013, Johnston, Hillygus and Bartels 2014).³ Surveys have found that, to an increasing extent, individuals view the Court as disagreeing with their ideologies (Bartels and Johnston 2013, Pew Research Center 2013). Importantly, those who do not view themselves as sharing the Court's ideology report lower evaluations of the Court's legitimacy (Bartels and Johnston 2013, Christenson and Glick 2015). Furthermore, partisan source cues affect individuals' support for the independence of the Court. When proposals to limit the power of the Court come from co-partisan or neutral elites, individuals are more likely to

³Although there has been a recent rich empirical literature on this topic, the relationship between individual-level ideology and support for the Court has been noted before; see Adamany 1973.

support these efforts than when they are proposed by elites from the opposing party (Clark and Kestelc 2015). Relatedly, partisanship and party cues affect public acceptance of Court decisions. When told that a decision is the product of a Republican Court, acceptance of the decision increases among Republicans and decreases among Democrats (Nicholson and Hansford 2014).

The justices' own statements suggest that they are aware that negative perceptions of impartiality and fairness threaten the legitimacy of their rulings. In *Planned Parenthood v. Casey* (1993), Justices O'Connor, Kennedy, and Souter write that:

“The Court’s power lies...in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means, and to declare what it demands...The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation (865-866).”

Chief Justice John Roberts is often cited as the institutional steward of the current Court. Accordingly, he has voiced concern in the course of his official activities as well as in press interviews and at public events about how the Court’s decision making process is perceived. In a 2007 interview *The Atlantic*, Roberts noted his

commitment to encouraging consensus among his colleagues, expressing frustration that the media tends to seize on 5-4 decisions as indications that the Court is not “an impartial institution that transcends partisan politics” and instead makes “people identify the rule of law with how individual justices vote.” In the oral argument of *Gill v. Whitford* (2018), Roberts remarked about the prospect of a flurry of future redistricting challenges if the plaintiffs won:

“...if you’re the intelligent man on the street and the court issues a decision, and let’s say the Democrats win, and that person will say: ‘Well, why did the Democrats win?’ And the intelligent man on the street is going to say that’s a bunch of baloney. It must be because the Supreme Court preferred the Democrats over the Republicans. And that’s going to come out one case after another as these cases are brought in every state. And that is going to cause very serious harm to the status and integrity of the decisions of this court in the eyes of the country.”

After the controversial and widely publicized confirmation of Brett Kavanaugh to the Court in October 2018, Chief Justice Roberts took the extraordinary step of using his appearance at an event at the University of Minnesota Law School shortly thereafter to address the “contentious events in Washington of recent weeks,” and reassure the public that the Court is non-partisan, saying:

“I will not criticize the political branches...what I would like to do briefly is emphasize how the judicial branch is, how it must be very different...We do not speak for the people. But we speak for the Constitution.

Our role is very clear. We are to interpret the Constitution and laws of the United States and ensure that the political branches act within them. That job obviously requires independence from the political branches. The story of the Supreme Court would be very different without that sort of independence...the Court has from time to time erred, and erred greatly. But when it has, it has been because the court yielded to political pressure...As our newest colleague put it, we do not sit on opposite sides of an aisle, we do not caucus in separate rooms, we do not serve one party or one interest, we serve one nation...I want to assure all of you that we will continue to do that, to the best of our abilities, whether times are calm or contentious.”⁴

Other justices similarly took opportunities to emphasize the importance of the Court’s impartiality at public events. At a conference at Princeton University on October 5, Elena Kagan said:

“Part of the Court’s strength and part of the Court’s legitimacy depends on people not seeing the Court in the way that people see the rest of the governing structures of this country now. In other words, people thinking of the Court as not politically divided in the same way, as not an extension of politics, but instead somehow above the fray...it’s an incredibly important thing for the Court to guard, is this reputation of being fair, of being impartial, of being neutral, and of not being simply

⁴<https://www.c-span.org/video/?451977-1/chief-justice-roberts-stresses-supreme-courts-independence-contentious-kavanaugh-hearings>

an extension of the terribly polarized political process and environment that we live in...Every single one of us needs to realize how precious the court's legitimacy is. You know we don't have an army. We don't have any money. The only way we get people to do what we say that they should do is because people respect us, and they respect our fairness.”⁵

Scholars have found in survey-based work that portrayals of the Court as politicized can influence public evaluations of its legitimacy. Notable work by Gibson and Caldeira (2011) shows that individuals believe the Court to be more legitimate when they are informed about it, if they also believe that the justices exercise “principled discretion” and are not like “ordinary politicians.” If individuals have high levels of knowledge about the Court, but they also believe that the justices are just like other politicians, or are “legislators in robes,” these individuals perceive the Court as possessing a lower level of legitimacy. Gibson and Nelson (2017) further find that ideological disagreement with Court decisions plays a much smaller role in influencing evaluations of legitimacy than do perceptions of judicial politicization. Additionally, experimental evidence suggests that when the media portrays the Court as deciding cases according to political reasons or using unfair procedures, subjects report lower levels of legitimacy, but the use of legal justifications results in higher levels of legitimacy (Baird and Gangl 2006, Farganis 2012, Ramirez 2008).

Therefore, the information that the public receives about the Court is crucial in determining public support for the Court, as well as how the public regards the Court's

⁵<https://www.cnn.com/videos/justice/2018/10/05/justice-elena-kagan-supreme-court-sot-princeton-vpx.cnn>

legitimacy as an institution. Importantly, the way in which the Court communicates with the public greatly differs from the communication methods of other political institutions. In contrast to the elected branches, the Court takes an outwardly passive approach to influencing these perceptions. Instead of engaging in activities like holding news conferences, issuing press releases, and staging photo opportunities, as the president and members of Congress do, the justices of the Court largely hand down rulings and then rely on the news media to communicate them to American citizens. The public thus receives most, if not all, of its information about the Court from the news media. Decisions of the press ranging from whether or not to cover an action of the Court and what content to include in stories about the Court, to the tone of their coverage, all contribute to popular knowledge of and opinion about the Court. How the press portrays the Court can greatly impact popular evaluations of the Court, and, ultimately, its legitimacy and power.

However, scholars do not possess a comprehensive picture of what information the public is actually receiving about the Court. Although a number of studies have investigated how the media portrays the Court (Davis 1994, 2011, Hoekstra 2003, Slotnick and Segal 1998, Solberg and Waltenburg 2015, Zillis 2015), most confine their analyses to specific media or time periods, focus on variations in simply the frequency of coverage, or examine media coverage of particular cases. Such limitations are consequential because the American media environment has undergone an extensive transformation in recent decades. Whereas twenty years ago print newspapers and broadcast television dominated the news landscape, today the Internet and cable television are challenging the preeminence of traditional news sources. These novel

types of news media differ from legacy media in what content they emphasize and how they present information. Most notably, many modern news sources explicitly advocate from a particular partisan or ideological viewpoint. Accordingly, it is likely that news consumers today are systematically receiving different types of information about politics, and about the Supreme Court, than they received several decades ago. Importantly, such variations in the supply of information may help explain why support for the Court has declined during the same time period, and may ultimately have implications for the Court's legitimacy.

In line with existing research, I argue that the media can portray the Court as either "principled" or "politicized." Whereas principled portrayals bolster evaluations of the Court's legitimacy, politicized portrayals detract from such evaluations. As technological and economic developments have created the conditions for new types of media to develop, these media have adopted ideological and partisan stances in order to gain market share. These modern sources of news are precisely the type of outlets which are likely to provide politicized portraits of the Court. As modern news sources grow in popularity, politicized perceptions of the Court also become more widespread, ultimately affecting the Court's legitimacy.

This dissertation will proceed as follows. Chapter 2 presents my argument as to why the changing media environment has provided the public with increasingly politicized information. I review the relevant literature addressing perceptions of the Supreme Court's legitimacy and existing studies of media coverage of the Court. I provide an overview of the important ways American news media have changed over the last several decades. I conclude with empirical implications and hypotheses,

namely that both the content and style of news coverage of the Court is more politicized in modern (cable television news, political blogs) versus legacy (newspapers, wire services, broadcast television) news sources.

Chapter 3 provides an overview of changes in the process of reporting on the Supreme Court through interviews with journalists from both legacy and new media organizations.

Chapter 4 explains methods of data collection for my data set of over 100,000 news articles and transcripts about the Supreme Court and illustrates patterns in coverage over time. I then show that the content of media coverage of the Court has changed over time. I hypothesize that modern news sources will cover politicized topics to a greater extent, whereas legacy news sources will focus more on the cases and controversies before the Court. Using topic modeling, I find that cable television news channels and political blogs cover the Court in political contexts at higher levels, whereas the bulk of reporting on the Court among newspapers, wire services, and broadcast television centers on the Court's actual work.

Chapter 5 tests hypotheses concerning the tone of news coverage over time. I hypothesize that modern news sources will use politicized and dramatized styles of writing to a greater extent than legacy media. Using supervised machine learning, I classify newspaper articles and blog posts into politicized and dramatized categories, and then examine trends by news source and over time.

Chapter 6 will provide an overview of the arguments advanced in my dissertation, as well as a synthesis of the results offered by the project. I will include a thorough discussion of the implications of my findings, as well as a discussion of the limitations

of the project and a survey of potential avenues for future research. I will highlight the main contributions of my dissertation, namely demonstrating the increasingly politicized nature of Supreme Court news. In so doing, my research will shed light on whether the effects on legitimacy evaluations found in surveys and experiments could manifest over time as modern news sources become increasingly widespread. Determining whether it is possible for the Court's legitimacy to decrease in a significant way is an important question to answer for those interested in ensuring the health of American democracy.

Chapter 2

Concepts and Theory

2.1 Beliefs about the Supreme Court

The American political system assigns a critical role to the Supreme Court as the key, and often the only, check against violations of the rule of law by officials of the American state. Scholars agree that the Supreme Court's de facto power stems from a "reservoir of goodwill" for the institution amongst the public, known as "diffuse support," or "institutional loyalty." Such support or loyalty forms deep and durable beliefs in the legitimacy of the Supreme Court's role in American politics among the citizenry. Individuals who possess high levels of diffuse support for the Court will defend the Court as it is contemporaneously constituted and resist efforts to change or abolish the institution. Diffuse support differs from "specific support," or approval of particular policy outputs of an institution. Diffuse support is what makes people tolerate and accept specific rulings of the Court with which they personally disagree, as well as accept judicial review of laws passed by democratically-elected politicians.

Respect for the Court's authority in the form of institutional loyalty is essential to the Court's role in American society, as it is at times called on to perform anti-majoritarian functions like protecting the rights of minorities or declaring policies enacted by legislative majorities unconstitutional. If the Court has built up enough popular esteem, a decision out of line with prevailing public opinion draws on, but does not deplete its reservoir of goodwill (Caldeira and Gibson 1992, Easton 1965, Gibson, Caldeira and Baird 1998, Marshall 1989).

2.1.1 Individual-Level Beliefs about Judicial Reasoning

Existing research has found that at the individual level, people report higher levels of institutional loyalty to the Supreme Court when they believe that the justices reach their decisions through unbiased, apolitical processes. Scholars note that people often believe that the justices of the Court engage in a kind of deliberative process that is distinct from what they observe in Congress and the White House (Hibbing and Theiss-Morse 1995, 2002). Whereas citizens observe members of the elected branches publicly debating government decisions, often using heated attacks and inflammatory rhetoric, they do not directly observe the Supreme Court's decision making process. While the Court questions litigants in open court during oral argument and allows members of the media and public to attend decision announcements, the Court does not allow these proceedings to be televised, and audio recordings are released on the same day only at the Court's discretion. Furthermore, the actual deliberations over Court rulings occur behind closed doors, in conferences only justices of the Court

attend, and through the circulation of written opinion drafts, which only justices and their law clerks see. Thus, the Court's deliberative process is largely hidden from public view, and what the Court allows the public to observe is a carefully-curated end product, not the often bitter negotiations engaged in by legislators and executive actors.

Moreover, at the most visible proceedings related to the Court, namely the Senate confirmation hearings for new justices, nominees usually make every effort to appear apolitical. Although senators often ask highly sensitive questions, hoping to expose the political leanings of a nominee, the nominees themselves craft their responses carefully to demonstrate they are committed to legal precedent, not to their own ideological or policy goals. Whenever possible, the Court makes extensive efforts to avoid the impression that it participates in partisan politics.

Although some research has found that it is good for courts if people believe in the "myth of legality" (Scheb and Lyons 2000), recent research recognizes more nuance in public beliefs about the Supreme Court. Even if people have a more "realistic" view of judging (namely that judges' personal views do play a role in their decisions), people can still believe the Court to be legitimate so long as they do not go so far as to see the Court as "politicized."

Gibson and Caldeira (2011) define a continuum of views of Supreme Court decision making ranging from "mechanical jurisprudence" to "politicians in robes," with "principled discretion" as a midpoint. "Mechanical jurisprudence" is the notion that the justices make decisions purely based on reflexive applications of the law (Pound 1908). The process of judging is deterministic, leaving little to no room for personal

discretion. From this perspective, courts' legitimacy derives from the fact that laws, not personal values, determine judicial decisions. "Principled discretion" recognizes that judges' personal values can play a role in decision making. However, in order for judicial decisions to maintain legitimacy, personal values which influence rulings must be sincerely held. In other words, judges must make decisions based on earnest, not purely self-serving, beliefs. The view of judges as "politicians in robes," on the other hand, holds that judges make decisions based on selfish, policy-oriented goals. The crucial distinction between the "principled discretion" and "politicians in robes" views is that judges exercising principled discretion are seen as sincere, not strategic, whereas judges who are "mere ordinary politicians" rule as they do in order to further their strategic political goals.

Using a national survey, Gibson and Caldeira find that those who believe that the Court makes its decisions through "mechanical jurisprudence" hold favorable views of the institution and its legitimacy, while those who think that the justices are merely "politicians in robes" judge the Court unfavorably. However, they find that individuals with high levels of knowledge about the Supreme Court are more likely to support the Court, precisely because they are also more likely to believe that the justices exercise principled discretion. Therefore, the knowledge that personal ideology does factor into judicial decision-making is not damning for the Court as long as people believe those values shape the justices' decisions in a sincere manner.

In a similar vein, Woodson (2015) uses three survey-based studies to show that the impact of institutional loyalty on acceptance of court decisions depends on perceptions of the process judges use to make the decision. Woodson simplifies the continuum of

Gibson and Caldeira (2011) into “principled” versus “politicized” modes of evaluation. Incorporating the concept of “principled discretion” in the “principled” mode, “decision making is based solely on abstract principles unrelated to the policy implications of a decision. For judges, this could be a variety of principles that includes, but is not limited to, legalistic principles.” In contrast, in the “politicized” mode, “decision making is based solely on the policy implications of a decision. For judges, this is policy-based decision making in which judges’ main goal is to advance their own policy preferences.”

Gibson and Nelson (2017) tackles the growing body of literature which proposes that mere ideological satisfaction with Court decisions, not process perceptions, determines individual-level beliefs about legitimacy (see Bartels and Johnston (2013)). The authors argue that it is instead perceptions of judicial politicization which drives evaluations of legitimacy. Gibson and Nelson define “politicized” perceptions as believing that “ordinary political processes common to the other branches of government also pertain to the U.S. Supreme Court,” and that the justices engage in “insincerity and strategic behavior, in self-interested behavior, in involvement with partisan politics, and perhaps even in disdain for the preferences of the institution’s constituents.”

Again using a national survey, the authors find that greater levels of perceived politicization result in lower levels of institutional loyalty to the Court. Ideological dissatisfaction with Court rulings only has a small impact on an individual’s evaluations of legitimacy among those who take a “realistic” view of the Court’s decision making process, because such individuals view ideological considerations as a relevant basis for evaluating the Court. Gibson and Nelson conclude that “the Court, data

suggest, should worry less about angering the public with its policy decisions, and focus more on the public's satisfaction with its processes, procedures, and politics...if it is to avoid putting its popular legitimacy at risk."

Experimental research also shows that whether the Court is more broadly portrayed as neutral and impartial affects evaluations of its legitimacy. Baird and Gangl (2006) find that when the media portrays the Court as deciding cases according to political, rather than legal, considerations, perceptions of the fairness of the Court's procedures decrease. Ramirez (2008) demonstrates that when the media portrays the Court's procedures as unfair; namely as untrustworthy, unrepresentative, and biased, support for the Court decreases. Farganis (2012) shows that when news articles describe the justices' rationale for their decision as based on public opinion or religious reasons, as opposed to legal justifications, subjects are less supportive of the Court.

Therefore, when individuals perceive bias or politicized decision making on the part of the justices, the strength of their diffuse support for the Court declines. However, there are certain contextual factors that can increase individual-level diffuse support for the Court. Gibson and Caldeira (2009) propounds "positivity theory," which holds that as people consume more information about the Court, they learn more about its unique role in American government and its apolitical, impartial methods of decision making. They are exposed to "legitimizing symbols of the judiciary," such as the black robes, high bench, imposing Court building, and use of formalities like "your honor," which couch Court proceedings in gravitas and authority. Learning more about the Court therefore increases institutional loyalty. When citizens evaluate nominees to the Supreme Court, their level of institutional loyalty determines

the “frame” by which they judge nominees. If they are loyal to the Court, they evaluate nominees according to a “judiciousness” frame, of which the main criterion is a nominee’s legal qualifications. If citizens do not possess a sense of institutional loyalty toward the Court, they judge nominees on ideological or partisan grounds, as they would judge a nominee for a non-judicial post. Such evaluations are mainly based on agreement with the nominee’s policy attitudes. The authors use a survey of attitudes toward Samuel Alito’s 2005 nomination to the Court to provide support for their hypotheses.

Moreover, Gibson, Lodge and Woodson (2014) use a survey-based experiment to show that exposure to legitimizing symbols increases acceptance of Court decisions. Similarly to Gibson and Caldeira (2009), the authors propose that judicial symbols contextualize court decisions and encourage the belief that court decisions are fair and impartial, and therefore should be obeyed.

Thus, the way in which the Court is portrayed to the public is integral to determining what types of beliefs people will form about the Court. Helpful portrayals are those which depict the justices as principled, basing rulings mainly on legal considerations. Harmful portrayals show the justices to be strategic actors motivated by their own selfish policy goals. The bulk of extant research suggests that perceptions that legal reasons inform decision making increase public esteem for court, while beliefs that ideological, and especially partisan, considerations are the basis for judicial decisions can decrease diffuse support.

2.1.2 Sources of Beliefs about the Supreme Court: Learning through the Media

Of tremendous consequence, then, is the source of popular information about the Supreme Court. As noted by Berkson (1978) and Baum (2008), the Court has multiple constituencies, or audiences. These can be divided into two groups: other judges, lawyers, politicians, and public officials, who observe the Court's activities closely, and the general public, who do not pay close attention to the Court's proceedings. While some legal and policy professionals may read the Court's opinions themselves, most citizens do not engage in this time-consuming undertaking, which requires some legal expertise. Furthermore, the Court does not actively engage in public relations, unlike the other branches of the federal government, so most Americans learn about the Supreme Court primarily through the news media (Berkson 1978, Caldeira 1986, Davis 1994, Franklin and Kosaki 1995, Slotnick and Segal 1998). The Court does not issue press releases interpreting the its rulings. What press advisories the Court does issue are mainly very brief updates on changes in Court personnel (retirements and new appointments of justices and Court staff), its schedule, or small changes to its general functioning, like announcing an update to its website or that the facade of its building will undergo renovations¹. Media access to the justices themselves is rarely granted, and the norm against providing information to the press is extremely well-respected and enforced among the justices' law clerks. The Court does not al-

¹See <https://www.supremecourt.gov/publicinfo/press/pressreleases.aspx> for press releases dating back to 2002. 113 press releases have been issued from 2002 to the present, an average of about seven per year. In contrast, it is not uncommon for the White House to issue seven press releases in a single day (see <https://www.whitehouse.gov/briefings-statements/>).

low its proceedings to be video recorded, so the only way to see oral arguments or decision announcements is to attend in person, and space in the Court room is very limited. Although the Court does release audio recordings of its proceedings, it usually only releases on the same day in extremely high-profile cases, often only after being petitioned to do so by reporters. Most audio is therefore of limited value to journalists who work on tight deadlines and to the news industry in general, where currency is extremely important. Although the Court has a press relations arm, called the “Public Information Office,” its main functions are to coordinate the distribution of publicly-available documents to reporters and other interested persons, credential reporters, coordinate seating of reporters in high-profile arguments or decision announcements, notify reporters of scheduling updates, and provide a place for reporters to work. The Public Information Office does not coordinate press relations among the justices themselves. Each justice’s chambers reviews requests for media access individually. There is also no centralized process for documenting the public activities of the justices outside the Court, such as speeches and other public appearances. Most importantly, representatives of the Office will not comment on or interpret actions. The Court also displays limited care for the needs of the press when devising its schedule. The Court does not announce in advance which opinions will be released on which days, complicating the preparation process for reporters. When the Court announces multiple decisions on the same day, reporters will at times have to choose what to cover, making it difficult for the public to learn about the full extent of the Court’s activities.

Where the Court provides a minimum of information to reporters, legislative and

executive actors actively seek out and attempt to shape their press coverage whenever possible. Members of Congress and the executive branch issue press releases, provide press briefings, and give interviews and statements to reporters about pending legislation and any range of political developments. High profile offices like the White House and Secretary of State brief the press multiple days per week. The White House and each executive agency have their own press relations apparatuses, which can be extensive in their scope. For example, the Environmental Protection Agency has 11 separate press offices by region of the country. Similarly, each member of Congress, as well as the leadership of each political party, have their own press offices. Furthermore, members of Congress, cabinet secretaries, and the president are all now active on social media, communicating directly with the public. In this way, elected politicians actively participate in an ongoing back-and-forth with the media to shape news about them, called the “negotiation of newsworthiness” (Cook 1998). Predictably, then, the Congress and the president are covered much more frequently than is the Court (Franklin and Kosaki 1995).

A number of existing studies have investigated how the media portrays the Court. Extant work finds that while media coverage of specific cases does increase public awareness of the rulings in those cases (Franklin and Kosaki 1995, Hoekstra 2003), much of the reporting on the Court is shallow, concentrated on the very end of Court terms, focused only on certain substantive areas, especially particularly controversial subjects like civil rights and liberties, and differs depending on the type of media in question. News reports often overly simplify decisions, engage in speculation, or mischaracterize actions of the Court, such as portraying denials of certiorari as

decisions on the merits (Slotnick and Segal 1998). Headlines can be inaccurate, and stories often focus on the reaction to a ruling instead of its substance (Newland 1964). Frequent references in the media to old Supreme Court precedents and not current rulings give the public an outdated view of the ideology of the current Court (Hetherington and Smith 2007). However, most studies are confined to limited time periods or specific types of media and mainly focus on variations in the frequency of coverage (Franklin and Kosaki 1995, Hetherington and Smith 2007, Slotnick and Segal 1998, Spill and Oxley 2003). Other studies examine press coverage of single decisions (Haider-Markel, Allen and Johansen 2006, Newland 1964) or a small number of cases (Hoekstra 2003). Another line of inquiry is interested in media coverage of the Supreme Court for instrumental reasons, using newspaper articles to measure concepts like case salience (Clark, Lax and Rice 2015, Collins and Cooper 2012, Epstein and Segal 2000) or the ideology of newspaper editorial boards (Ho and Quinn 2008).

More recent work examines certain types of media portrayals of the Court which may contribute to unfavorable views of the institution. Solberg and Waltenburg (2015) posit that the media has created a “cult of personality” surrounding individual justices of the Court and tends to overreport on stories which involve individual justices, such as nominations and confirmations to the Court, and departures from the Court. In confirmation hearings, there is a focus on nominees’ views on abortion and the personal biographies of the nominees, which gives the public a skewed picture of the Court. Notably, over time, the authors observe that references to what they call “political justifications,” namely “justifications [of rulings] based on the justice’s

ideology or personal viewpoint,” increase.

Zillis (2015) focuses on variation in media coverage of Court decisions according to the level of unanimity of rulings, positing that higher levels of dissensus will garner less favorable media coverage. Zillis finds that a larger number of dissenters from a ruling decreases the supportiveness of the framing of decisions, and makes reporters or commentators more likely to quote from a dissenting opinion or include criticism of the majority ruling from outside observers. On cable news, more divided rulings lead to “more aggressive rhetoric and debate.”

Therefore, most existing studies center on variations in the frequency of coverage among newspapers, especially the *New York Times* and to a lesser extent the *Washington Post* and *Los Angeles Times*. Several studies examine broadcast television, but few examine cable news (cf. Zillis 2015). Given that the American media environment has drastically changed in recent decades, with print newspaper readership declining, cable television becoming a prominent news source, and the internet creating the possibility for news to be disseminated through websites, blogs, and social media, a more nuanced analysis is warranted. Thus, one aim of this dissertation is to provide a more comprehensive quantitative history of media coverage of the Court during the late twentieth and early twenty-first centuries, incorporating a more diverse array of media. Furthermore, although studies like Solberg and Waltenburg (2015) and Zillis (2015) examine specific aspects of media coverage which are likely to impact legitimacy evaluations, namely the personalization of Supreme Court news and the emphasis on dissensus, no study has focused on long-term changes in politicization in the news media writ large.

In sum, the aspects of the Court's activities which media outlets choose to cover, and how they choose to cover them, are very significant. Media reports about the Court are often the only information that most Americans receive about the institution and thus serve as the basis for most peoples' beliefs about it. By focusing on particular issues or events, media reports give the public cues about what is important, ultimately affecting public opinion (Iyengar and Kinder 1987). Existing research shows that there is variation in how different news sources portray the Court. Thus, as the media environment changes, with certain types of media losing or gaining popularity, the information that the public is receiving about the Court may also be changing. The following section outlines important changes in American media over time which may have changed the incentives of those producing news, and subsequently the reporting that is ultimately available to the public.

2.2 Politicization in American Media: Past and Present

Unlike in other countries, the majority of the American press has not been subsidized by or identified with government or political parties since the mid-1800s (Daly 2012). Whereas in Europe most newspapers are associated with a particular ideological viewpoint based on a past connection to a political party (Daly 2012, Hallin 2005, Stephens 2014), journalism outlets in the United States have always been businesses motivated by profit (Daly 2012, Hamilton 2004). Newspapers in the colonial period were inde-

pendent businesses edited and produced by owners of printing press machines. In the late 1700s and early 1800s, newspapers briefly became identified with particular parties or ideologies with the emergence of the Federalist versus Anti-Federalist debates surrounding the ratification of the Bill of Rights. Politicians sponsored newspapers all over the country to spread their messages, and the printers of newspapers supporting the winning party line often received government printing contracts following elections. At a time when a stream of regular printing work was essential to printers' ability to stay in business, printers depended heavily on politicians' subsidies or patronage (Daly 2012).

However, advances in technology throughout the 1800s, such as the steam-powered printing press, railroads, the telegraph, and eventually the telephone, along with cheaper paper, allowed news to be collected and distributed much more quickly, for lower prices. In the 1830s, daily newspapers priced at one penny, a sum affordable to the average worker, became popular, and greatly expanded the audience for news (Daly 2012, Stephens 2014). As readership increased, newspapers relied less and less on government contracts or political party subsidies and were instead able to attract advertisers to subsidize their costs. By the late 1800s, advertising became an integral source of funding and comprised half of the space in newspapers. With the rise of this economic model based on a combination of advertising and mass circulation, newspapers were able to assert their independence from politicians and proclaim the "objectivity" of their news coverage, using that as a selling point and a marker of credibility (Daly 2012, Stephens 2014). The goal of most daily newspapers was to appeal to the largest number of people and therefore sell the most copies, which in

turn could be used to justify higher advertising rates. Although a number of papers used sensationalism and “yellow journalism” in the 1800s to boost circulation, those methods largely fell out of vogue by the turn of the century. When the *Associated Press*, the first wire service, was created, it counted as its members general-interest newspapers from around the country, so it too strove for “neutral” coverage of political events so that its copy could be used by all of its member newspapers, regardless of the paper’s location or audience. By the beginning of the twentieth century, a movement to professionalize journalism emerged, leading to the popularization of the values of “objectivity” and “neutrality” in the news and ethical standards among journalists that persist today. Journalism schools were founded to provide an institutionalized method of teaching these values and standards to aspiring journalists (Daly 2012, Meyers 2010, Stephens 2014).

Commercial broadcast radio debuted in 1922 and soon became highly regulated by the federal government. Developed as a way to transmit advertising to a wide audience at once (in other words, to broadcast), radio operators like AT&T began filling airtime in between paid advertisements with programming, using this content to attract listeners who would become an audience for advertisements. One form of programming was news. The federal government controlled radio station licenses and required that stations give political candidates similar access to airtime if requested. Preference for licenses was given to those who could provide the highest quality signal and content throughout the day. As a result, large corporations had a huge advantage and eventually crowded out many of the early independent stations. By the 1940s, there were three major players in broadcasting, CBS, NBC, and ABC (Daly 2012).

When broadcast television became popular in the 1950s, the regulatory and corporate structure of radio was already in place and was simply expanded to television. The federal government therefore controlled television station licenses as well as radio licenses. Renewal of station licenses allowed the government to impose a number of requirements on news programming. Stations were required to provide “equal time” to political candidates, programming “in the public interest,” and to provide a “reasonably balanced presentation” of views on political issues (Daly 2012). Broadcast television developed through the already-established corporate structures of CBS, NBC, and ABC, which remain the major broadcast stations into the present.

The period from the 1940s through the 1980s is often described as a “golden age of journalism.” In popular memory, this was a time of objectivity and neutrality in the news, unlike the periods of the political party press or yellow journalism before or the current period of politicized news, which would follow. In reality, a combination of economic incentives, federal regulation, and similarities in media ownership created the conditions for news to be widely similar across different outlets. Economically, the logistical limits of distributing print newspapers meant newspaper markets were largely localized, creating competition between a small number of newspapers in the same geographic area. As with broadcast television, the limited amount of competition led newspapers and television to cater to wide audiences. Furthermore, both newspapers and television newscasts were reliant on advertisers, who they did not want to offend with controversial content.

Second, federal regulation of political discussions on broadcast TV and radio through the “fairness doctrine” and the “equal time rule” ensured that alternate

views of political issues and competing candidates received similar air time. Although the equal time rule is still in effect today, the Federal Communications Commission abolished the fairness doctrine in 1987.

Third, news outlets were largely owned and managed by like-minded people during the “golden age of journalism,” resulting in similar news coverage. As Daly (2012) explains: “Almost all the major institutions of news - the big daily papers, news-oriented magazines, and the news divisions of every major broadcast network were in the hands of middle-aged white men, and almost all of them were part of a broad conservative-centrist consensus.” In addition to the similar societal status and political interests of the owners and operators of news outlets, most newspapers were owned by families or individuals with an interest in journalism, who made conscious efforts to separate their news divisions from the business side of their operations.

Several developments occurred beginning in the 1980s that fundamentally changed the American news landscape. At the time, the American news landscape consisted of three nightly television broadcasts, newspapers, newsmagazines, and radio. Besides news, Americans possessed few options for entertainment, forcing even those uninterested in current events to learn about politics by watching the news. Having a vast audience, news outlets marketed toward a majority of the public, resulting in largely ideologically-neutral news. Americans generally received the same information about current events because they lacked other choices. However, in the 1980s, cable television technology allowed the number of television channels to skyrocket, resulting in a wide range of entertainment programming in addition to several cable news channels. In the 1990s, the advent of the internet expanded Americans’ media

choice even further. Over this time period, print newspapers have declined in popularity and profitability, and network news ratings have declined. Cable news ratings have increased, as have internet and social media use (Prior 2007). Prior (2007) finds that Americans take advantage of the increasingly segmented media environment to either consume news from fewer, like-minded news sources, or to tune out completely, resulting in wide gaps in political knowledge as well as increased political polarization.

Cable news. CNN introduced the cable news format in 1980. Transmitted 24 hours per day, 365 days per year, CNN fundamentally changed the speed of and appetite for news, as well as the definition of what is newsworthy. Many topics that previously would not have received coverage during the limited time of broadcast television newscasts were now given attention in order to fill time (Rosenberg and Feldman 2008). Covering breaking news also became a way to fill airtime. The audience was alerted to breaking news as it happened, receiving updates as they came in. No longer would journalists take time to understand and synthesize the facts before reporting. Television viewers were captivated: CNN became profitable in 1985 and was valued at \$1.5 billion by 1990, at which time it was in 53 million U.S. households (Daly 2012).

Following CNN's success, competitors Fox News and MSNBC both debuted in 1996. In order to differentiate themselves from CNN and attract unique audiences, each network has carved out its own political and ideological niche over time (Hamilton 2004, Stephens 2014). Owned by Rupert Murdoch (owner of the conservative *New York Post* and *Weekly Standard*) and managed until 2017 by former conservative political operative Roger Ailes, Fox News quickly became a forum for conservative

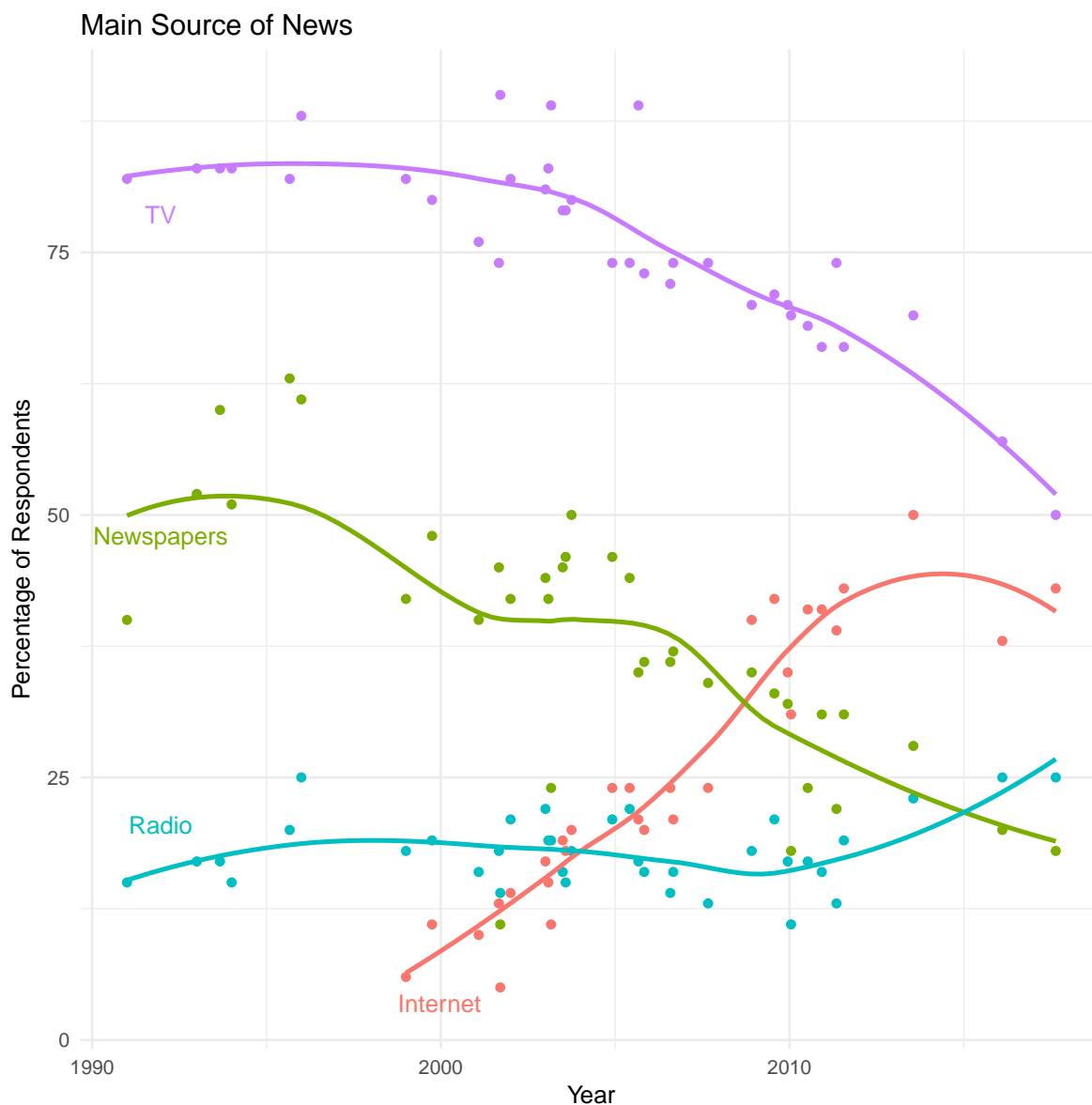


Figure 2.1: **Changes in most popular news sources.** Responses to poll conducted by the Pew Research Center from 1991 to 2017 asking “What is your main source for news?” Respondents could choose up to two options. Solid lines are loess smoothing curves. Although fewer respondents cite TV (purple) as a main source of news in recent years, it is the most popular news source in every year. The percentage of of respondents citing print newspapers (green) has markedly declined. While print newspapers were the second most popular news source from 1991 to 2007, the internet (red) overtook print newspapers in popularity in 2008. The percentage of respondents choosing the internet as a main source of news has increased consistently since 1999. In 2017, 50 percent of respondents cited TV as a main source of news, and 43 percent chose the Internet, which is the smallest difference between TV and any other source over the range of the data.

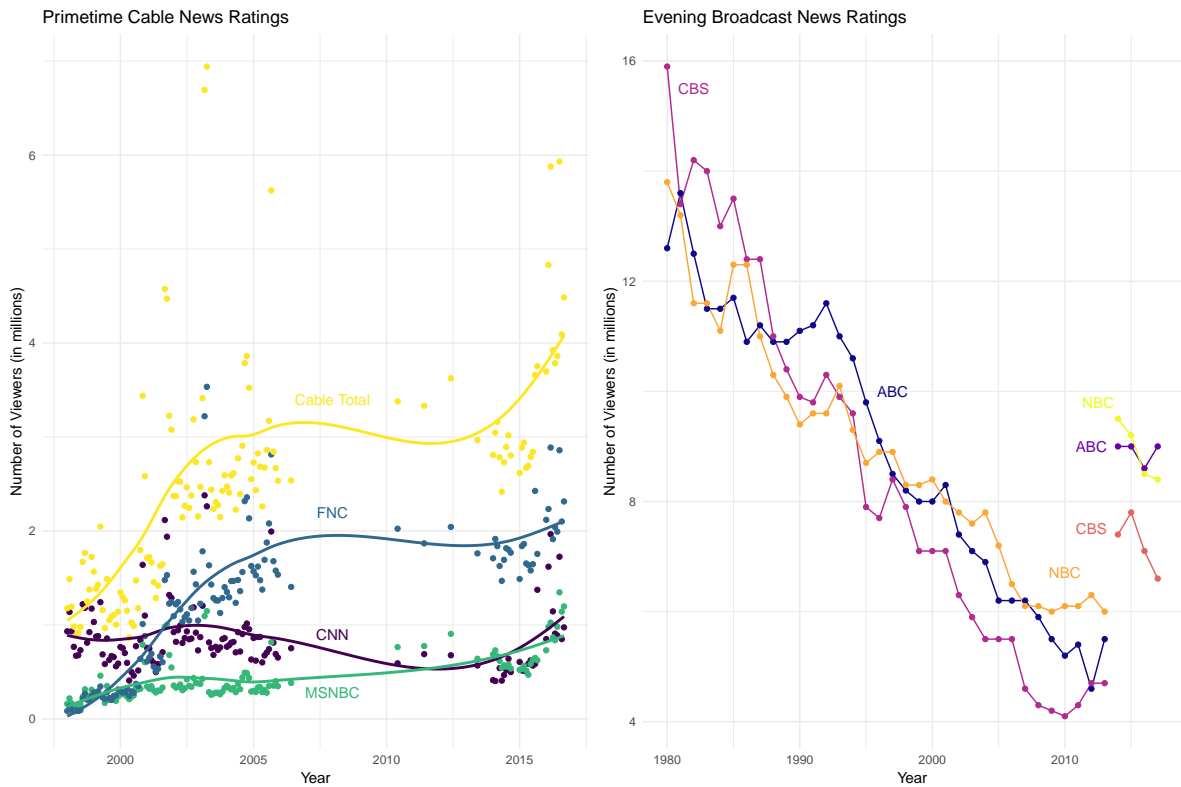


Figure 2.2: **Television ratings.** The left panel shows average primetime cable news ratings (total viewers 8-11 PM, Monday through Sunday), measured in millions of viewers from 1998 to 2016. Monthly ratings for 1998 to 2005 are from Nielsen Media Research, as cited by the Pew Research Center. Average annual ratings for 2006 to 2013 are from Nielsen Media research, as cited by adweek.com, a television and advertising trade website. Data is missing for 2007 to 2009. Monthly ratings for 2014 to 2016 (January to September only) are from SportsBusiness Daily, a trade publication which monitors media outlets. The total cable news audience (purple line) has grown from under 2 million primetime viewers in 1998 to over 4 million primetime viewers in recent years. The Fox News Channel (FNC; green line) has consistently been the highest-rated cable network since January 2002. The right panel shows the ratings of the evening broadcast network newscasts (in millions of total viewers) from 1980 to 2017. Data for 1980 to 2013 are from Nielsen Media Research, as cited by the Pew Research Center; data for 2014 to 2017 are from Nielsen Media Research as cited by adweek.com. Ratings are for the month of November. Overall, broadcast nightly newscast audiences have steadily declined since 1980.

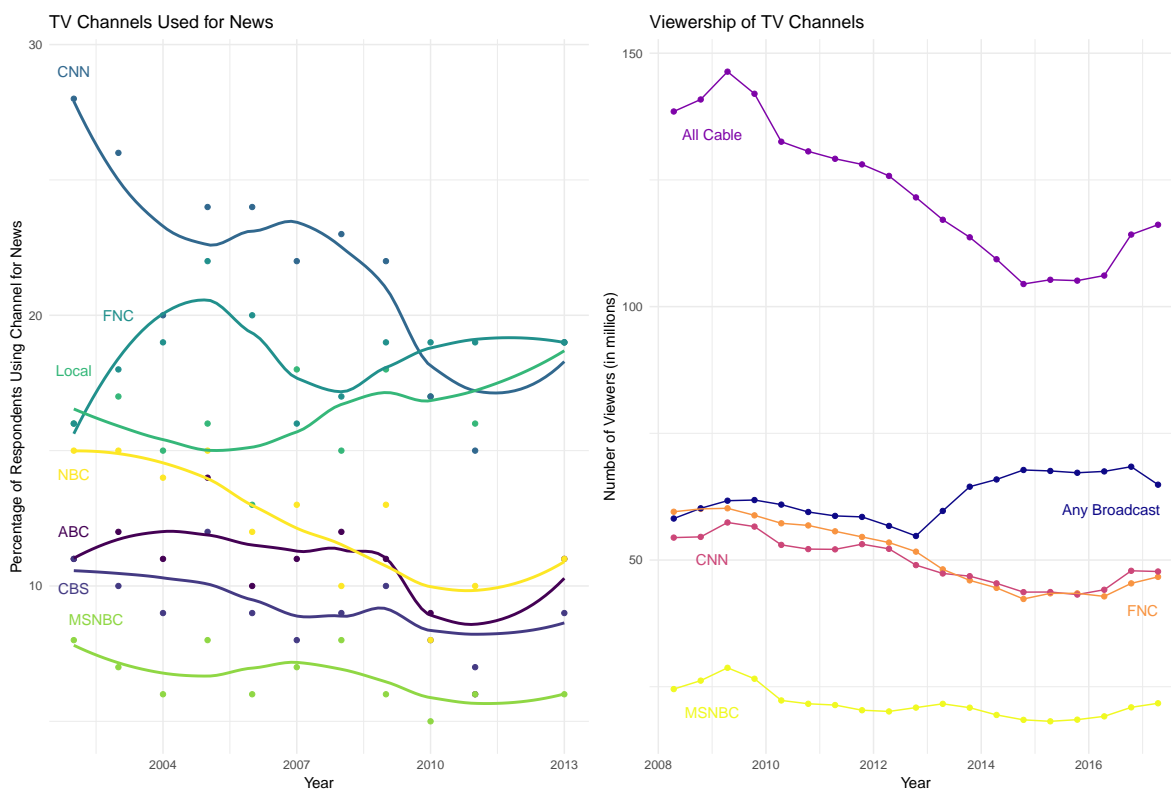


Figure 2.3: **TV viewership trends.** The left panel show responses to Pew Research Center polling from 2002 to 2013 asking respondents “On television, do you get most of your news about national and international issues from...?” (multiple responses possible). Solid lines are loess smoothing curves. CNN (green line) and Fox News (blue-green line) were consistently chosen as the most popular news channels along with local television news (blue line). NBC, ABC, and CBS were less popular choices, but the broadcast channels were almost always more popular than MSNBC. The right panel shows responses to two polls conducted by Nielsen Scarborough from 2008 to 2017. The purple line shows the number of viewers who “typically watch national/network news.” The green, red, and blue lines represent the number of viewers who have watched Fox News, CNN, and MSNBC, respectively, within the last 7 days. Although the viewership of any single cable news channel does not exceed the viewership of any of the three broadcast networks, Fox News and CNN have similar viewership. The combined number of viewers watching Fox News, CNN, and MSNBC within the last 7 days far exceeds the number of viewers who “typically watch national/network” news.

and Republican-leaning viewpoints, especially during evening primetime opinion programming. Empirical studies such as Clinton and Enamorado (2014), DellaVigna and Kaplan (2007), Martin and Yurukoglu (2017) have demonstrated the conservative inclinations of the channel. Polling indicates that those identifying as conservative or Republican make up the largest share of Fox News' audience (Pew Research Center 2009*b*), and that Fox News is perceived as the most ideological of the cable news networks (Pew Research Center 2009*a*).

Fox News' strategy has worked. Although CNN remained the highest-rated cable news channel for several years after Fox News and MSNBC debuted, in January 2002, Fox News overtook CNN and has remained the highest-rated cable news channel ever since (see Figure 2.2). The Fox News Channel has also seen the highest rate of revenue growth of the three cable news channels (Pew Research Center 2015).

MSNBC began as a joint venture between Microsoft and NBC News, though Microsoft eventually sold its ownership stake (Stelter 2012*b*). For years, MSNBC was the third place cable news channel, not competitive with CNN or Fox News. In the mid-2000s, MSNBC adopted the identity of the liberal or Democratic-supporting channel, emulating Fox News' opinion-focused evening programming model (Kurtz 2008, Stelter 2010, 2012*a*). MSNBC became more popular as a result, but in 2015, MSNBC rebranded again, firing many of the daytime opinion hosts or moving their shows to other timeslots. The channel continued airing left-leaning opinion programming during its evening primetime shows, but moved toward "hard news" during daytime (Ariens 2015, Steinberg 2017). MSNBC's ratings have increased overall since the election of President Donald Trump, but its opinion programming has seen the largest

gains (Katz 2018).

Ratings data and surveys suggest that cable television is a popular source of news. Although the primetime ratings of cable news programs are lower than the ratings of the evening broadcast newscasts, broadcast ratings have been declining since the 1980s (see Figure 2.2). Evening broadcast newscasts are short, 30-minute broadcasts, while cable news is available at any time. Cable television, which is often expensive, is not required to watch broadcast news. Surveys suggest that those who do watch cable news tend to watch for much longer periods of time. In viewership surveys, respondents mention CNN and Fox News at consistently higher rates than broadcast news channels (see Figure 2.3).

The internet. Invented in 1989 and becoming widely available to the public in the mid-1990s, the internet is now ubiquitous. As Figure 2.4 shows, the number of internet users in the United States more than doubled from 2000 to 2016. By 2018, 89 percent of Americans use the internet. However, some people are more likely to use the internet than others. Internet use is highest among the young, wealthy, and well-educated (Pew Research Center 2018*a*). Although 98 percent of Americans under 30 used the internet in 2018, only 66 percent of those over the age of 65 did so. However, internet use among older Americans has greatly increased since 2000, when only 14 percent of individuals over 65 used the internet.

A lack of regulation and the comparatively inexpensive nature of online content platforms have allowed a much wider diversity of viewpoints to be represented online than was previously possible in legacy media. Although legacy media have a large presence online, digital-native news sites and independent bloggers are also popular.

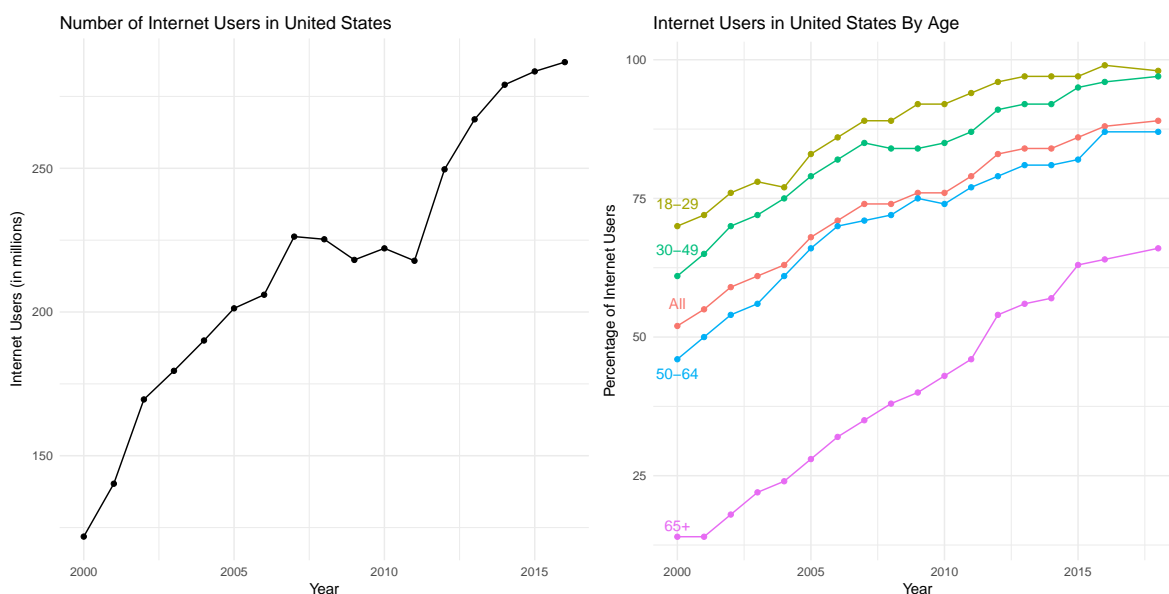


Figure 2.4: **United States internet usage trends.** The left panel shows number of internet users in millions from 2000 to 2016 (source: United Nations ITU and DESA/World Bank). The UN defines an internet user as an “individual who can access the internet at home, via any device type and connection.” The number of internet users in the U.S. more than doubled over this period, increasing from 122 million in 2000 to 287 million in 2016. The right panel shows responses to Pew Research Center polling from 2000 to 2018 asking respondents if they use the internet. Responses are divided into age groups. The red line shows the percentage of all respondents using the internet in a given year. In 2000, 52 percent of all respondents used the internet. By 2018, 89 percent of all respondents used the internet. There is age-related variation in internet use. While respondents aged 18-29 and 30-49 almost universally used the internet by 2018 (98 and 97 percent, respectively), only 66 percent of respondents over the age of 65 used the internet in 2018. However, the percentage of those over 65 using the internet has grown substantially from 14 percent in 2000.

The relatively egalitarian access to publishing on the internet greatly contrasts with the economic and logistical hurdles of broadcasting or distributing news in print. Given the crowded field of news sites, new websites and blogs have built followings by catering to particular political and ideological niches. Specialized audiences are often attractive to advertisers, who will pay higher rates to advertise to a more homogeneous group of people. Bloggers in particular are not subject to editorial review and do not have to adhere to a code of conduct or ethics, as do many journalists at legacy outlets. Bloggers therefore have wider latitude in what they publish. There is no prohibition on use of profanity or personal attacks, they do not have to be concerned with accuracy, and they have free rein to color their commentary with their own perspective (Meyers 2010, Rosenberg and Feldman 2008, Stephens 2014).

Print newspapers. Several economic developments have contributed to the decline of the print newspaper industry over the last several decades. As Figure 2.5 shows, daily print newspaper consumption has decreased among all age groups. First, corporate consolidation of the newspaper industry was widespread from the 1980s through the 2000s. Newspapers that were long owned by families or individuals who valued journalism became controlled by publicly-owned corporations beholden to shareholders. Thus, the formerly separate business and news divisions of newspapers became increasingly entangled. Newspapers consolidated to the point that in many cities, only one daily paper existed. By the mid-2000s, newspapers throughout the industry were experiencing budget cuts and layoffs. The economic downturn of 2008-2009 worsened the situation as many newspapers went bankrupt or moved their operations exclusively online. Consolidation therefore further incentivized papers to

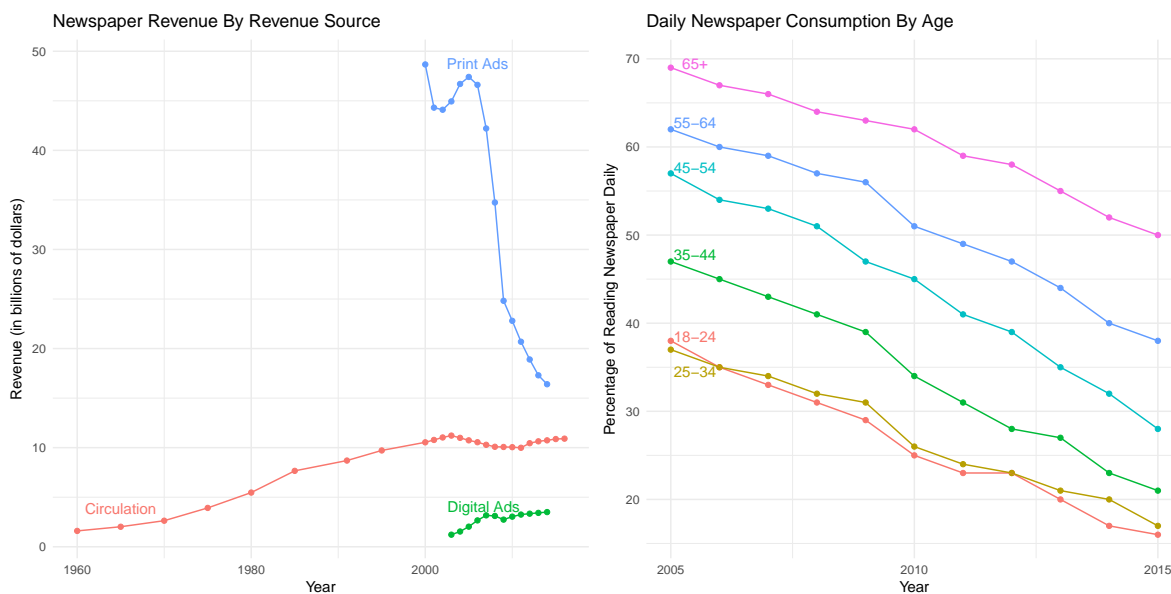


Figure 2.5: **Newspaper industry trends.** The left panel shows newspaper revenue in billions of dollars by revenue source. The red line shows circulation revenue (revenue from distribution of weekday and Sunday papers) from 1960 to 2016 (source: News Media Alliance). The blue line shows revenue from print advertising from 2000 to 2013 (source: Newspaper Association of America). The green line shows revenue from online advertising from 2003 to 2013 (source: Newspaper Association of America) (the Newspaper Association of America stopped releasing revenue figures in 2014 (Pew Research Center 2016)). Although circulation revenue grew steadily from 1960 to 2000, growth has leveled off in the twenty-first century. Revenue from print advertising, which was first measured at \$49 billion in 2000, dropped significantly to only \$17 billion in 2013. Although revenue from online advertising has grown, reaching \$3.4 billion in 2013, the rate of growth has been slow relative to the rapid rate of decline of print advertising revenue. The right panel shows the daily newspaper consumption penetration rate by age from 2005 to 2015 (source: Nielsen Scarborough). Daily newspaper readership has declined about 20 percentage points within all age groups over the 10-year period. While almost 70 percent of those over 65 read the newspaper daily in 2005, only half did so by 2015. Daily newspaper readership is consistently lower among younger respondents. Only about one in five of those under the age of 45 read the newspaper daily by 2015.

appeal to a mass audience to preserve their monopolies (Daly 2012, McChesney and Pickard 2011, Meyers 2010, Stephens 2014).

Second, the rise of the internet has greatly changed the operation of newspapers, challenging the preeminence of the print newspaper as newspaper companies' main product. The reach of the internet has erased the geographic monopolies of newspaper, allowing internet users to obtain news from all over the world. Once their main source of revenue, print advertising revenue has fallen drastically since the early 2000s (see Figure 2.5), largely due to classified advertising moving online to sites like Craigslist, in addition to a decrease in advertising among industries like department stores, who were also experiencing a period of corporate consolidation. Digital advertising has experienced some growth, but has not compensated for the decrease in print advertising. Furthermore, offsetting for print advertising losses with digital subscriptions has experienced mixed success, as many internet users have become accustomed to accessing content for free. Third party sites, like news aggregators and blogs, also often offer newspaper articles for free, frustrating papers' efforts to restrict access (Daly 2012, McChesney and Pickard 2011, Meyers 2010, Stephens 2014).

Although newspapers remain an important source of news, they have been forced to adapt to the changing news landscape, embracing the 24-hour news cycle to publish at all times of day, shifting resources towards their digital operations, training their reporters to produce multimedia content, allowing their own journalists to blog and use social media, and acquiring popular independent blogs (Daly 2012, McChesney and Pickard 2011).

Summary. Overall, economic and technological developments over the last

four decades have made the availability of partisan and ideological news sources widespread. Americans are increasingly turning away from legacy media such as print newspapers and broadcast television and towards modern, often politicized media such as cable television and the internet, for news. Evidence suggests that younger Americans are doing so at higher rates, which is consequential because media habits develop during one's young adult years (Tewksbury and Rittenberg 2012). Although the United States has experienced periods of politicized media before, the new era of politicization stands in stark contrast to the immediate prior era of largely ideologically-homogeneous news governed by the journalistic values of neutrality and objectivity. As politicized information sources become more popular, it is likely that news consumers today are systematically receiving different types of information about politics, and about the Supreme Court, than they received several decades ago.

2.3 Concepts: Images of the Supreme Court in the Media

I propose that there are certain types of media portrayals of the Court which bolster evaluations of the Court's legitimacy and some which diminish beliefs in its legitimacy. Here I define concepts relevant to these different types of portrayals that I will use throughout the rest of the dissertation. I consider media portrayals of the Court on two different dimensions: the content of these portrayals (what information the media

present) and their tone, or style (how they present it).

2.3.1 Content

For the substance of media portrayals of the Court, the key concept of interest is politicized content. Politicized content discusses the Supreme Court or its rulings alongside other political institutions or actors, such as Congress, the president, or individual politicians. Such coverage references electoral politics, partisan machinations, political parties, or political ideologies. In the instance of the Supreme Court, the crucial distinction is between case- or issue-related discussion of the Court in the media versus discussion of the Court's involvement in partisan politics. "Non-politicized" content discusses the Court's work as a legal institution and the actual cases and controversies pending before it, or that it has decided. In contrast, politicized content treats the Court as an instrument in the broader political arena. Politicized topics of coverage of the Court include politicians' comments on the Court, its members, or its decisions, including elected officials and political party representatives or adherents, the Supreme Court as an issue in electoral politics or the effect of electoral politics on the Court and its membership, or political parties' stances on issues before the Court.

Examples of politicized content include:

- A story advocating that Republicans need to win the next presidential election so that a Republican president can put Republicans or conservative jurists on the Court.

- An article about the Speaker of the House criticizing a recent Court ruling.
- A news item discussing how the Court’s impending ruling in a case reviewing the constitutionality of a law championed by the president may affect his reelection bid.

2.3.2 Tone

Regarding the style of media portrayals of the Court, I examine three concepts: opinionated tone, politicized tone, and dramatized tone. I define the tone of a news item as the judgments and feelings the author or speaker of the news item conveys through his or her word choice about the content discussed.

Opinionated tone. A story expresses an opinion when it takes an explicit stance on an issue or makes an argument about whether a development is good or bad, positive or negative, right or wrong. Opinionated news articles consist of the author’s or speaker’s value judgments about and normative evaluations of the subject of the story. Some scholars rightly draw distinctions between “explicit” and “implicit” opinions (Card et al. 2016, Liu 2012). Explicit opinions are direct expressions of support or opposition or forthright evaluations that something is good or bad, whereas implicit opinions are indirect statements which reflect positively or negatively on a certain side of a debate. Authors or speakers often convey implicit opinions by presenting a greater amount of evidence in support of one side of a debate in comparison to the other. Explicit opinions are easier to detect and therefore most research in the field of sentiment analysis concerns such opinions (Liu 2012). I only consider explicit

statements of opinion.

Examples of opinionated statements include:

- “The Supreme Court is wrong on campaign finance.”
- “The ruling issued yesterday by the Court was a step in the right direction.”
- “The Court’s decision in *Gabriel v. Johnson* is good for democracy.”
- “*Tao v. Sanchez* was a mistake and must be overturned.”

Politicized tone. Politicized stories invoke or discuss partisan or ideological divisions as related to the central issue, including substantive references to right versus left, Democrats versus Republicans, liberal versus conservatives, or phrases like the “liberal stance” or the “Republican position.” Politicized stories identify a party or ideology with a specific point of view.

Examples of politicized statements include:

- “The Supreme Court’s ruling in *Provenza v. Flynn* is horrible for the GOP.”
- “The right should be pleased with the Court’s decision, but the left will hate it.”
- “Democrats want the Court to rule for the plaintiff, Republicans think the Court must decide in favor of the respondent.”
- “Liberals believe the rules are just; conservatives want the Court to strike them down.”

- “The Court voted along ideological lines, with the conservatives in the majority and the liberals in dissent.”
- “Justices A, B, C, D, and E, all appointed by Republicans, agreed the law is constitutional; Justices F, G, H, and I, all appointed by Democrats, disagreed.”
- “Justices 1 and 2, both solid conservatives appointed by Republican presidents, opposed the position advocated by the Democratic Attorney General of Maryland.”

Dramatized tone. Similar to “sensationalism” or “tabloidization,” a dramatized tone attempts to create excitement or provoke an emotional response from the audience, “whether positive or negative in valence” (Uribe and Gunter 2007). Dramatized statements use exaggeration and emphasis to appeal to emotion or human instinct (Grabe, Zhou and Barnett 2001). Linguistic devices which generate drama include exaggeration or hyperbole (often stressing significance or magnitude), emphasizing conflict and controversy, the use of insults or profanity, and directly telling the audience to feel certain emotions.

Examples of dramatized statements include:

- Exaggeration
 - “The Court’s latest ruling is a complete and utter disaster for freedom-lovers everywhere.”
 - “*Altuve v. Springer* is a landmark case that will change our country forever.”

- “It’s an amazing day in America after the Supreme Court completely ended discrimination in one fell swoop.”

- Emphasizing conflict/controversy:

- “Supreme Court justices rip each other to shreds in shocking decision.”
- “The left and the right are fiercely battling over an essential right in this contentious case.”

- Using insults/profanity:

- “The justices will prove themselves to be senseless pawns if they approve of the administration’s absurd policy.”
- “Anyone who thinks the Court should rule in favor of this ridiculously stupid claim is an idiot.”
- “The Supreme Court is screwing America by completely pissing off free-speech advocates everywhere.”

- Emotional appeals:

- “You should be very afraid of what the out-of-control Supreme Court will do next.”
- “We are all enraged by this decision that has upset advocates everywhere.”

2.4 A Model of Changing Beliefs about the Legitimacy of the Supreme Court

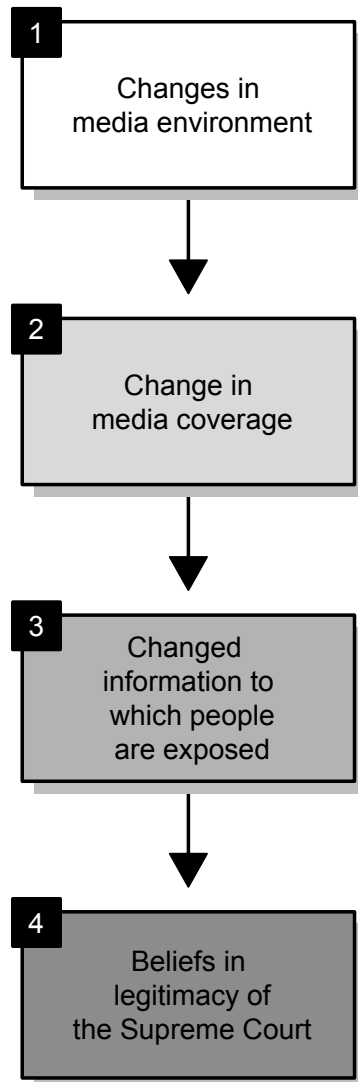


Figure 2.6: A model of how aggregate-level beliefs about the legitimacy of the Supreme Court change.

Figure 2.6 presents my model of change in aggregate-level beliefs about the legitimacy of the Supreme Court. As outlined in Section 2.2, the American media environ-

ment has transformed in very consequential ways since the middle of the twentieth century. More news sources, using a variety of technological platforms, are now available. Many modern news sources appeal to niche partisan or ideological audiences and do not abide by the norms and professional ethics of traditional journalism. Legacy news sources generally still try to appeal to broad audiences, report on developments which people need to know about in order to be informed citizens, and hold their journalists to ethical standards. However, the job of all journalists is changing as the locus of discussion about news and politics has shifted online and to 24-hour a day cable television. Therefore, changes in the overall media environment have produced changes in media coverage about the Supreme Court. Modern news organizations targeting partisan audiences have different priorities for their coverage than do legacy outlets producing news of general interest and significance, creating differences in the topics on which the two types of outlets focus. While legacy media aim to provide the public with an interesting portrayal of the institution of the Supreme Court and how the work it is doing will impact large segments of society, modern media focus on specific issues which activate their partisan audiences. Given that the legacy media already occupy the segment of the news marketplace concerned with “hard news” production, modern media offer partisan and ideologically-opinionated perspectives in order to differentiate themselves and draw in an audience. Modern media also employ certain stylistic devices in an effort to entice readers or viewers, emphasizing the partisan or ideological interests present in the issues the Court is considering, and dramatizing their stories in order to maintain audience interest.

Combined, these broad changes in media coverage mean that people are now

exposed to different information about the Court than they were in previous eras. While people can still pick up a newspaper or turn on the nightly news, they also have the option to browse for news on demand on a range of internet sites or choose a cable channel to watch which advocates a particular partisan viewpoint. In this new era of media choice, people are likely to choose news sources which confirm their preexisting positions (Stroud 2011). Therefore, consumers of different news sources and types of news will be exposed to different views and characterizations of what the Supreme Court is doing and how well they are doing it. If people are systematically receiving information about the Court which portrays it as involved in partisan politics and politicized, they may doubt its impartiality, ultimately affecting their beliefs in the legitimacy of the Court. Moreover, if different segments of the populations are exposed to different accounts of how well the Supreme Court is doing its job, beliefs in its legitimacy may vary among partisan or ideological groups, creating concerns about whether these groups will respect the authority of the Court.

2.4.1 Empirical Implications

The existing literature outlines two types of portrayals of the Supreme Court, “principled” and “politicized,” as Woodson (2015) terms them. Principled portrayals depict the Court as apolitical or “above politics,” showing the justices as using a fair, impartial process to make decisions. Politicized portrayals show the Court as involved in politics, just like “ordinary politicians” such as legislators. In a politicized depiction, justices are biased according to and motivated by their own policy preferences. While

principled portrayals of the Court bolster evaluations of its legitimacy, politicized portrayals harm such evaluations. I argue that modern news sources, namely cable news and blogs, have economic incentives to provide partisan- and ideologically-tailored content to their particular audiences. Legacy media appeal to wide audiences, do not have explicit ideological or partisan stances, and adhere to traditional journalistic goals of neutrality and objectivity. Modern media appeal to niche audiences using explicit ideological or partisan stances and do not try to be neutral or objective. Therefore, politicized portrayals of the Court will be more prevalent in modern news sources than in legacy media, which are motivated to a greater extent to report in the public interest, and whose reporters tend to be deferential to the Court (Davis 1994).

Hypotheses

Politicization can manifest in news reports in two main ways: through the content of news coverage, and through the style in which the news is reported.

Content I propose that modern sources of news, namely cable television and political blogs, will be more likely to discuss the Supreme Court in partisan and ideological contexts, as well as alongside politicians, encouraging the perception that the justices are similar to congressmen and executive actors. In order to differentiate themselves and cater to their ideologically-specific audiences, cable channels and blogs will focus to a greater extent on partisan and ideological conflicts which will inspire strong emotions, and therefore capture the attention of, their segmented audiences.

H1: Modern news sources, namely cable television news and blogs, will

cover politicized topics to a greater extent than will legacy news sources, specifically newspapers, wire services, and broadcast television news.

On the other hand, established news sources, specifically newspapers, wire services, and broadcast television channels, will instead be more likely to cover topics related to actual cases and controversies appealed to, currently before, or decided by the Court. These media must appeal to broader audiences than cable television and blogs, and they see the education of the public as a core value of their organizational missions. In so doing, these sources will increase knowledge of the Court's actual work.

H2: Legacy news sources will provide a greater amount of coverage of actual cases and controversies before the Court than will modern news sources.

Thus, cable television and online blogs will focus on different aspects of news about the Supreme Court than will traditional news outlets because both their audiences and mission differ. While cable and blogs are often explicitly partisan or ideological, with their on-air personalities or bloggers advancing a particular political agenda, newspapers, broadcast television, and wire services aim to provide the information that the public needs to participate responsibly in American democracy. Therefore, modern news sources will find politically-charged topics to be the most newsworthy, while legacy news sources will find the Supreme Court's actual work product to be significant in and of itself.

Style Since the U.S. Supreme Court is the ultimate arbiter of constitutional disputes in American society, most issues it considers can be connected to partisan politics or ideology in some way. However, not all news stories portray the Court's activities as politicized. Stylistically, politicized stories invoke or discuss partisan or ideological divisions as related to the central issue of the story, including substantive references to right versus left, Democrats versus Republicans, liberal versus conservatives, or phrases like the "liberal stance" or the "Republican position." I argue that modern news sources are more likely to use a politicized style of discussion than legacy media due to their partisan and ideological leanings and their comparative lack of deference to the Court.

H3: Modern news sources will use a politicized tone of coverage more frequently than will legacy news sources.

As Gibson and Nelson (2017) note, mere discussion of ideological leanings, for instance, is not likely to damage the Court's legitimacy. Although they do not specify where "the line" falls, they suggest that more intensely-expressed sentiments may be more damaging to legitimacy evaluations. Therefore, also I classify stories according to whether they are dramatized. Characteristics of dramatized stories include exaggeration, emphasizing conflict, the use of insults or profanity, and appeals to emotion. I expect that stories in modern news sources will more frequently be dramatized.

H4: Modern news sources will use a dramatized tone of coverage more frequently than will legacy news sources.

2.4.2 Plan for Remaining Chapters

In the chapters to follow, I will discuss the nature of reporting on the Court and how it has changed as a result of the developments discussed in this chapter. I will provide a descriptive overview of media coverage of the Supreme Court from 1980 to 2016. I will then discuss the empirical strategy used to test my hypotheses and my results, demonstrating that politicized portrayals of the Court, both in content and in style, have indeed become more prevalent over time.

Chapter 3

Changes in American Media

3.1 General Changes in American Media and Specific Changes in Supreme Court Coverage

Chapter 2 demonstrated that the American media environment has undergone extensive changes over time. Americans are increasingly consuming a wider range of news, turning away from traditional sources like print newspapers and broadcast television and towards modern media, which often have a partisan or ideological viewpoint. As politicized information sources become more popular, it is likely that news consumers today are systematically receiving different types of information about politics than they received several decades ago. In the chapter to follow, I show how changes in the overall media landscape have changed the process of reporting on the Supreme Court specifically. First, the faster pace of news production and the increasing demand for news have changed how legacy media reporters work, as well as the reporting they

produce. Second, the rise of modern information sources has introduced more variation in the types of news outlets who cover the Court. Journalists for modern media often do not adhere to the approach and norms followed by legacy media reporters, further differentiating coverage of the Court. Ultimately, these changes in how the expanded range of news sources cover the Court have altered the information to which people are exposed about the justices and their work.

3.2 Background: Supreme Court Reporting in 1990

Scholarly treatments of journalism about the Supreme Court are few and far between. Davis (1994) provides the most detailed portrait to date of the characteristics and work habits of the Supreme Court press corps. Drawing on interviews of 16 journalists and a survey of 18 journalists conducted in 1990-1991, he gave a comprehensive overview of the process of reporting on the Court at the time. Davis estimated that 50 reporters covered the Court in the late 1980s and early 1990s. Of those reporters, 12 to 15 were “regulars” from the national daily media, major broadcast networks, and Washington, DC area press who were present at the Court on a consistent basis and covered it full-time or nearly full-time. The remainder of the Supreme Court press were “non-regulars” who covered the Court as one aspect of a broader assignment to legal developments, were Washington correspondents for regional media, or were journalists for trade publications who reported only on specific cases relevant to the

industries of their audiences.

Davis noted that members of the Supreme Court press corps followed a work routine similar to that of the Court itself. The beat entailed an extensive amount of reading and documentary research, unlike many other reporting assignments. Supreme Court reporters are not given information or briefings to draw on beyond the petitions, briefs, orders, and opinions that the Court makes public, so it is imperative that reporters review those documents to build their stories. The job largely consists of interpreting and translating legal documents and language into “plain English” for a lay audience.

At the beginning of a term, reporters reviewed the list of cases granted and denied certiorari to date, occasionally writing stories about cases denied certiorari, but focusing on covering the petitions granted by the Court. At this point, reporters picked out a number of cases to follow throughout the term. Usually reporters read the certiorari petitions for cases they were covering. A small number of full-time reporters reviewed all the cert petitions. Davis finds that reporters tended to have similar news judgment and to independently select many of the same cases as newsworthy. Although most reporters could not articulate what made a case newsworthy, Davis noted that reporters needed to “sell” stories to their editors based on the importance of the story to a broad audience.

Davis observed that only the wire services covered almost every accepted case. Major national outlets like the *New York Times* would cover the majority of cases, but publications like regional newspapers would only follow a few major cases of interest to their geographic readerships. Reporters followed the cases as they were orally

argued and decided. Whether they wrote stories about all three major developments in a case, namely the grant of certiorari, oral argument, and the decision, depended on the significance of the case and whether other relevant cases were being argued or decided on the same day. At the time, the “news hole”, or available space for news, for both daily print and broadcast media was small. Reporters interviewed by Davis said the news hole was shrinking compared to its past size. Print reporters were limited to one story per day, and broadcast spots in evening newscasts were short and frequently displaced from programs in favor of other news. National newsmagazines had even smaller news holes due to their weekly, instead of daily, publication schedules.

Deadlines for filing stories for most print dailies and evening broadcasts occurred in the afternoon. For print reporters, most would file a story in the afternoon for the next morning’s newspaper. Broadcast journalists appearing on that night’s newscast would also need to produce their report by the afternoon. However, in major cases, the broadcast networks might interrupt regular programming to announce decisions; in that circumstance, their reporters would face late morning deadlines. Davis notes the emergence of CNN as a competitor to the broadcast networks to report rulings first in highly newsworthy cases. Reporters for the wire services and afternoon daily newspapers would also file by late morning. These early stories were usually quick accounts and would be followed up on later with a fuller report. Thus, Davis said that all reporters must meet deadlines “at some point each day,” and that, in the case of reporting on decisions, most reporters “only have a couple hours” to read, digest, and distill rulings for their audiences. Since wire service stories were available first and editors had access to them, the interpretation offered by wire reporters became the

standard and limited the range of interpretations that other reporters could present later, creating a level of uniformity in coverage of the Court.

At the time, reporters needed to be present at the Court in order to gain access to material for their stories. As is still the case today, the Court does not allow any technology more advanced than pen and paper into oral argument sessions, so reporters wishing to observe and write about arguments needed to attend in person. The Court's Public Information Office housed copies of petitions and briefs, which reporters could review in the Court's press room. On days when the Court issued rulings, the Public Information Office would hand out copies of the opinions in the press room as the Court simultaneously announced the decisions in the Court room. If a journalist wanted to interview a source, such as a legal expert, for analysis of or reaction to a ruling, he or she would need to read the opinion to the source over the phone, fax the source a copy, or wait several hours for the source to receive a copy via courier if he or she was a lawyer or interest group representative based in DC. In 1990, the Court began using an electronic distribution system called Project Hermes to transmit opinions almost as soon as they were announced, but the subscription service was limited to a select customer base of universities, news organizations, and publishers.

Thus, the job of reporting on the Supreme Court at the beginning of the 1990s largely consisted of documentary research involving reading and analyzing the petitions and briefs of parties to current cases as well as the Court's ruling in each case. Media organizations needed to maintain a physical presence at the Court in order to access these documents and have a reporter in the Court room to observe and

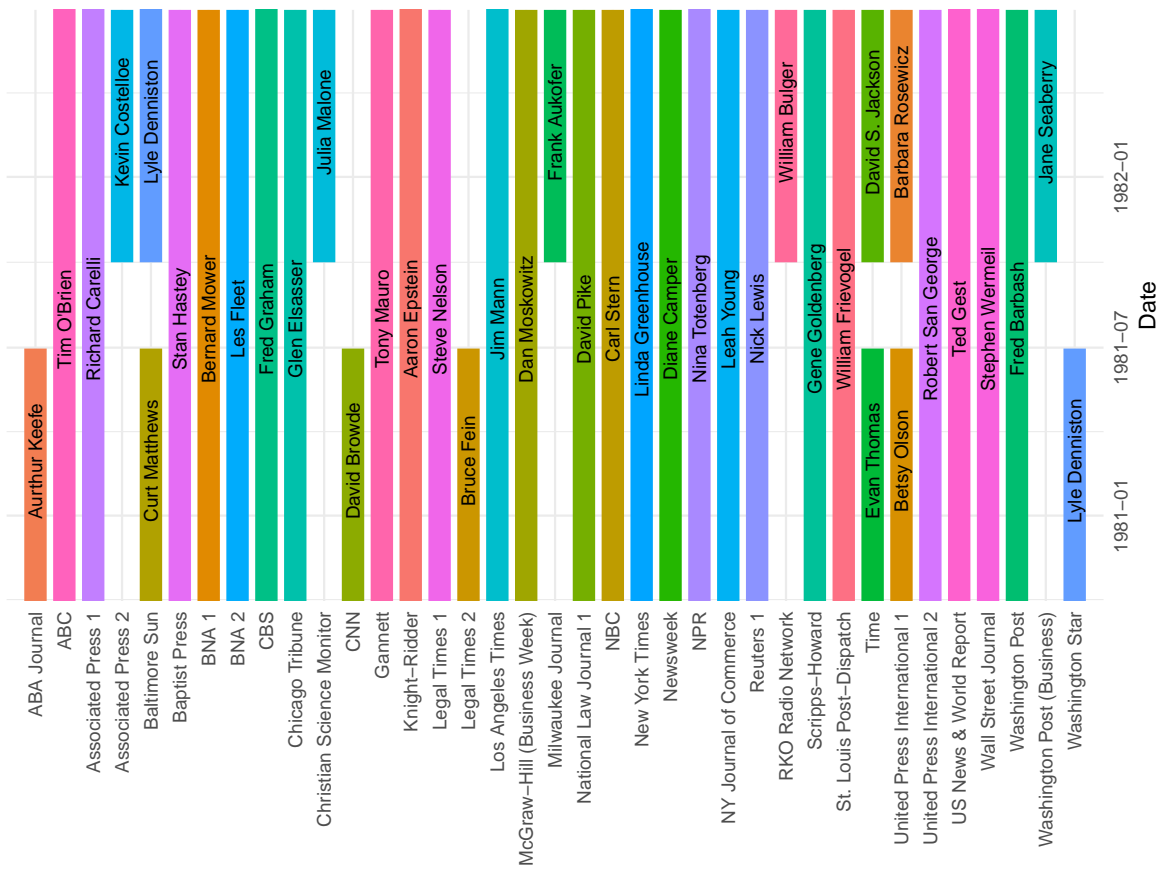
take notes on oral argument. Although the pace of reporting varied between media, with wire service and television reporters facing accelerated deadlines, newspaper and other print reporters often had most of a work day to write a single story. Supreme Court reporters in the pre-Internet era largely took a homogeneous approach to their work, using the same documentary sources, working in the same physical location, and selecting similar cases as newsworthy to their broad audiences.

3.3 Supreme Court Reporting Today

The media landscape today is very different than it was in the early 1990s when Davis conducted his study. In order to show how changes in the overall media environment have impacted media coverage of the Supreme Court specifically, I conduct interviews with 17 journalists who write about the Supreme Court to varying degrees for different types of media. I interview eight Supreme Court hard pass holders (full-time credentialed reporters) for legacy news outlets: Robert Barnes (*Washington Post*), Jess Bravin (*Wall Street Journal*), Marcia Coyle (*National Law Journal & PBS*), Michael Doyle (formerly of McClatchy Newspapers until 2016), Adam Liptak (*New York Times*), David Savage (*Los Angeles Times*), Pete Williams (NBC News), and Richard Wolf (*USA Today*).

I interview one hard pass holder for an online news outlet, Chris Geidner of BuzzFeed News, who is one of the first journalists from a digital-native publication to be granted a hard pass by the Court. According to the Supreme Court's Public Information Office: "Although a hard pass may not be essential for reporting on the

Hard Pass Holders, 1980–1981 Terms



Hard Pass Holders, 1996–2004 Terms

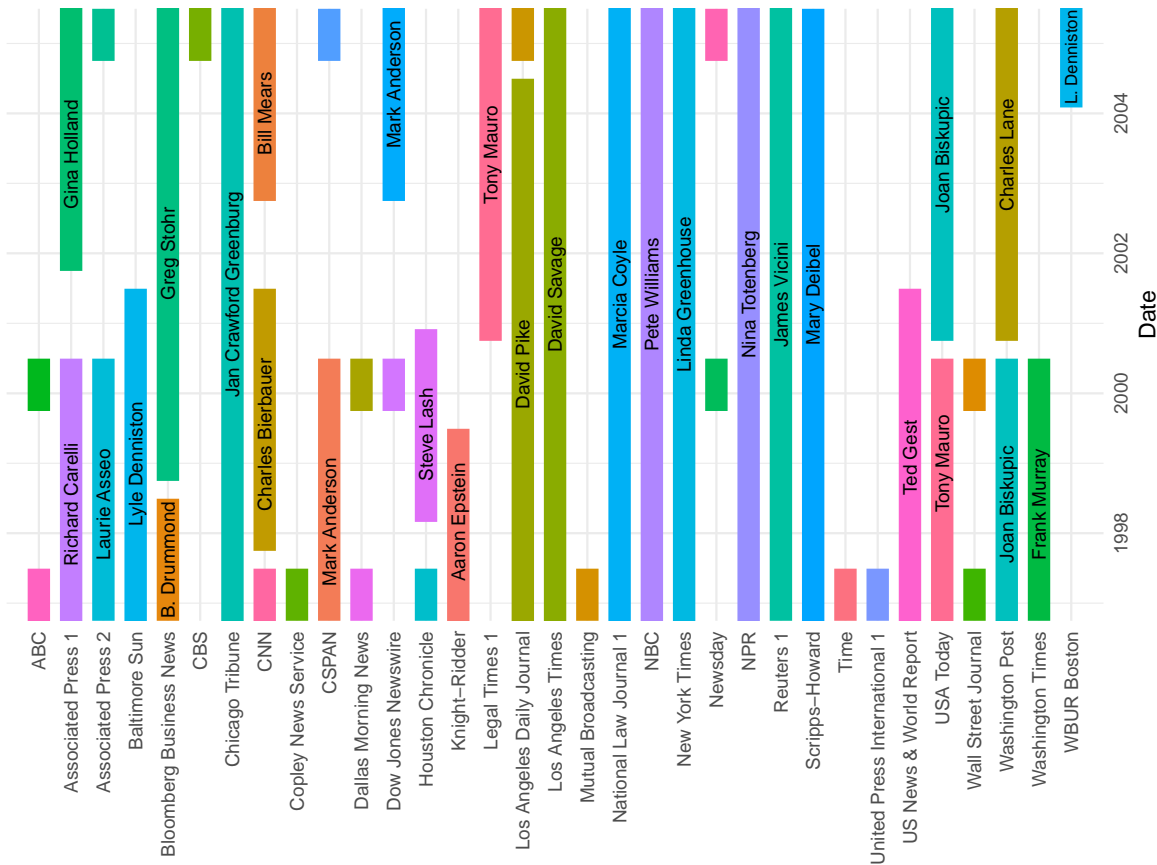




Figure 3.1: Supreme Court hard pass holders, 1980-1981 terms, 1996-2004 terms, and 2008-2017 terms. Source: Supreme Court hard pass holder lists for the 1980, 1981, 1996, 1999, 2004, and 2008-2017 terms, courtesy of the U.S. Supreme Court Public Information Office, supplemented with journalist biographies. Lists for other terms were unavailable.

Court, it confers privileges that journalists find helpful, including access to seats in the Courtroom during Court sessions; use of the pressroom facilities and office resources; assigned personal work space; and access to the Court building after normal business hours. In addition, the PIO provides credentialed reporters with information and guidance, beyond what is provided to the public, that facilitates their work.” (U.S. Supreme Court Public Information Office 2015) Journalists who would like access to the Court, but do not possess a hard pass, must apply for a single-day pass each time they visit the Court, subject to availability. As Figure 3.1 shows, over time, the news outlets granted hard passes by the Court tend to be larger, nationally-oriented media organizations.¹ Regional newspapers and newsmagazines no longer have full-time Court reporters, and NPR is the only remaining radio network with a presence at the Court. Although websites do not have a large presence in the Supreme Court press corps, there are indications that digital-only news organizations may increasingly be accepted, as Geidner of BuzzFeed News and Amy Howe, who co-founded SCOTUSblog and now writes for it and for her blog *Howe on the Court*, both are currently credentialed.

I interview two writers for magazines which publish online daily: Garrett Epps (*The Atlantic*) and Pema Levy (*Mother Jones*). Both of these outlets have liberal audiences. I also interview five writers who work at websites (who are not hard pass holders): Kevin Daley (The Daily Caller News Foundation), German Lopez (Vox), Ian Millhiser (ThinkProgress), Tyler O’Neil (PJ Media), and Tierney Sneed (Talking

¹Source: Supreme Court Hard Pass Holder lists for 1980-1981, 1996, 1999, 2004, and 2008-2017, as provided by the Court’s Public Information Office, supplemented with information from my interviews.

Table 3.1: Interview Subjects

Name	Media Outlet	Type
Robert Barnes	<i>Washington Post</i>	Newspaper
Jess Bravin	<i>Wall Street Journal</i>	Newspaper
Marcia Coyle	<i>National Law Journal, PBS Newshour</i>	Magazine, Broadcast TV
Kevin Daley	Daily Caller News Foundation	Website
Michael Doyle	McClatchy (former)	Newspaper
Garrett Epps	<i>The Atlantic</i>	Magazine
Chris Geidner	<i>BuzzFeed News</i>	Website
Pema Levy	<i>Mother Jones</i>	Magazine
Adam Liptak	<i>New York Times</i>	Newspaper
German Lopez	Vox	Website
Ian Millhiser	ThinkProgress	Website
Tyler O'Neil	PJ Media	Website
Mike Sacks	Fox 5 NY (formerly Huffington Post)	Local TV (formerly website)
David Savage	<i>Los Angeles Times</i>	Newspaper
Tierney Sneed	Talking Points Memo	Website
Pete Williams	NBC News	Broadcast/Cable TV
Richard Wolf	<i>USA Today</i>	Newspaper

Points Memo). The Daily Caller News Foundation and PJ Media are conservative outlets; Vox, ThinkProgress, and Talking Points Memo have liberal audiences. I also spoke with Mike Sacks, who was the first Supreme Court correspondent for the Huffington Post (now rebranded as HuffPost), one of the most popular liberal news outlets, during the 2011-2012 term; he now covers the Court as part of a broad legal beat for a local broadcast television station in New York City.

3.3.1 Changes Over Time Observed by Legacy Media Hard Pass Holders

The hard pass holders for legacy media I interviewed have been on the Supreme Court beat ranging from 6 to 32 years. All had prior reporting experience on other beats and

have been journalists for between 16 and 43 years. Several became reporters directly following their graduation from college or law school and covered other subjects before becoming their publication's Supreme Court or legal correspondent. Marcia Coyle worked as a political reporter while attending law school at night; after her graduation, she became the *National Law Journal's* Supreme Court reporter. She also reports on the Court for *PBS Newshour*. Adam Liptak practiced law for 14 years before transitioning to journalism at the *New York Times*. Most never intended to become Supreme Court reporters, but happened on to the opportunity because a colleague was leaving the beat. Both Robert Barnes and Richard Wolf, who have each been reporters for over 40 years, but on the Court beat for 12 and 6 years, respectively, intended to join the beat temporarily to help out during periods of staff leave or turnover, but remained because they enjoyed it so much.

Adam Liptak took over from Linda Greenhouse in 2008 as the Supreme Court correspondent for the *New York Times*. When she left, Greenhouse did not have a computer at the Court, and she would not file stories for the web. When Liptak first started on the beat, if the Court issued a ruling at 10 AM, a digital assistant would post stories for him at noon and he would then file a story for print at 4 PM, "and that was considered fast." Now, he says he is expected to file a story at 10:05 AM if the Court issues a decision at 10 AM, as "the idea of waiting until the next day" to cover a Court action is "impossible" today. This increase in the speed of reporting on the Court beat was a change highlighted by all of the hard pass holders interviewed. David Savage, who began covering the Court for the *Los Angeles Times* in 1986, said that when he first started, if the Court announced an action in the

morning, he would call his editor, say he would cover it, and then have time to write a story throughout the day. Now, on decision days, he starts writing within “60 seconds to 2 minutes after receiving the decision.” As Jess Bravin of the Wall Street Journal explains, “even if the Supreme Court issues a 60-page decision, editors and the audience expect a story 10 minutes later. Generally, a reader now expects the same sort of thing from the paper that wire service customers used to expect from the wire service.” The reporters are unable to read the full decision before filing a story for the website. Robert Barnes of the *Washington Post* says he only has time to “make sense of the decision, put up a story, and then update it throughout the day.”

Richard Wolf of *USA Today* observes that there is more and more pressure to get a story up quickly every year. “The need to compete instantly has gotten more extreme each year. Papers do care about using your story, your byline, and not the wire service for the first 30 minutes after a case is decided and then switching” because of web traffic statistics. He and the other hard pass holders prepare a great deal of material in advance in order to file stories within minutes of the Court issuing rulings or announcing orders. David Savage notes that reporters “need to know the subject beforehand. You have to know whether it’s important, you have to know what the case is about; you don’t have time to learn.” Wolf finds that he is writing more stories in advance each year, saying “inevitably, it becomes too boilerplate.” For a decision, Wolf writes almost the entire article beforehand, and then fills in a few blanks, such as the lede and the vote split, once the Court hands down the decision. After filing the first version of the story, Wolf begins revising it repeatedly and filing these updates

for the website throughout the day. When Wolf started on the beat in 2012, he did these repeated revisions only for the four or five most important cases of the term. Now he says he follows this process for between 12 and 20 cases each term.

Michael Doyle, the Legal Affairs correspondent from 2008 to 2016 for McClatchy Newspapers (a newspaper group with 29 local newspapers in 28 markets, such as the *Miami Herald*, *Charlotte Observer*, and *Sacramento Bee*), described his “formula for the first story” as consisting of the decision, the vote tally, some background, and the one or two best quotes from the decision. He said that “if at 10:03 AM the decision is announced, at 10:20 I have the first story done.” He then reads the majority opinion and any concurrences or dissents, adds to the story, and makes corrections. He files a story for the print papers by 4 PM. Following this process, he usually writes three versions of each story. “Everything is sped up,” he said. “The daily paper story is almost irrelevant. The next day story is now the first day story.”

Robert Barnes of the *Washington Post* follows a similar model of pre-writing, updating the original story throughout the day, and then writing a final version for the next day’s print newspaper. He notes that this “notion of the evolving news story” is one of the biggest changes for traditional print reporters. For his story announcing the Court’s ruling in *Obergefell v. Hodges* (2015), he wrote “4 to 5 versions” of the story throughout the day, then wrote a final version for the next day’s newspaper, adding nuance and reaction. “The paper is a digital-first operation now. The rise of the Internet and social media, and the competition the paper finds itself in, has changed everything,” Barnes said.

Reporters therefore may write five or ten versions of a story when combining these

numerous revisions and updates to decision stories after their initial filing with the multiple versions of decision stories they prepare in advance to save as much time as possible when the most significant cases of the term are decided. For example, Jess Bravin wrote three different versions of the initial story announcing the *Obergefell* decision based on three different plausible outcomes. He uses his “informed assessment of what the Court is likely to do” to write as much as possible before the day of the decision. Bravin says he does not “prep all cases to that degree, but definitely in any cases I expect to write a decision story for.” In the October 2014 term, there were about 12 cases that Bravin knew he would write an immediate decision story on no matter what.

For Pete Williams of NBC News, the expectation of being live on television when an important decision is handed down is concurrent with the need to post a story online immediately, making pre-writing a necessity. On decision days for key cases, Williams has multiple stories prepared that each address a different possible outcome. He gives editors access to the multiple versions before the decision announcement. Once he receives the ruling, as he stands ready to go on air, he will tell an editor who is listening to the audio feed from his microphone which version of the story to post on NBC’s website. For the October 2017 term, Williams prepared multiple stories for nine cases, including “4 or 5” versions of the story for the decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), including a version in which the bakery owner won outright, lost outright, and won on technical grounds, the latter of which ended up being the Court’s ruling.

Both Bravin and Liptak note that the demand for an immediate story creates

an inverse relationship between readership and story quality. As Liptak explained, "the earliest, pedestrian story will get huge readership. The later story, which is more nuanced, detailed, and notes things like voting alignments and doctrine, will get much smaller readership." Bravin said that the *Wall Street Journal* pays attention to the times of day during which readership is highest and the paper needs to "give the audience what they want, especially at these times." As a result, "most people who are interested in the subject read...the quick version, which is not as well-written or edited, and does not have as much detail and context."

Multiple reporters also said that the demand for immediate news interfered with their overall ability to produce a quality story. For one, the Court's ban on technology in the Court room forces reporters who have obligations to file stories via computer and tweet out news immediately to sacrifice sitting in the press gallery to hear the justices announce the rulings. According to Adam Liptak, being absent from the Court room causes a reporter to lose out on observing the ambiance in the room, which can add detail to a story, as well as "hearing the summary of the decision from the author, which is very useful, and makes your story better. Instead of reading 60 pages, you get to hear the author explain the decision in 20 minutes. It's hard to recover from losing that briefing opportunity." While many journalists report from the Supreme Court's press room on decision days, Michael Doyle stopped going to the Supreme Court entirely when important decisions were to be handed down. In the October 2014 term, Doyle would wait at his McClatchy office for the Court to electronically post a decision, which he said takes about 3 minutes, instead of obtaining a hard copy from the Court's Public Information Office. Doyle would

have his pre-written story with background prepared, as well as a sense of what the decision would be based on his review of the issues for his prior story covering the oral argument in the case. Once the decision was posted online, Doyle would quickly skim it and copy and paste good quotes into his pre-written story. Doyle says this method “sacrifices being there, but gains in efficiency.”

Before he would write a story, Doyle would tweet out the news first. Similarly, when there is breaking news, Richard Wolf first sends out a news alert so that the *USA Today* website will have a scrolling banner across the top of the site with the headline. He then tweets. Third, he files his story after adding the just-announced ruling to his pre-written material. Wolf sends the news alert and tweets before filing his story because “if I wait until after I file my story, it’s too late. The nature of a lot of websites now is that the individual who finds out something is encouraged to break the news on Twitter and get credit immediately, not save it for the website and possibly not be first.”

Therefore, Supreme Court reporters have a range of obligations now that were not present prior to the rise of the Internet and social media. The combination of these escalated duties with the increased speed of reporting has created concerns about story accuracy and quality among reporters. Marcia Coyle of the *National Law Journal* said that “with the dawning of the Internet, the *National Law Journal* covers everything. The *National Law Journal* is weekly, but what’s changed over the years is that *National Law Journal* reporters are daily reporters because of the web. We have to blog, write for the website, and tweet” in addition to writing “your

single story” for print, as was the case previously.² Coyle also contributes to the NLJ’s “Supreme Court Brief,” an e-newsletter which publishes every day the Court is sitting and every week otherwise. Coyle says that this “creates unusual pressures that weren’t always there. You used to have time to read the opinions before you put words on the page. Often now you don’t have time to think. Sometimes I wake up in the middle of the night worrying I made errors.” Adam Liptak, among others, echoed this concern, saying “the effect of the speed-up of reporting is losing in-depth analysis, which is the distinct contribution that those on the beat can make. You used to have the luxury of thinking.”

A related change ushered in by cable television and the Internet is the constant demand for news. Liptak observes that “there is now an ever-increasing demand for stories about cases at all stages of the process. This applies especially to big cases, but it is starting to apply to the medium cases, too.” Many reporters expressed distaste for covering oral argument because they feel growing pressure to make a prediction about the outcome of a case, despite the fact that questions asked in argument do not always indicate how the justices will vote. However, Savage says that “all Court reporters are now doing more oral argument stories than before. There used to be a news bias against oral argument stories. I had an editor years ago who questioned why I ever wrote oral argument stories. But I’m doing more now because of the web and the endless appetite” for news. Bravin notes that in print, he is “limited by the newshole,” but “there are lots of stories that the print newspaper doesn’t have space

²As of March 2017, the *National Law Journal* transitioned from a weekly newspaper to a monthly magazine, with daily updates to its website (ALM 2017).

for that only run online.” Reporters themselves may decide that certain developments are interesting, like a justice making a particular comment at oral argument, but they are not newsworthy enough for a print story. In these situations, Wolf “might tweet or write a brief online piece on it. I’ll tweet little interesting things on the beat that I’m not going to turn into a story, like stats, or the justices’ comments on things when they’re giving outside talks.” In this way, certain events or details that audiences would not have known about in the print era because they did not meet a certain standard of newsworthiness are now disseminated via the web or social media.

For television reporter Pete Williams of NBC News, the job of covering the Supreme Court entails different responsibilities than it does for his colleagues working for traditionally print-based organizations. Whereas print reporters usually have the space to explain Court actions fully, Williams must summarize in a 1 minute and 45 second segment “what the controversy was, what the Court said, and why it matters. That hasn’t changed despite the proliferation of other ways to find out what the Supreme Court is up to...for the person turning on the TV while they make dinner, they probably don’t know anything about the case, so you still have to start with the basics no matter what.”

Williams started at NBC News in 1993, covering the Supreme Court, the Department of Justice, and legal issues at other government agencies. At the time, his coverage of the Supreme Court would air on the Today Show and on the NBC Nightly News. Now, he continues to report for those shows, as well as for NBC’s cable channel, MSNBC, and write for nbcnews.com. For Williams, the pressure to rapidly report the two to three most significant rulings of the term has always existed. However, even

for television, the speed has slightly accelerated. Williams notes that for the decision in *National Federation of Independent Business v. Sebelius* (2012), he waited in the press room, was handed the opinion by the Public Information Office, and then read and digested the summary as he walked to go live on air at a camera set up outside the Court building. That process is too slow today. As Williams says, “I have to be ready to go immediately.” He now waits in position in front of the Court to appear live on television as soon as the Court rules in the three to four most newsworthy cases each term.

Although he used to sit in the Court room to hear decisions announced in less significant cases, Williams now waits in the press room with his print colleagues and begins working on stories for the web as soon as he receives opinions from the PIO. Williams says that there has been a certain amount of convergence over the years between his job and that of print reporters, as he is now expected to do a lot of the what they do. He spends “a huge amount of time writing for the web” and he produces “many more stories on nbcnews.com than on the air.” While Williams will cover 10-12 cases on television “in a good term,” he will write about 20-30 cases for the website. Therefore, for NBC as well as newspapers, there is a lower bar for content about the Court that is published on the website as opposed to aired on television or printed. While “it is rare to do a story about a cert grant for TV,” Williams says he will often write about grants of certiorari for the web, and denials of certiorari are “fodder for the website.”

Despite this seemingly unlimited demand for news, most full-time Court reporters for general interest news outlets still only cover a fraction of the Court’s decisions (wire

service reporters and correspondents for publications serving the legal community, like Marcia Coyle's *National Law Journal*, cover more cases). David Savage estimated that in the October 2014 term, he wrote about one-third of the Court's decisions. "I ignore two-thirds of cases because they are deciding issues like minute points of bankruptcy law or routine legal cases; I can't justify putting these in the paper. Most cases are not very newsworthy. Some cases may be interesting to the paper's business staff. I let them write about those, like mortgage or finance cases." Richard Wolf echoes this sentiment, saying there are "some cases I absolutely ignore, don't understand, and never touch. I completely blow these off and my editors don't care. For example, bankruptcy cases. Sometimes on financial cases I'll alert the business staff that they are coming up and might be important, but I don't cover them myself." Jess Bravin observes that the newsworthiness of criminal cases are often "borderline" and whether he writes a story about a criminal case often depends on how broadly the Court decides it and what else happens that day. Thus, although there is a higher demand for content about the Court now and space to publish it online, these developments have not resulted in coverage of the full universe of cases that the Court decides.

Overall, the major changes in the process of reporting on the Supreme Court observed by journalists with extensive experience covering the Court for legacy media organizations are the increases in the speed of production of and the demand for news. The consequences of these developments for coverage of the Court include possibly less accurate reporting and a large proportion of news audiences receiving the most preliminary, and least detailed, versions of stories which evolve over time. Although reporters now produce a higher volume of news about the Court, this includes coverage

of events previously thought to be trivial or difficult to accurately report, such as oral arguments or denials of certiorari. While news about the Court is more readily available from legacy media organizations, the journalists themselves voice concerns that the quality of this information has changed.

3.3.2 Reporting by Modern Versus Legacy Media

Professional Backgrounds

Whereas legacy media beat reporters are generally older and have extensive experience in the journalism profession, often spending the majority of their careers at the same news organization, the backgrounds of journalists covering the Court for new media outlets are more varied. In general, they are younger than the legacy media Supreme Court reporters and are at earlier stages in their journalism careers. For some, their current news outlet is the first or second journalism job they have held. A few have worked for partisan campaigns, interest groups, or ideologically-oriented news organizations before taking their current job. Ian Millhiser of ThinkProgress is a fellow at the Center for American Progress, a progressive advocacy group. Kevin Daley of the Daily Caller News Foundation and Tyler O’Neil of PJ Media both interned with the National Journalism Center, which is sponsored by a conservative foundation, prior to taking their current positions.³ O’Neil also worked for Mitt Romney’s presidential campaign and several political fundraising organizations. Pema Levy

³The National Journalism Center’s alumni include conservative commentator Ann Coulter and Fox News host Greg Gutfeld. It aims to “ensure students learn the basic tenants of conservatism and free enterprise - ideas not taught at most journalism schools,” in addition to helping students understand “the biased nature of our news today” (source: <https://njc.yaf.org/history/>).

of *Mother Jones* worked at the progressive outlets *American Prospect* and Talking Points memo before her current position, in addition to postings at *International Business Times* and *Newsweek*. Both Chris Geidner of BuzzFeed News and Mike Sacks, formerly of the Huffington Post, were independent bloggers before working for larger digital-native news organizations.

Approaches to Supreme Court Coverage

Legacy news organizations like the outlets mentioned in the previous section tend to take an institution-based approach to providing news coverage of government. Reporters are assigned to an institution or combination of related institutions. However, this is not the only way news organizations today cover politics. In addition to the approaches of having a dedicated, full-time Supreme Court correspondent, who provides narrow coverage of the institution (such as reporters for major newspapers), or a legal correspondent or justice reporter who covers other courts or perhaps the Department of Justice in addition to the Supreme Court (as is common for television reporters), outlets without a Supreme Court reporter either use a topics-based approach to reporting, covering the Court mainly when it is relevant to specific content areas, or they only write commentary for very significant cases.

A number of the modern media journalists I interviewed cover the Court explicitly as part of their assigned roles. Chris Geidner of BuzzFeed News has transitioned from an occasional Court reporter to one of the first journalists from a digital-native news organization to receive a hard pass credential from the Court. However, Geidner's position entails dedicating only a third of his time to the Court, often concentrated

towards the end of a term. Kevin Daley of the Daily Caller News Foundation reports on the Supreme Court almost exclusively when it is in session. Daley is the first Supreme Court correspondent that the Daily Caller News Foundation has employed, and he covers the Court in a beat fashion of his own initiative. Prior to Daley's creation of the Supreme Court correspondent position, the Daily Caller News Foundation covered the Court on an ad hoc basis. Garrett Epps is the Supreme Court correspondent for *The Atlantic* and *The Atlantic Online* and writes mainly about issues at the Court that he finds interesting. Ian Millhiser is the Justice Editor for ThinkProgress, writing about the Court as part of a broader mandate centering on legal affairs. While at the Huffington Post, Mike Sacks was its first Supreme Court correspondent.

Several of the modern media journalists interviewed only write about the Court occasionally. For German Lopez of Vox, and Tierney Sneed of Talking Points Memo, their current assignments focus on specific content areas, not institutions. Although Sneed came to Talking Points Memo as a general politics reporter, more recently she has been dedicated to topically-based beats such as health care, voting rights, or the special counsel investigation of President Trump. Lopez writes about criminal justice, gun policy, and LGBTQ issues for Vox. When Vox hired Lopez, they allowed him to select his own areas of to cover based on his own interests. He began covering the Supreme Court because all of the issues he chose are very relevant to the Court. Lopez said "at Vox, if one of the things you write about ends up at the Supreme Court, you are expected to cover it, talk to lawyers and legal experts about the case." Lopez and Sneed cover the Court only when it is relevant to their topic areas. Other

journalists at their websites write about the Court when a case relevant to their interests is granted by the Court, for example, Lopez's colleague Dara Lind of Vox covers immigration and therefore writes about immigration-related cases when they come to the Court.

Pema Levy of Mother Jones describes herself and her colleagues at Mother Jones as generalists, some of whom have certain topics they are interested in and follow. Multiple people cover the Court in a term because those who have followed a particular issue will write about a case involving that issue. Levy specifically mentioned cases involving civil rights, cases concerning unions (“an interesting progressive political and policy issue”), cases “which show up in politics,” and cases “with ideological aspects.”

Tyler O'Neil is a columnist and editor for PJ Media. He describes his job as to “cover the trending news of the day and write some opinion pieces. I also work on bigger pieces that can attract attention from places like the Drudge Report. In general, if something is driving media coverage, I will write about it.” O'Neil generally only writes about the Court if it is an important topic in the news cycle, such as during the confirmation process for a new justice, or at the end of a term when significant rulings are being announced.

Therefore, for journalists at sites following topic-based models of coverage, they only cover the Supreme Court if a case before it is relevant to their topics of interest. For their sites in general, then, the amount of Supreme Court coverage they provide is limited by the specific topics that their reporters cover. For example, if a site has reporters covering immigration, abortion, and affirmative action, their coverage

of the Court will be heavily skewed to those areas. For general commentators like Tyler O’Neil, they may only write about the most-high profile cases in a term, in addition to nominations. This results in a relatively low amount of coverage of the Court. Both Sneed of Talking Points Memo and Lopez of Vox said they wrote 20 to 30 stories about the Court per year. However, Sneed notes that when she first started at TPM, “*King v. Burwell* was a big case; I wrote dozens of stories about that case alone. In other Supreme Court terms, when things are less intense, I write 20 to 30 stories per year, including cert grants, arguments, decisions- everything.” Lopez said that the rate at which he covers the Court varies by the time of year. He writes more about the Court in June when high-profile decisions are being handed down, and “in the early part of the term, I will write a few stories to say you should look out for these cases. O’Neil of PJ Media estimates he writes 10-30 stories about the Court a year, depending on the Court’s docket and whether a new justice has been nominated, saying “the site overall is 1 to 2 percent about the Court.”

From Blogger to Supreme Court Correspondent

Chris Geidner began working at a regional Ohio newspaper in college, leaving his position to attend law school. After law school, he started a blog called “Law Dork,” which he maintained for seven years. Through Law Dork and by establishing an active presence on Twitter, Geidner made a name for himself in legal journalism circles. He moved to Washington, DC and began writing about legal issues like “Don’t Ask, Don’t Tell,” DOMA, and Prop 8 for *Metro Weekly*, a LGBT magazine. Given the high profile of LGBT issues at the time, Geidner was hired by BuzzFeed in 2012 to

cover them for the site. After he covered the Supreme Court’s 2013 rulings in *US v. Windsor* and *Hollingsworth v. Perry*, BuzzFeed expanded his role to covering all legal issues, in addition to LGBT political issues. As BuzzFeed’s Legal Editor, Geidner writes “about issues that fall at the intersection of politics, policy, and the law. There’s a political element and could have policy, but it’s not exclusively a political story.” Between the 2013 rulings and *Obergefell v. Hodges* in 2015, Geidner was present at the Supreme Court more and more to cover gay marriage, as that was the “main topic” he covered and he “wrote about every stay application” and appeal. He was also interested in death penalty cases, and as time went on, he began covering more capital cases in addition to other Supreme Court cases in a broader range of areas. Once it became clear that he would be covering the Court more comprehensively, Geidner broached the possibility of applying for a hard pass credential with the Court’s Public Information Office in 2015. The PIO told him that “it would help my application if I could show consistent, long-term coverage of the Court more broadly” and “it would be best if I covered the Court for a year” before applying. Geidner followed the PIO’s advice, applying for and being granted a hard pass for the Court’s October 2016 term. Since receiving his credential, Geidner says he “wrote a ton more Supreme Court stories” than he had previously.

Geidner’s experience shows how a news outlet might move organically from a topics-based model of Supreme Court coverage to an institution-based model. Although Geidner is now a credentialed hard pass holder like the reporters from legacy news organizations discussed in Section 3.3.1, his background in covering politics and specific topical areas may give him a unique perspective on covering the Court. He

expresses a primary interest in writing about the politics, personalities, and interpersonal dynamics on the Court more than specific legal or jurisprudential issues. For instance, he says about oral argument: “watching the arguments is watching the justices, not what’s being said. There’s so much that happens that’s not in the transcript. One of the most important things is how often Thomas and Breyer talk to each other. Thomas is very engaged in most cases.” He also discusses the importance of knowing how the justices think, observing “I will never understand Ruth Bader Ginsburg’s mind the way Nina (Totenberg, of NPR) does. I wasn’t there to watch her evolve...I am watching everything that Justice Kagan and Justice Sotomayor do...I have my justices, and I am prepared for the time when I have covered them for a long time.”

In this way, Geidner is similar to Mike Sacks, the Huffington Post’s first Supreme Court correspondent. After he made a name for himself in the legal journalism community through his blog “First One at One First,”⁴ The Huffington Post hired Sacks in 2011 primarily to cover the Obamacare case, *NFIB v. Sebelius*, and money in politics at the Court following its ruling in *Citizens United*. However, Sacks was primarily interested in politics at the Court, Chief Justice Roberts’ institutional stewardship, the personalities on the Court, and how public opinion affects the institution. Sacks and Geidner are therefore both interested in what political scientists would describe as a “realist” view of the Court, which some legacy Court reporters are reticent to explicitly acknowledge. Sacks left the correspondent position after a term. The Huff-

⁴Sacks was in law school when he came up with the idea for his blog. He lived close to the Court (which is located 1 First Street, NE) and would camp out over night in front of the Court before oral arguments, interviewing others waiting in line and offering analysis of cases.

ington Post hired its second Supreme Court correspondent in 2015, Cristian Farias, but after he left in 2016, the site has reverted to a topics-based model of covering the Court.

Audience Influence and Politicization of Coverage

As was the case in the interviews conducted by Davis in the early 1990s, the legacy hard pass holders I interviewed had difficulty explaining exactly what made a case newsworthy. Although a few mentioned that they may follow particular cases because of their outlet's geographic audience, like cases originating out of California for David Savage of the *Los Angeles Times*, most said the crucial factor in deciding whether to cover a case was whether it impacted a broad audience.

Many new media reporters, both those who take an institution- and a topic-based approach to coverage, mentioned this sentiment, but were likely to qualify this condition in terms of appealing to their outlet's more specific audience. For several reporters, they explicitly mentioned the partisanship or ideology of their audience and specifically picked particular cases and justices to cover because of that criterion. For example, Tyler O'Neil of PJ Media describes his audience as "right of center" and says one major aspect he looks for in cases to cover is if "there's a conservative angle on the main issue...For instance, I wrote about the Court taking a recent crisis pregnancy center case because it has a free speech angle, and my audience skews pro-life." In covering the ruling in *Janus v. AFSCME* (2018), O'Neil notes that "it's a controversial issue on both sides. For my audience, I focus on the anti-union angle, not because unions are inherently bad, but because unions are associated with the

left and the Democrat party. Trump got a lot of support from this position.” O’Neil also likes to write about religious freedom/LGBT issues, as well as “dark money” because “it’s important to have political free speech in funding, that donors are able to be anonymous.” O’Neil also mentioned coverage of specific justices as compelling to his audience: Neil Gorsuch, because “my audience favors Trump, and sees Gorsuch as an extension of Trump’s influence,” as well as Clarence Thomas because “he is a stalwart conservative and African American on the Court.” O’Neil also cited Ruth Bader Ginsburg as “interesting” to his audience, comparing her to Nancy Pelosi, saying “Pelosi is easily demonized by the right and is more divisive among Democrats, so she is useful to conservative outlets. Ruth Bader Ginsburg tends to be more liked and esteemed among liberals than Pelosi...Ruth Bader Ginsburg is really disliked and mistrusted among my audience and conservatives, but she’s not constantly presently” like Pelosi. Finally, O’Neil observes that electoral politics plays a role in when he writes about the Court because “during presidential election season, the Court is a big issue on the right. A lot of op-eds were written defending Trump because of the Supreme Court as an issue when they wouldn’t otherwise have supported Trump.”

Kevin Daley of the Daily Caller News Foundation mentioned several similar topics and justices. He describes the Daily Caller’s audience as “center-right” and is aware that there are certain topics his readers are especially interested in, such as “immigration, the Second Amendment, and cultural issues.” Daley says he “doesn’t write about these issues a majority of the time, but I will pay attention to opportunities to write about these topics and I almost always write about them if I can, including cert petitions dismissed” in these areas, which he mentions “makes for good content.”

Daley also points out that “the Daily Caller’s center-right audience loves coverage of Justices Thomas and Gorsuch. When they speak, the audience wants to know.”

Ian Millhiser of ThinkProgress says that “one of the joys of working at a site that doesn’t require you to hide your politics is that your judgment generally aligns with your readers in terms of what you care about and think is important. The cases you care about from the get-go are the ones the readers care about.” Millhiser views his role not just as commenting on and analyzing Supreme Court cases, but also as engaging in advocacy and potentially shaping outcomes. “I am not one of those people who prints a quote from one side and then one from the other. That’s not my role.” He notes that “we have a Republican Court now. One thing everyone learned after *NFIB*, the first Obamacare case, was that having a strong PR campaign is an important part of litigation. They’ve created a space where Republicans on the Court can take seriously legal arguments publicized and normalized by Republican PR campaigns.” For “a handful of cases,” in which Millhiser thinks he “can potentially have an influence on what happens,” he says he writes “dozens of stories on those. For example, for *King v. Burwell*, there was a PR campaign trying to normalize an outlandish legal argument,” and Millhiser worked to counteract that through his writing on ThinkProgress. Millhiser pays attention to the the Federalist Society “since they are the ones picking judges nowadays” and researches their potential legal strategies, saying “if I go to a Federalist Society event and they are all talking some issue, I will research the issue to find out why they think they can achieve their political goals using that legal issue. For example, why they can use inferior officers clause or something like that.” Millhiser also reads conservative legal blogs

and “sees my role as to point out problems, hypocrisy...When the other side is running a dishonest PR campaign, I see it as my moral responsibility to poke holes in their arguments.”

Mike Sacks, who has worked for both new and legacy media organizations through his roles at the progressive website the Huffington Post and his current job at Fox 5 NY, a local broadcast television station in New York City, noted differences in what was newsworthy for the Huffington Post versus what is newsworthy for local broadcast television. For Sacks to cover a Supreme Court case at Fox 5, it must either be a “big, blockbuster” case, or it must be relevant to his audience in the tri-state area surrounding New York. At the Huffington Post, editors wanted Sacks to write about specific issues of interest to a progressive audience, especially money in politics, given the Court’s recent ruling in *Citizens United*. Sacks noted that his “news judgment was not always in line with the churn of a high-traffic, progressive-leaning tabloid...I always rolled my eyes at the ‘Scalia/Ginsburg surprising friendship’ stories that cropped up every term, but those were some of the biggest stories.” When the Obama administration filed a cert petition for *NFIB v. Sebelius*, Sacks “thought ‘what’s the big deal?’ I forgot the audience would be interested.” His editor asked him to write a story on the petition, and it received “huge play.” Sacks notes that “some of the most politically-salient cases,” at the time relating to arbitration and anti-trust, are “big for the HuffPost readership” and stories about those subjects aligned with the “ideological orientation of the audience.” Relatedly, “sometimes there would be something that came out of the progressive blogs that I thought was sensationalized, didn’t think was as big as they said. I wouldn’t want to write that up. I did have a

blind spot sometimes to what others thought was important.”

New Media Work Routines

The legacy hard pass holders I interviewed mentioned the heavy reading load of the beat and that they examined merits briefs, amicus briefs, orders, and sometimes certiorari petitions, culling story ideas from these documents. Most also said they attended a large number of oral arguments each term, in addition to being physically present at the Court for decision announcements, working together in the Press Room in the initial period after rulings are handed down to make sense of decisions. In contrast, the new media journalists I interviewed who only write about the Court occasionally said that they did not go to the Court often. Although some have attended one or two oral arguments in significant cases, new media reporters generally do not have a presence at the Court in the same way that legacy reporters do. Many report from their offices on decision days, often looking to the Court’s website, SCOTUSblog, and Twitter for the release of the decision and some initial analysis. While the Court’s transition to releasing opinions as well as audio and transcripts of oral arguments online has expanded the range of media outlets and journalists who can report on the Court, many legacy hard pass holders reporters, as well as new media reporters who have visited the Press Room using day passes, noted the collegial nature of the Supreme Court press corps. Those who report remotely cannot participate. Journalists present in the press room immediately after a decision is announced often initially collaborate on a basic interpretation of the ruling. This dynamic may decrease the uniformity of interpretation provided by those writing about the Court,

in addition to there simply being a wider range of journalists and writers covering the Court. Furthermore, not being physically present at the Court may decrease the likelihood that journalists include in their stories the symbols of the Court that scholars have found lead people to have a “positivity bias” about the Court.

Although some legacy reporters are active on Twitter, most said they use it primarily to promote finished stories. Several did not use it much, if at all, and said it was unimportant to their reporting. New media journalists were much more likely to view the use of Twitter as essential to their jobs. Several obtain story ideas and connect with sources who can provide them with analysis on Twitter. Many follow legal experts as well as political commentators and pay attention to what they view as important cases. Kevin Daley of the Daily Caller News Foundation says he looks “at law professors for signals...you have to delegate or crowd source at the cert stage because there are so many cases pending. Sometimes I find things in cert petitions by my own review, but generally I take cues from social media in what’s interesting.” Several new media journalists also mentioned reading legal blogs for cues about case importance. A number of new media reporters also attend events sponsored by partisan interest groups or stay in touch with representatives of these groups, like the Federalist Society, the Heritage Foundation, the American Constitution Society, the Institute for Justice, or the American Civil Liberties Union. Some reporters attend interest group events because the group’s perspective aligns with the slant of their readership, so the reporters can obtain co-partisans’ perspective on which cases are newsworthy. However, reporters also occasionally attend interest group events in order to see which cases are important to “the other side.”

Thus, legacy reporters generally decide what cases and actions of the Court to cover based on a combination of reading the briefs in pending cases, attending oral argument, drawing on their experience on the beat to determine which cases might be important to the development of the Court's jurisprudence or its institutional identity, and staying current about what's in the news more broadly, new media reporters look to social media, blogs, interest groups, experts, and co-partisans to determine what cases are important. This is especially true for those reporters who cover the Court only on an ad hoc basis. New media reporters who are more dedicated to Court coverage, or who possess law degrees, seem to depend more on their own judgment in determining what is important. New media reporters vary in the extent to which they depend on the briefs in pending cases. Most say that they will at least look at them to get some background about a case they are covering, others view them as essential. However, new media reporters do not seem to rely on the briefs to the same extent that legacy reporters do.

3.4 Implications

Overall, the interviews I conducted with journalists who write about the Supreme Court reveal that reporting on the Court has changed in several important ways over time. For legacy beat reporters, the process of reporting has sped up tremendously, and there are additional pressures on their time due to obligations to generate more content for the web and to be active on social media. These reporters are concerned about the effects of changing media technology on the depth and accuracy of their

reporting. They also produce content now for the web or social media that previously would not have been regarded as newsworthy.

The entry of modern media into the Supreme Court reporting landscape has changed the range of information that is available to the public about the Court. There is now a steady supply of information written to appeal to specific partisan or ideological audiences. Writers at ideologically-oriented outlets are aware of the topics of interest to their particular audiences and select Supreme Court cases or actions to cover in order to generate clicks. Many noted covering denials of certiorari in areas of interest to their ideological audiences, which scholars have found is often confusing or misleading (Slotnick and Segal 1998). Since covering the Court full-time is not their job, many modern media journalists sometimes depend on analysis, commentary, and cues about case salience from other people who are sometimes partisan or ideological. There is substantial variation in the level of coverage provided by these sites. Some may only cover the most important cases of a term and a few cases of interest to their audience because of the partisan angle. This stands in contrast to the level of coverage legacy beat reporters provide. Although they do not cover every case, they generally cover about third of the Court's docket, writing about each case multiple times. The differences between the information offered by legacy and new media organizations is important because research has found that people tend to seek out information provided by co-partisans. Furthermore, audiences generally must pay for legacy media content in the form of newspaper subscriptions, access to paywall-protected websites, or television service. New media content tends to be free, as these outlets generally rely on advertising for revenue. Therefore, it may be

both more appealing and less costly for people to access content online, producing a change in the information that people receive about the Court.

Chapter 4

Topics of Coverage

4.1 The Court in 2018, As Told By Legacy Versus Modern News

As the previous chapter demonstrates, the goals of journalists who cover and comment on the Supreme Court for legacy and modern media differ. While legacy reporters generally cover the Court as an institution, producing content to inform their audiences about a broad range of the issues the Court rules on, modern media journalists often concentrate on a narrower subset of the Court's activities which they can politicize. For example, in June 2018, the popular online news sources Breitbart (conservative) and HuffPost (liberal) differed in the content they produced about the Court from the *New York Times*, which many consider to be the United States' paper of record. June is the end of the Supreme Court's yearly term, so media coverage of the institution tends to be high during this month. The *Times* published 62 unique stories about

the Court in June (counting stories that ran both in print and online as one story), encompassing 15 new rulings issued by the Court, two grants or denials of certiorari for the next term, and Anthony Kennedy's retirement news (22 stories). Of the 15 new rulings covered, the *Times* published multiple pieces about nine of those rulings. Breitbart and HuffPost published 42 and 30 stories, respectively. Breitbart wrote about 9 rulings handed down in June, and HuffPost wrote about 10 rulings. Each online outlet published multiple pieces about four rulings: *Masterpiece Cakeshop*, *Janus v. AFSCME*, and *Trump v. Hawaii* for both sites, and *NFILA v. Becerra* for Breitbart and *Gill v. Whitford* for HuffPost. Breitbart wrote 15 stories about the Kennedy retirement and vacancy, whereas HuffPost published five stories about this news.

Importantly, the substantive focus of these stories often differed. While the *Times* concentrated on conveying the news and analyzing its ramifications, the online sites included more commentary from partisan or ideological actors. For instance, for the *Masterpiece Cakeshop* ruling, the *Times*' stories do not take partisan or ideological stances (see Table 4.1). In contrast, four of the five Breitbart stories about the case concern explicit opinions expressed by the writer or opinions of ideological allies (the Catholic League) or opponents (Hollywood liberals like actor Andrew Garfield as well as politician Nancy Pelosi). Similarly, of the two headlines about *Masterpiece* written by HuffPost, one discusses the ruling, but the other focuses on liberal ally Justice Ruth Bader Ginsburg's dissent in the case.

In conveying the news of Justice Kennedy's retirement and the subsequent appointment of his successor, the online sites again focused on different aspects of the

Headline	Source
"In Narrow Decision, Supreme Court Sides With Baker Who Turned Away Gay Couple"	New York Times, Jun. 4, 2018
"How the Supreme Court Avoided the Cake Case's Tough Issues; Contributing Op-Ed Writer"	New York Times, Jun. 7, 2018
"Supreme Court Sides with Masterpiece Cakeshop in Same-Sex Wedding Ruling"	Breitbart, Jun. 4, 2018
"Hollywood Should Applaud SCOTUS, Defend Christian Baker's Artistic Freedom"	Breitbart, Jun. 4, 2018
"Catholic League: SCOTUS Cakeshop Ruling Big Loss for 'Gay Bullies'"	Breitbart, Jun. 4, 2018
"Nancy Pelosi on Supreme Court Ruling: Bake That Cake, Christians!"	Breitbart, Jun. 4, 2018
"'Spider-Man' Star Andrew Garfield Bashes SCOTUS at Tony Awards: 'Just Bake a Cake for Everyone'"	Breitbart, Jun. 11, 2018
"Supreme Court Sides With The Baker Who Refused To Make Gay Couple's Wedding Cake"	HuffPost, Jun. 4, 2018
"The Key Part Of RBG's Dissent In The Supreme Court 'Cakeshop' Case"	HuffPost, Jun. 4, 2018

Figure 4.1: Headlines about *Masterpiece Cakeshop* Ruling

developments than did the *New York Times*. Table 4.2 presents examples of the 22 stories that the *New York Times* published about the Kennedy vacancy, five of which center on partisan concerns, such as the fact-check article “Democrats Cite McConnell’s Precedent to Delay Supreme Court Hearings. But Does It Apply?” and the op-ed “The Right Has Won the Supreme Court. Now What?” The remainder of the headlines did not invoke partisanship, simply relaying the news at hand, such as in “The Front-Runners and Full List of Potential Supreme Court Nominees,” “Supreme Court Justice Anthony Kennedy Is Retiring: What Happens Now?,” and “Trump Prepares to Nominate a Supreme Court Justice.” Breitbart, on the other hand, discussed the goals of Republicans or conservatives in four of its 15 stories about the vacancy, including the possibility that the vacancy will result in the “First Reliable Conservative Majority Since 1934” on the Court, or the advice of a Member of the House of Representatives that President Trump should fill the vacancy with a “Committed Conservative.” Breitbart also published five stories about the reaction to the vacancy among its ideological opponents, such as Democratic Senators Cory

Booker, Elizabeth Warren, and Dick Durbin, MSNBC personality Rachel Maddow, and liberal daytime television host Whoopi Goldberg, calling attention to inflammatory quotes like Maddow’s statement that the selection of Kennedy’s replacement is a “Pull-the-Fire-Alarm Moment” or Goldberg’s declaration that the prospective nominee needs to “Get Out of My Vagina.” Similarly, three of the five stories HuffPost wrote about the Kennedy news discuss how Democrats are reacting to the vacancy, such as “Democrats Demand GOP Follow McConnell Rule” and “Democrats Tie Trump Supreme Court Pick To Russia Investigation.”

Headline	Source
"Anthony Kennedy Retires From Supreme Court, and McConnell Says Senate Will Move Swiftly on a Replacement"	NY Times, Jun. 27, 2018
"Supreme Court Justice Anthony Kennedy Will Retire"	NY Times, Jun. 27, 2018
"The Front-Runners and Full List of Potential Supreme Court Nominees"	NY Times, Jun. 27, 2018
"McConnell Promises Fall Vote to Confirm Next Supreme Court Justice"	NY Times, Jun. 27, 2018
"Democrats Cite McConnell’s Precedent to Delay Supreme Court Hearings. But Does It Apply?: Fact Check of the Day"	NY Times, Jun. 27, 2018
"Supreme Court Justice Anthony Kennedy Is Retiring. What Happens Now?"	NY Times, Jun. 28, 2018
"Denied a Filibuster, Democrats Eye Other Tactics in Supreme Court Fight; On Washington"	NY Times, Jun. 28, 2018
"Political War Over Replacing Kennedy on Supreme Court Is Underway"	NY Times, Jun. 28, 2018
"With Kennedy Gone, Roberts Will Be the Supreme Court’s Swing Vote"	NY Times, Jun. 28, 2018
"The Right Has Won the Supreme Court. Now What?: Contributing Op-Ed Writer"	NY Times, Jun. 28, 2018
"Trump Prepares to Nominate a Supreme Court Justice; Op-Ed Columnist"	NY Times, Jun. 29, 2018
"Trump Says He Will Announce Supreme Court Pick on July 9"	NY Times, Jun. 29, 2018
"Options Few, Democrats Refuse to Concede on Supreme Court Pick"	NY Times, Jun. 29, 2018
"Justice Anthony Kennedy to Retire from Supreme Court"	Breitbart, Jun. 27, 2018
"Donald Trump Rallies in Fargo: Republican Senate ‘Critical’ for Supreme Court"	Breitbart, Jun. 27, 2018
"Anthony Kennedy’s SCOTUS Exit Could Bring First Reliable Conservative Majority Since 1934"	Breitbart, Jun. 27, 2018
"Booker: Trump’s SCOTUS Nominee Shouldn’t Be Confirmed ‘While This Criminal Investigation Is Going On’"	Breitbart, Jun. 28, 2018
"Maddow: Trump’s SCOTUS Pick a ‘Pull-the-Fire-Alarm Moment’"	Breitbart, Jun. 28, 2018
"Dem Sen Warren: Unnamed Trump SCOTUS Nominee Will Criminalize Abortion and Try to Punish Women"	Breitbart, Jun. 28, 2018
"Whoopi Goldberg to Potential Trump SCOTUS Pick: ‘Get Out of My Vagina’"	Breitbart, Jun. 28, 2018
"Durbin: ‘We Don’t Have the Power’ to Play Hardball on SCOTUS Nominee"	Breitbart, Jun. 28, 2018
"Exclusive-Rep. Kevin Cramer’s Advice for Trump SCOTUS Pick: ‘Don’t Get Caught Up on Quotas’; Find ‘Committed Conservative’"	Breitbart, Jun. 29, 2018
"President Donald Trump Announcing Supreme Court Justice July 9"	Breitbart, Jun. 29, 2018
"Never-Trump Would’ve Handed Democrats 6-3 Supreme Court Majority"	Breitbart, Jun. 29, 2018
"Trump Considering Up to Seven Names for Supreme Court"	Breitbart, Jun. 30, 2018
"Anthony Kennedy Announces Retirement From The Supreme Court"	HuffPost, Jun. 27, 2018
"Democrats Demand GOP Follow ‘McConnell Rule’ And Delay Supreme Court Hearing"	HuffPost, Jun. 27, 2018
"Democrats Regret Not Fighting Harder For Obama’s Supreme Court Pick"	HuffPost, Jun. 27, 2018
"Democrats Tie Trump Supreme Court Pick To Russia Investigation"	HuffPost, Jun. 28, 2018
"Trump To Name Supreme Court Nominee On July 9"	HuffPost, Jun. 29, 2018

Figure 4.2: Headlines about Kennedy vacancy

Thus, this snapshot of news coverage of the Court during June 2018 demonstrates

that the content that different news outlets publish about the Court, even during the same time period and about the same events, can vary dramatically. While legacy news outlets aim to provide hard news coverage that appeals to all audiences, supplemented with some opinion pieces conveying particular viewpoints, a larger share of modern news outlets' coverage of the Court focuses on particular topics and aspects of news about the Court which can be politicized, therefore appealing to their partisan and ideological audiences. In the remainder of this chapter, I introduce the data that I will use to show that this phenomenon holds systematically, and then I test related hypotheses.

4.2 Data

In the chapters to follow, I analyze the text of news articles and transcripts during the period from 1980 to 2016 to assess how the content of media coverage of the Supreme Court differs by news outlet and over time. Here I introduce the data I will use in the next chapters.

4.2.1 Sample Selection

I analyze stories about the U.S. Supreme Court from six major daily newspapers (the *Chicago Tribune*, *Los Angeles Times*, *New York Times*, *USA Today*, *Wall Street Journal*, and *Washington Post*), one national wire service (the Associated Press), one national public radio station (NPR), the three major broadcast television networks (ABC, CBS, and NBC), one nightly public television newscast (PBS Newshour), the

three major cable television news stations (CNN, Fox News Channel, and MSNBC), and nine political blogs (see Table 4.1). The Associated Press is the oldest and most widely-used American wire service (Daly 2012). I include PBS Newshour and NPR due to their national prominence.

I include newspapers based on national prominence, geographic variety, and ideological diversity. The editorial boards of the *Chicago Tribune* and *Wall Street Journal* are considered conservative, *USA Today* has a moderate reputation, and the *Los Angeles Times*, *New York Times*, and *Washington Post* are considered liberal (Gentzkow and Shapiro 2010, Ho and Quinn 2008). The circulation of these papers consistently ranks highly throughout the period under study (see Figure 4.3).

I select blogs to include based on a combination of popularity, ideological leaning, and ability to obtain data. I aim to include an equal mix of liberal and conservative blogs in the sample. I used a variety of political blog rankings posted online, as well as referrals to similar sites on popular political blogs or websites, to compile my set of blogs (Agarwal 2018, Aldred et al. 2008, Alexa Internet 2018, Bolyard 2017, Brown 2007, Coppins 2017, Davis 2005, eBizMBA 2017, Gunelius 2018, Haskins 2018, Hawkins 2009^{a,b}, 2014, Kurtzman 2012, McNichol 2009, Personal Democracy Media 2009, Polskin 2018, Reisinger 2009). One challenge associated with research of online-only news sources is that there are no definitive rankings of the popularity or readership of blogs or websites. There are a range of rankings available, some based on web traffic statistics, others based on other bloggers' evaluations. Rankings based on web traffic use various metrics such as pageviews, number of visitors, or the time visitors spend on the site, and vary in how they combine these measures to

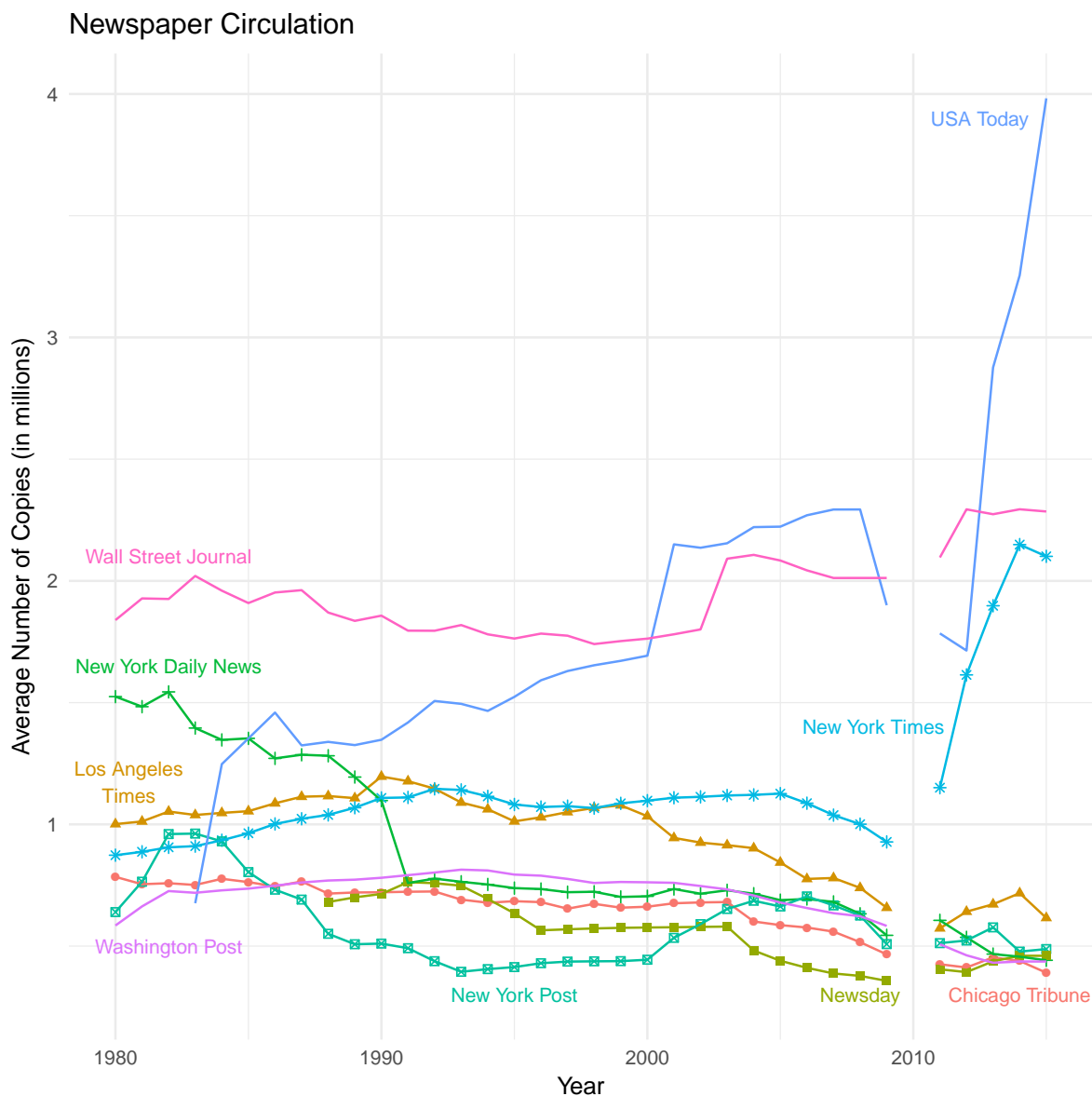


Figure 4.3: **Daily newspaper popularity.** Average yearly circulation for newspapers which reach the top ten U.S. daily newspapers by circulation in at least half of the years from 1980 to 2015, as measured by Editor & Publisher, a trade journal covering the newspaper industry. Data for 2010 is unavailable. The *Chicago Tribune*, *Los Angeles Times*, *New York Times*, *USA Today*, *Washington Post*, and *Wall Street Journal* consistently rank highly in circulation from 1980 to 2015. Other newspapers which consistently reach the top ten in circulation are the *New York Daily News*, the *New York Post*, and *Newsday*, all of which are located in New York. Other newspapers which reach the top ten in circulation are the *Detroit Free-Press* (15 out of 36 years), *Houston Chronicle* (15), *Chicago Sun-Times* (11), *Detroit News* (10), *San Francisco Chronicle* (5), *Dallas Morning News* (5), *San Jose Morning News* (5), *Orange County Register* (2), *Philadelphia Inquirer* (1), *Denver Post* (1), *Los Angeles Daily News* (1), and *Fort Myers News-Press* (1).

produce a single ranking (for example, Alexa or Quantcast rankings). Lists curated by other bloggers are generally cross-sectional. Given these limitations, I examined political blog rankings written at different points in time and use sites which appear in multiple rankings.

Some well-read online news sites and blogs could not be included in the analysis due to legal restrictions. Despite the fact that fair use copyright exceptions enable academics to use copyrighted material for research purposes, many online news sources and blogs, especially those owned by corporations as opposed to individuals, issue restrictive terms of service prohibiting users from downloading their content or entering it into a database. Users face possible legal penalties for doing so. The blogs I use in the analysis have no such prohibition in their terms of service as of the date of data collection.

Website ranking, monthly visitor data, and social media followers (see Figures 4.2-4.4) indicate that the blogs included in my sample vary in popularity and appear to be less popular than a number of other blogs and online news sources (see Figures 2 and 3 ¹) ². Daily Kos, Infowars, and Boing Boing rank highly among blogs and have audiences on par with a number of online-only publications, newsmagazine, and regional newspapers. Instapundit, Crooks and Liars, Powerline Blog, Wonkette, and Weasel Zippers are less widely-read. Michelle Malkin, although ranking very low in

¹I use web traffic statistics for PJ Media, the website which now houses Instapundit, in place of statistics for Instapundit's former standalone URL.

²Although I make a distinction between blogs and online publications, there are no firm rules regarding what distinguishes a "blog" from an "online magazine" or online-only newspaper. Some websites are founded as blogs and eventually grow into larger news operations. I divide websites into two categories for the purposes of visualization, grouping larger, more professionalized sites with online newsmagazines and grouping smaller, more independently-run and/or community-based websites into the blog category.

monthly visitors, has a relatively large social media following, similar in quantity to sites like Breitbart, The Hill, The Daily Beast, and the *Atlantic*. Although some of the blogs I include in my sample are not highly-ranked, scholars have found that there is an “echo chamber” effect in the liberal and conservative blogospheres, suggesting that similar opinions are expressed on various blogs of the same ideology (Adamic and Glance 2005, Gilbert, Bergstrom and Karahalios 2009, Hargittai, Gallo and Kane 2007, Sunstein 2001).

4.2.2 Data Collection

I download newspaper articles and radio and television transcripts from the LexisNexis and ProQuest databases which include “Supreme Court” or “SCOTUS” in the headline, lead paragraph, or abstract of the story. Due to differences in available search fields between the databases, I search for “Supreme Court” or “SCOTUS” in the headline or lead paragraph of stories in LexisNexis and headline or abstract in ProQuest. I remove all stories which do not mention “Supreme Court” or “SCOTUS” in the first 100 words in order to apply an equal relevance criterion to all stories. News writing authorities range in recommendations regarding the length of lead paragraphs (Whitaker, Ramsey and Smith 2012). I use 100 words as a conservative estimate with the aim of inclusivity. I also remove stories which mention the supreme court of a U.S. state, foreign country, or regional court in the title or text of the story, and those which list a foreign country in their dateline. For newspapers, I include news articles as well as op-eds and editorials.

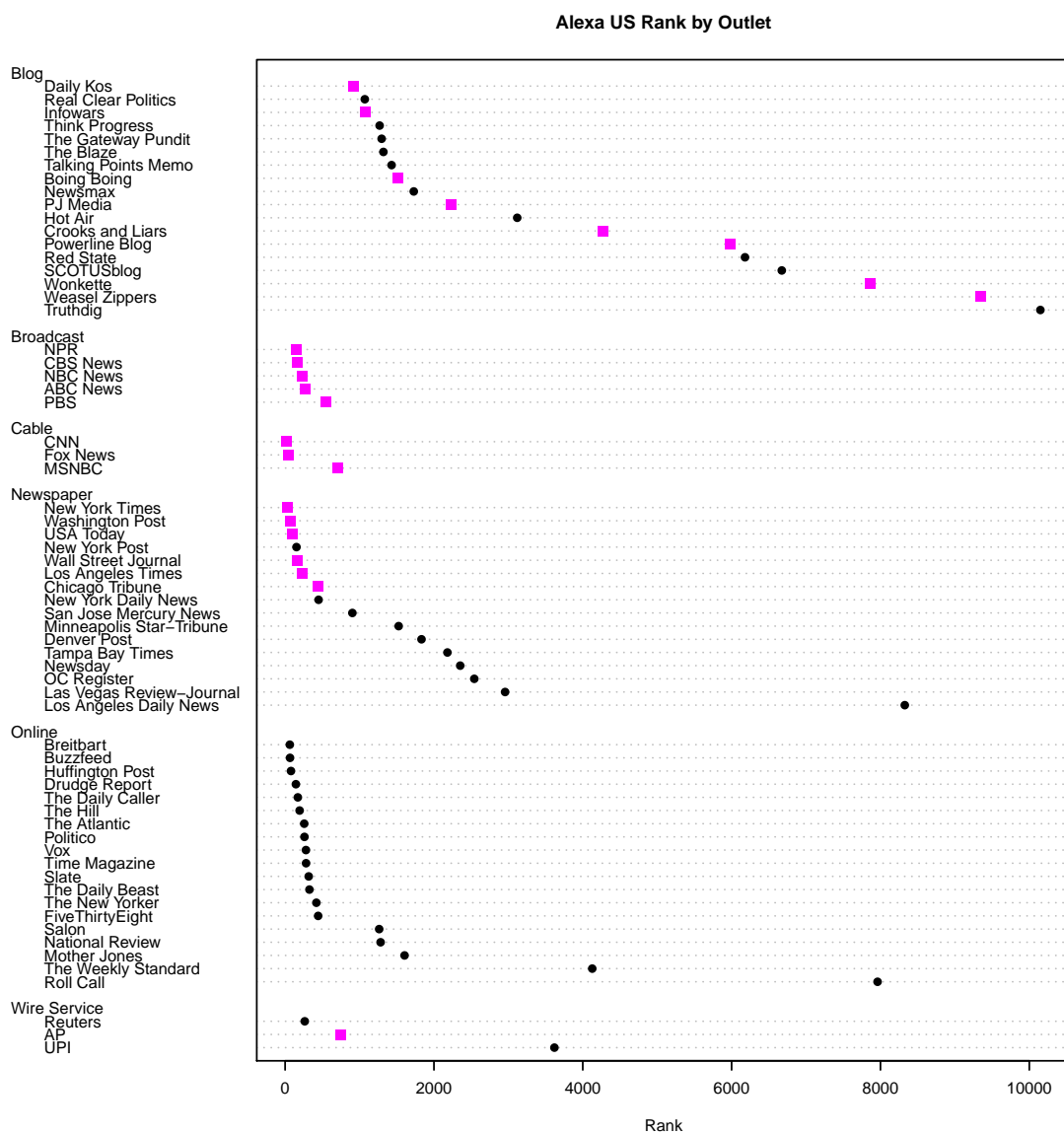


Figure 4.4: **Website rankings.** Rankings of news websites' popularity among users in the United States, as estimated by Alexa Internet, Inc. Rankings are computed based on visitors and page views over the previous three months. Rankings marked by pink squares indicate that the news source is included in my sample; black circles indicate that the news source is not included in my sample. Rankings cited here were collected in June 2018. The ranking for Michelle Malkin (#46,149) was removed to improve the scaling of the chart.

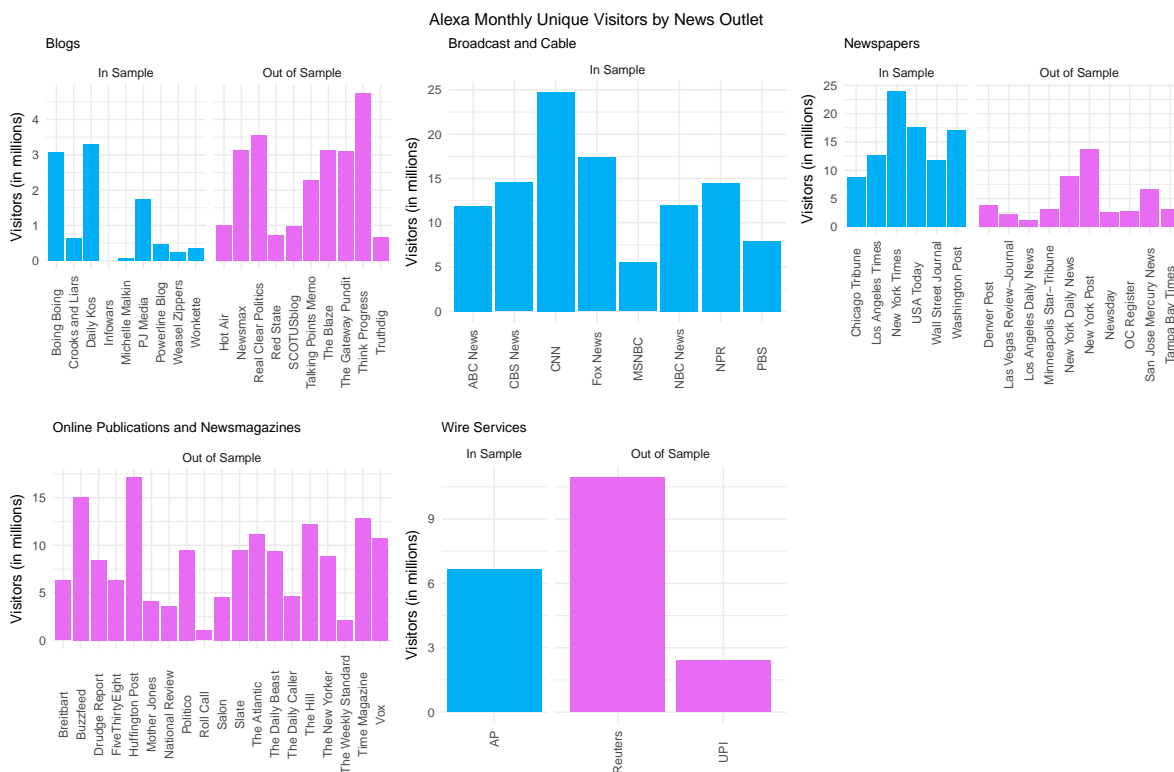


Figure 4.5: **Monthly website visitors.** The number of unique people visiting each outlet's website in the past 30 days, as measured by Alexa Internet, Inc. The websites of the broadcast and cable television stations, as well as the newspapers included in my sample, tend to be the most-visited. The websites of newsmagazines and online-only sources vary in number of visitors, but the number of visitors to these sites generally exceeds the number of visitors to blogs. Data cited here were collected in June 2018. Infowars does not allow its traffic statistics to be reported. Note: scales of y-axes vary to maximize readability of individual graphs.

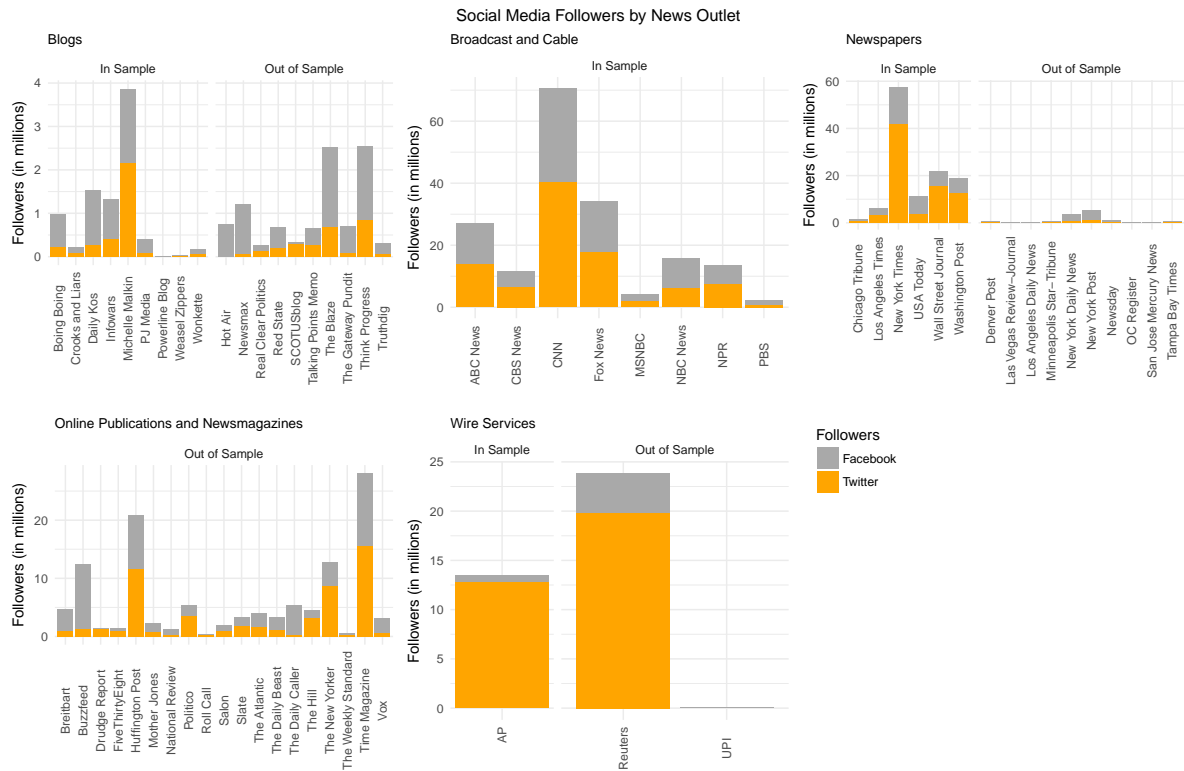


Figure 4.6: **Social media followers.** Followers on Facebook (gray) and on Twitter (orange) by news outlet. The outlets with the largest followings are ABC News, CNN, Fox News, the *New York Times*, the *Wall Street Journal*, the Huffington Post, Time Magazine, and Reuters, all of which have over 20 million followers. Broadcast and cable television sources have substantial followings, as do most newspapers included in my sample. Online sources vary widely in number of followers. Data cited here were collected in June 2018. Note: scales of y-axes vary to maximize readability of individual graphs.

I collect posts from political blogs using automated web scraping. If a blog is divided into sections, I scrape the “politics” or “news” section of the site. Otherwise, I scrape all posts. I apply the same relevance restrictions to blog posts that I apply to newspaper articles and radio and television transcripts.

After processing the documents for analysis, the resulting data set consists of 115,123 stories about the United States Supreme Court over the period from 1980 to 2016. The availability of stories varies over time by source (see Table 4.2). Most newspapers articles prior to 1980-1985, depending on the paper, have not yet been digitized in a computer-readable format. Furthermore, LexisNexis and ProQuest have some gaps in coverage of certain media outlets. Cable news channels did not exist until the 1980s-1990s, and most political blogs did not begin operating until the mid-2000s.

Figures 4.5-4.7 illustrate trends in coverage of the U.S. Supreme Court by news source, over time, in comparison to overall news coverage. Figure 8 shows that the amount of content about the Supreme Court varies widely by media outlet. The Associated Press consistently generates the most stories about the Court, generally over 1,000 per year (the mean number of stories per year from 1980 to 2016 is approximately 1,247 stories). The *New York Times* and *Washington Post* publish 250-500 stories about the Court per year, though that number has increased in recent years for the *Washington Post* due to the amount of online content about the Court that the *Post* produces. Other newspapers generally publish fewer than 250 stories per year about the Court, though coverage has decreased over time for the *Chicago Tribune* and increased over time for the *Wall Street Journal*, again driven by an increase in on-

Table 4.1: Data Sources

Media Outlet	Type	Source	Years	N
<i>Chicago Tribune</i>	Newspaper	ProQuest	1985-2016	3,182
<i>Los Angeles Times</i>	Newspaper	ProQuest	1985-2016	3,147
<i>New York Times</i>	Newspaper	LexisNexis	1980-2016	13,057
<i>USA Today</i>	Newspaper	LexisNexis	1989-2016	4,357
<i>Wall Street Journal</i>	Newspaper	ProQuest	1984-2016	2,947
<i>Washington Post</i>	Newspaper	LexisNexis	1980-2016	17,004
Associated Press	Wire service	LexisNexis	1980-2016	46,131
NPR	Broadcast Radio	LexisNexis	1991-2016	4,504
ABC	Broadcast TV	LexisNexis	1980-2016	2,046
CBS	Broadcast TV	LexisNexis	1990-2016	2,405
NBC	Broadcast TV	LexisNexis	1997-2016	1,365
PBS Newshour	Broadcast TV	LexisNexis	1980-2016	563
CNN	Cable TV	LexisNexis	1990-2016	5,887
Fox News	Cable TV	LexisNexis	1998-2016	1,258
MSNBC	Cable TV	LexisNexis	1999-2016	314
Boing Boing	Blog (Liberal)	Scraped	2009-2016	25
Crooks and Liars	Blog (Liberal)	Scraped	2004-2016	781
Daily Kos	Blog (Liberal)	Scraped	2003-2016	2,355
Wonkette	Blog (Liberal)	Scraped	2004-2016	718
Infowars	Blog (Conservative)	Scraped	2008-2016	485
Instapundit	Blog (Conservative)	Scraped	2002-2016	955
Michelle Malkin	Blog (Conservative)	Scraped	2004-2016	197
Powerline	Blog (Conservative)	Scraped	2002-2016	759
Weasel Zippers	Blog (Conservative)	Scraped	2011-2016	681
Total				115,123

line content at the *Wall Street Journal*. Among broadcast television and radio, NPR produces the most content about the Court, averaging approximately 173 stories per year. The three major broadcast television networks average between 55 (ABC) and 89 (CBS) stories per year. Coverage of the Court on cable television varies. Driven in recent years by increased online coverage, CNN provides the highest level of coverage of the Court on cable television (mean number of stories from 1990 to 2016 is 218). Coverage by Fox News is on par with that of the broadcast networks, as it averages 66 stories per year; MSNBC provides the least coverage, averaging 17 stories per year. Among blogs, coverage over time varies widely as well. Most blogs post less than 100 stories per year about the Court with the exception of Daily Kos, where the number of stories about the Court has increased over time to 555 stories in 2016.

However, Figure 4.9 shows that the overall amount of news coverage, of all topics, dwarfs coverage of the Supreme Court. Newspapers publish approximately 25,000 to 200,000 stories per year, while the number of stories produced by the Associated Press can approach or exceed 1 million post-2000. In contrast, blogs generally publish several thousand posts per year. Broadcast outlets produce about 10,000 to 20,000 stories per year, while CNN produces 20,000 to 35,000 stories. Fox News and MSNBC again generate less content at less than 10,000 stories per year. Figure 10 therefore illustrates that stories about the U.S. Supreme Court comprise a very small proportion of overall news coverage across news sources. For most news sources, stories about the Court make up less than 2.5 percent of all coverage, with the exception of PBS Newshour, though Newshour only averages 262 total stories per year.

In the chapters to follow, I analyze these stories about the Supreme Court using

computer-assisted text analysis techniques to evaluate my hypotheses regarding the politicization of news coverage about the Court from Chapter 2.

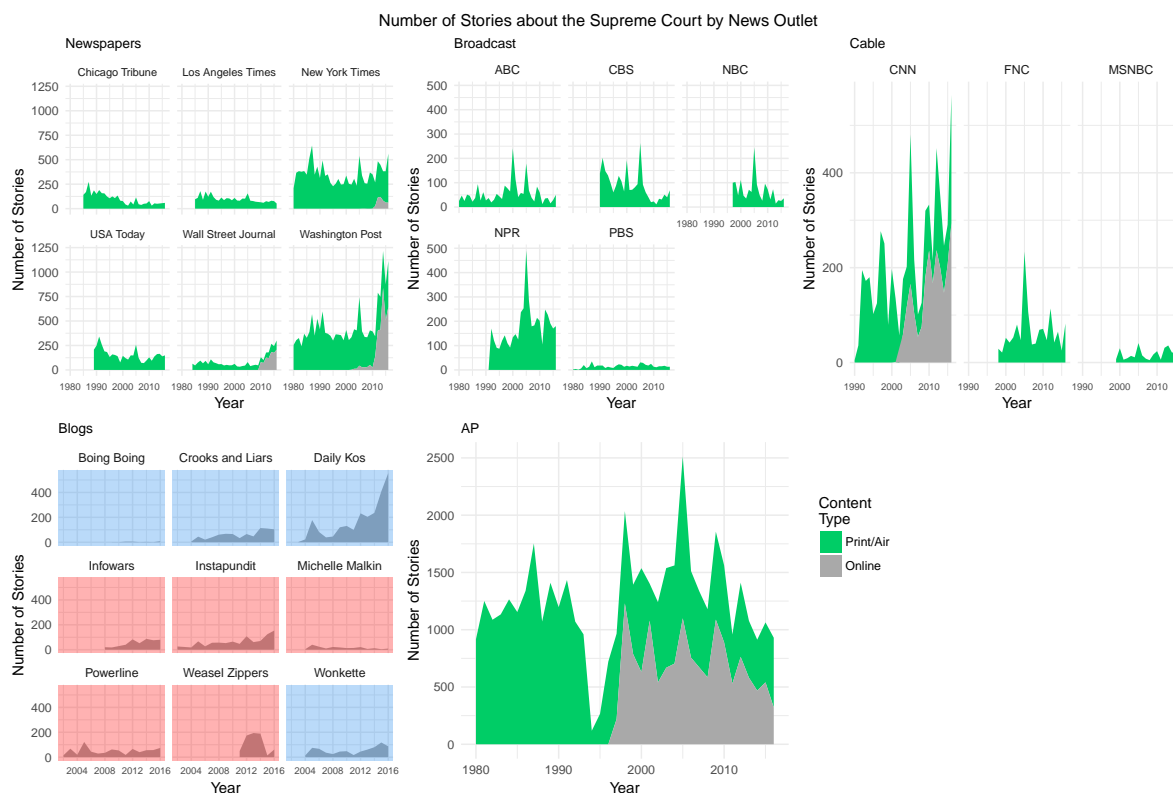


Figure 4.7: **Supreme Court coverage over time.** Stacked area charts showing the number of stories about the U.S. Supreme Court in each year, by news outlet. The gray areas represent print articles or television/radio transcripts. The green areas represent online articles posted on the source in question’s website. For blogs, the background of the chart is shaded blue if the blog is liberal and red if the blog is conservative. Note: scales of y-axes vary to maximize readability of individual graphs. The Associated Press provides the most coverage over time, followed by the *New York Times*, and *Washington Post*. Note: LexisNexis’s data is incomplete for the Associated Press in 1994.

4.3 Review of Hypotheses

I propose that modern sources of news, namely cable television and political blogs, will be more likely to discuss the Supreme Court in partisan and ideological contexts, as

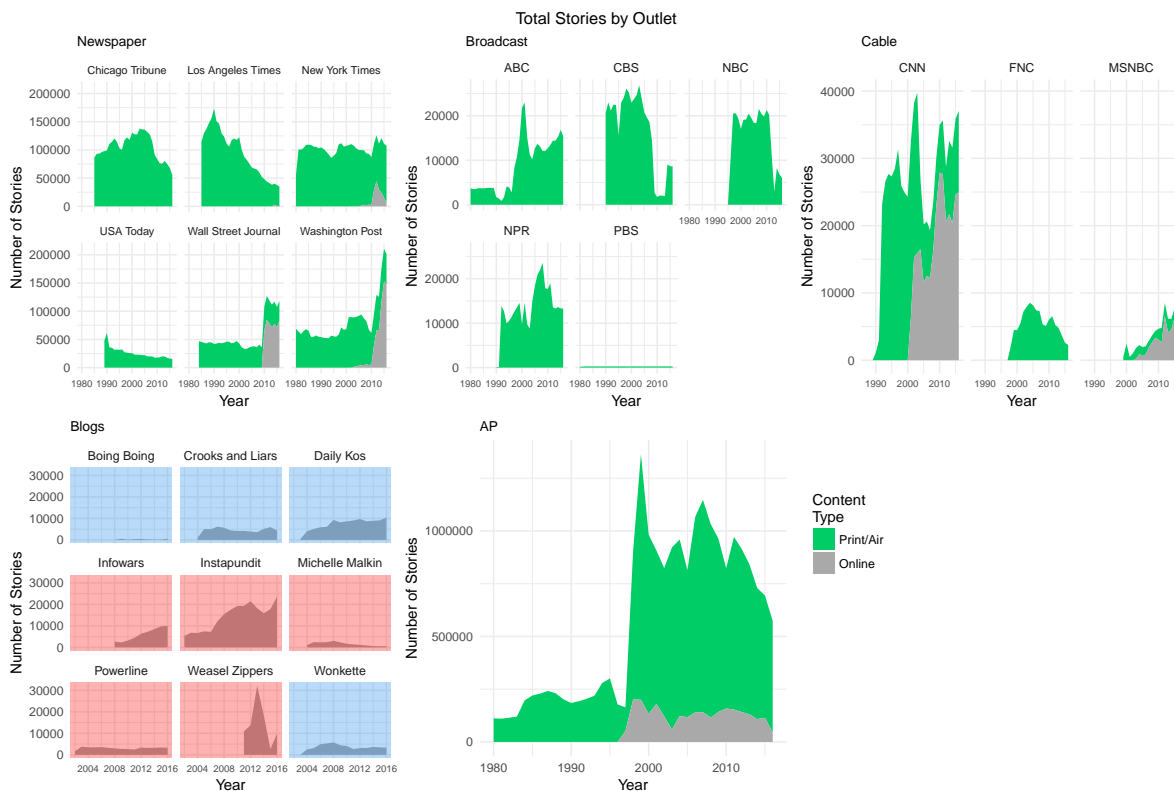


Figure 4.8: **Overall coverage over time (frequency)**. Stacked area charts showing the total number of stories in each year, by news outlet (all topics). The gray areas represent print articles or television/radio transcripts. The green areas represent online articles posted on the source in question’s website. For blogs, the background of the chart is shaded blue if the blog is liberal and red if the blog is conservative. Note: scales of y-axes vary to maximize readability of individual graphs. The Associated Press provides the most content over time, followed by newspapers. Broadcast news, cable news, and blogs vary in the amount of content they generate, but in general, the overall amount of content produced by these sources is much smaller than the amount supplied by the AP or newspapers. Independent blogs provide the smallest amount of content.

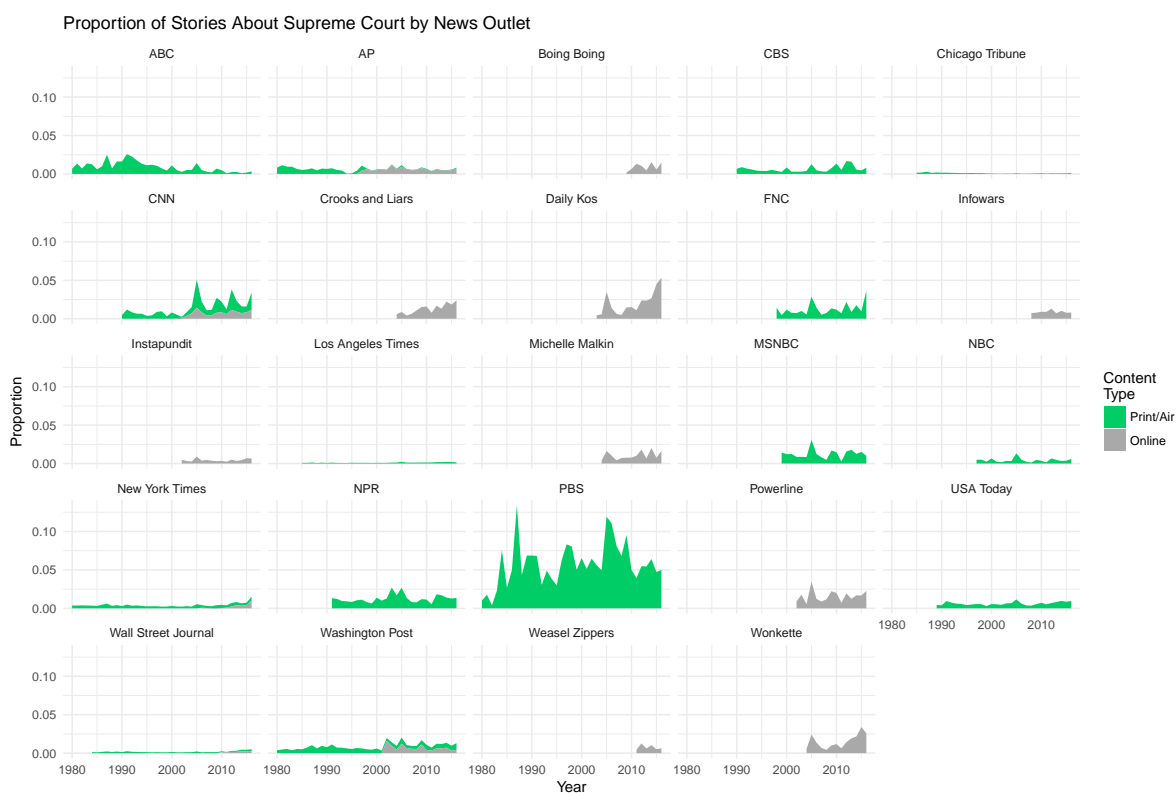


Figure 4.9: **Proportion of overall coverage over time.** Proportion of total content generated by each news source over time that is about the U.S. Supreme Court. In general, stories about the Supreme Court compose less than 2.5 percent of most outlets' coverage over time. One exception is PBS Newhour. Approximately 6 percent of Newhour's total coverage in each year addresses the Court, though the total amount of coverage it generates is comparatively very small, averaging 262 transcripts per year. Note: scales of y-axes vary to maximize readability of individual graphs.

well as alongside politicians, encouraging the perception that the justices are similar to congressmen and executive actors. In order to differentiate themselves and cater to their ideologically-specific audiences, cable channels and blogs will focus to a greater extent on partisan and ideological conflicts which will inspire strong emotions, and therefore capture the attention of, their segmented audiences.

H1: Modern news sources, namely cable television news and blogs, will cover politicized topics to a greater extent than will legacy news sources, specifically newspapers, wire services, and broadcast television news.

On the other hand, established news sources, specifically newspapers, wire services, and broadcast television channels, will instead be more likely to cover topics related to actual cases and controversies appealed to, currently before, or decided by the Court. These media must appeal to broader audiences than cable television and blogs, and they hold public education as a core value of their organizational missions. In so doing, these sources will increase knowledge of the Court's actual work.

H2: Legacy news sources will provide a greater amount of coverage of actual cases and controversies before the Court than will modern news sources.

Thus, cable television and online blogs will focus on different aspects of news about the Supreme Court than will traditional news outlets because both their audiences and mission differ. While cable and blogs are often explicitly partisan or ideological, with their on-air personalities or bloggers advancing a particular political agenda,

newspapers, broadcast television, and wire services aim to provide the information that the public needs to participate responsibly in American democracy. Therefore, modern news sources will find politically-charged topics to be the most newsworthy, while legacy news sources will find the Supreme Court’s actual work product to be significant in and of itself.

4.4 Methods

Structural Topic Model Estimation

I estimate Structural Topic Models to classify stories about the U.S. Supreme Court into topics. Topic models generally use only the list of words found in each document in a dataset to categorize the documents in an unsupervised fashion. However, the Structural Topic Model (Roberts et al. 2013) is a variation of standard topic models which incorporates metadata such as media outlet or ideological affiliation into the model itself. STM therefore allows researchers to include covariates of interest into their models, instead of classifying texts based on their vocabularies alone and then performing post-hoc analyses with covariates. In contrast to the most commonly used topic model, Latent Dirichlet Allocation, STM also uses metadata information to pool across parameter estimates, improving model performance (Roberts et al. 2013).

STM uses covariates to estimate two main quantities of interest: topic prevalence and topic content. Topic “prevalence” refers to how much of a document discusses a particular topic. Topic “content” refers to the specific words used to discuss a given topic. By incorporating metadata into the estimation of the model, STM allows one

Table 4.2: Structural Topic Models

Model	Documents	Terms	Tokens
Associated Press	43,879	2,711	7,014,301
Newspapers	46,107	3,218	9,452,613
Broadcast	10,818	3,794	2,830,803
Cable	7,396	5,475	3,641,630
Blogs	6,459	2,535	853,687

to directly calculate the effects of covariates on the frequency with which a topic is discussed and the specific language used to discuss it.

Due to computational limitations, I estimate a separate structural topic model for each of the five categories of news outlets.³ For comparability I estimate an STM with 66 topics for each news outlet type, specifying that topic prevalence varies by media outlet and year, and topic content varies by media outlet.⁴ For the wire service model, since the Associated Press is the only wire service in the sample, I do not include topic content parameters. I apply the same pre-processing steps to the documents used to estimate all models, including tokenizing, stemming, and removing numbers and punctuation. I remove any terms that only appear in one percent of documents in each of the five corpuses in order to limit vocabulary size and therefore computational requirements and model performance. Table 4.2 details the number of documents, terms (vocabulary size), and tokens in each of the five models.

³The large number of documents in the data set, the large number of estimated parameters, and the iterative nature of the estimation process are too memory-intensive to estimate a single model for all documents in R.

⁴There are not definitive guidelines for choosing the number of topics in a topic model (Grimmer and Stewart 2013). Therefore, I use the Spectral initialization (K=0) option of the STM package in R to estimate a reasonable number of topics for each of the five models without supervision. The number of topics for each model varies between 62 and 70. I then average the number of topics to produce 66 topics. I reestimate each model with 66 topics for comparability.

Table 4.3: Topic Classification Examples

Category	Topic Examples	Top Words
Case Coverage	pensions (<i>Newspapers</i>)	“pension, payment, employe, benefit, worker, reimburs, retir”
	executions (<i>Cable</i>)	“unconsci, drug, lethal, repriev, parol, chamber, petition”
	abortion (<i>Blogs</i>)	“clinic, abort, pregnanc, doctor, medic, women, reproduct”
	affirmative action in education (<i>Newspapers</i>)	“admiss, divers, campus, enrol, asian, racial, ethnic”
Politicized	congressional comments on Court decisions (<i>Blogs</i>)	“pelosi, nanci, boehner, bill, rep, lawmak, congress”
	Scalia vacancy and 2016 presidential primaries (<i>Cable</i>)	“rubio, berni, sander, marco, carson, caucus, cruz”
Nominations	Bork nomination (<i>AP</i>)	“senat, said, committe, nomin, sen, confirm, bork”
	O’Connor vacancy (<i>Cable</i>)	“alito, harriet, frist, mier, samuel, leahi, nomine”

Topic Categorization

I examine the top ten documents associated with each of the 66 topics in the five models and sort the topics into one of three categories. The three categories are “Politicized,” “Case Coverage,” and “Other.” Within the “Politicized” category, I include a sub-category: “Nominations.” Table 4.3 presents examples of topics sorted into these categories. In the second column of the table, the name of the corpus the topic appears in is italicized next to a description of what the topic is about. The top seven words associated with each topic appear in the third column. For example, a topic that I categorize as pertaining to case coverage is the “pensions” topic in the Newspapers corpus. The words most highly associated with the “pensions” topic are “pension, payment, employe, benefit, worker, reimburs,” and “retir.”

Topics in the “Politicized” category address the Supreme Court or its rulings

alongside other political institutions or actors, such as Congress, the president, political parties, or individual politicians. For example, the Blog corpus includes a topic discussing congressional leaders' reactions to or comments on cases or pending actions before the Court, such as Speaker John Boehner and Minority Leader Nancy Pelosi's comments on the Affordable Care Act and same-sex marriage cases, or Speaker Paul Ryan's comments on the possibility of scheduling a vote in the House of Representatives authorizing him to file a brief before the Court opposing President Obama's executive orders on immigration. Other common topics falling into the "Political Contexts" category include discussion of the Supreme Court in the context of elections, such as the importance of a certain candidate winning to appoint like-minded justices or to work in support of or against certain precedents, activities on the part of Department of Justice personnel before the Court, and the relationship between partisan politics or ideological movements and issues before the Court.

Nominations to the Supreme Court are a subset of the "Politicized" category. Supreme Court justices, or potential justices, must interact with politicians, specifically the president and the Senate, and explicitly explain their personal backgrounds and views during the nomination process. However, I separate topics addressing nominations from other coverage of political contexts because discussion of nominations is largely driven by the timing at which vacancies on the Court arise, which is episodic. For instance, six nominations occurred between 1986 and 1994, there were no nominations from 1995-2004, and then there were five nominations from 2005 to 2010.

The "Case Coverage" category comprises topics which address individual cases,

legal issues, or issue areas which may be appealed to the Court, are currently under consideration, or have been decided by the Court. For example, a broad topic addressing a legal issue area is the “copyright” topic of the Newspaper corpus (top words “copyright, song, film, music, artist, librari, movi”), which includes coverage of cases such as *Campbell v. Acuff-Rose Music* (1994), considering whether commercial parodies of copyrighted material qualify as fair use, *Eldred v. Ashcroft* (2003), upholding the constitutionality of the 1998 Sony Bono Copyright Term Extension Act, *MGM Studios v. Grokster* (2005), establishing copyright infringement liability for file-sharing services, and *Authors Guild v. Google* (2016), an appeal declined by the Court in 2016 alleging that Google’s mass digitization of books violated copyright. Some cases garner enough attention that they constitute their own topic, such as *National Federation of Independent Business v. Sebelius* (2012), the Affordable Care Act ruling, which appears as its own topic in each of the five source type corpora.

I divide topics related to cases into three sub-categories: “Economic,” “Criminal,” and “Rights.” Case topics falling into the “Economic” sub-category addresses the U.S. Supreme Court Database’s issue areas of unions, economic activity, interstate relations, and federal taxation. “Criminal” topics include criminal procedure, due process, and judicial power. “Rights” topics include civil rights, first amendment, and privacy issues.

4.4.1 Results

Figure 4.10 illustrates the proportion of each text corpus (AP, Newspapers, Broadcast, Cable, and Blogs) consisting of politicized topics over time, and Figure 4.11 shows the proportion of each corpus comprised of case coverage. Topic models assume that each document in a corpus is a mixture of topics, producing an estimate of the proportion of each document which pertains to each topic. Therefore, after assigning each topic to a category, I sum the document-proportion by year that falls into each category.

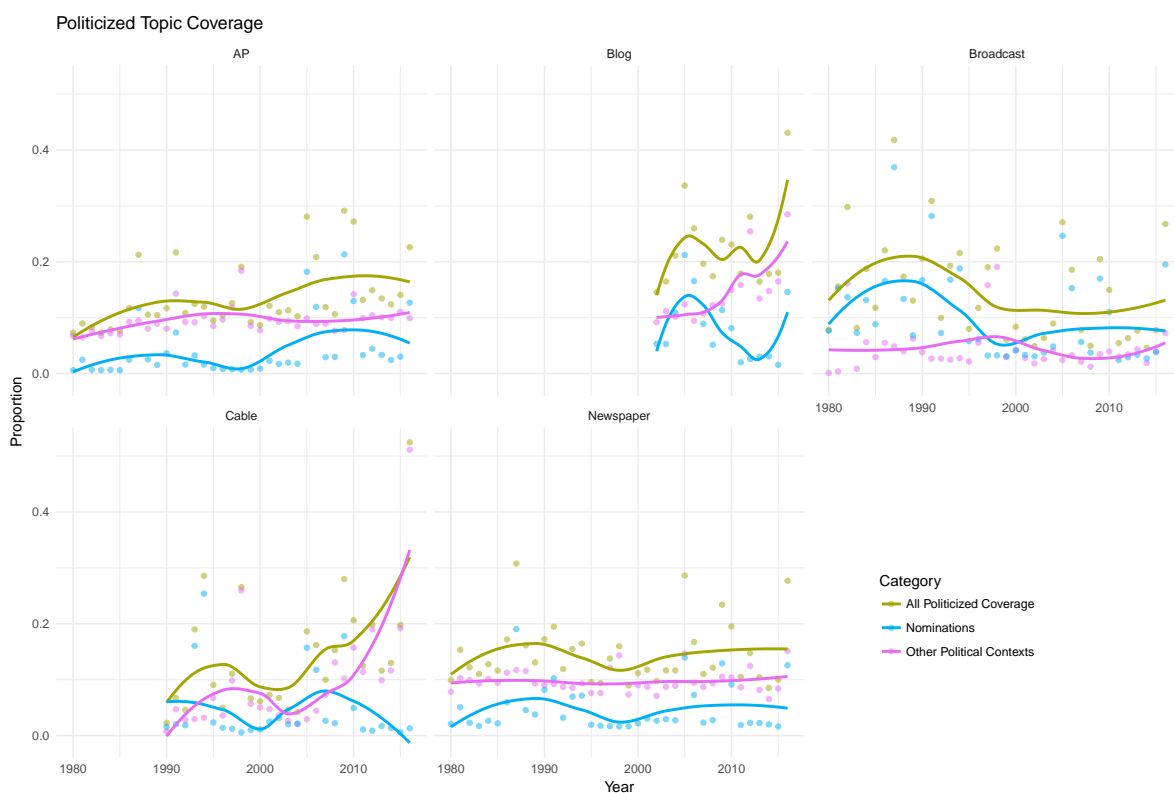


Figure 4.10: Proportion of each text corpus composed of politicized topics over time. Data points are smoothed using loess regression. The yellow line represents the proportion of the corpus consisting of any politicized topics in a given year. The blue line illustrates the proportion composed of topics related to nominations. The pink line displays the proportion of politicized topics which are not related to nominations: topics like the impact of elections on the Supreme Court or comments by politicians on the Court.

Politicized coverage, including nominations to the Court, varies between the five types of news sources. The proportion of the Cable and Blog corpora composed of politicized topics (including nominations) is on the rise, reaching over a third of the total coverage in 2016. Both Cable and Blog sources have devoted more and more coverage to political contexts and nominations since the early 2000s. Among the AP, Newspapers, and Broadcast outlets, discussion of politicized topics has varied, but has remained near 10 to 20 percent of the corpus in each year. Most of the increase in coverage of politically-focused subjects among Cable channels and Blogs is due to increasing coverage of political contexts, separate from nominations. Excluding nominations, coverage of other Political Contexts has still been rising since the early 2000s, most dramatically among Cable networks. Furthermore, excluding coverage of nominations, trends in coverage of Political Contexts among the AP, Newspapers, and Broadcast sources are very flat and stable over time.

Discussion of Nominations peaks at two points in time, mirroring patterns of vacancies and nominations. First, the AP, Newspapers, and Broadcast outlets show spikes in coverage of varying magnitudes during the mid-1980s to early 1990s. That coverage is highest in the Broadcast corpus comports with previous findings that broadcast television is especially prone to discuss events for which they can show visuals (Davis 1994), and confirmation hearings provide a rare chance to secure video of potential Supreme Court justices. During the period from 1986-1991, six justices were nominated to the Court. William Rehnquist was elevated to Chief Justice and Antonin Scalia was nominated to replace him in 1986. Both Robert Bork and Douglas Ginsburg were infamously nominated but not confirmed in 1987; Anthony Kennedy

was eventually confirmed to that vacancy in the same year. David Souter was nominated and confirmed in 1990, and Clarence Thomas in 1991; again in controversial fashion. Between Stephen Breyer's nomination in 1994 and 2005, the Court experienced one of its longest periods of membership stability in history, as no vacancies arose. Accordingly, another modest peak in coverage of nominations occurred around 2005, a year in which three people were nominated to succeed Sandra Day O'Connor - John Roberts, who was subsequently elevated to succeed Rehnquist following the Chief's death, Harriet Miers, who withdrew, and Samuel Alito, who was eventually confirmed successfully. Notably, the peak in coverage among Blogs is much more pronounced, which makes sense given conservative bloggers' intense interest in the ideological bona fides of Roberts, Alito, and Miers. Indeed, backlash from conservative bloggers was one of the main reasons Miers was forced to withdraw her name from consideration (Morrissey 2005, Shapiro 2005).

On the other hand, Figure 4.11 shows that while there has been some decline in AP and Broadcast coverage of case/issue-related topics, discussion of cases and legal issues before the Court comprises the majority of the Newspaper, AP, and Broadcast corpora over time. In contrast, in the Cable and Blog corpora, topics concerning the Court's work product have declined to composing about 40 percent of stories about the Court in 2016. The proportion of case-related topics in the Blog corpus has fluctuated around 40 percent, while the same proportion in the Cable corpus declined by approximately 20 points between 1990 and 2016.

Within the sub-categories of "Economic," "Criminal," and "Rights" cases, coverage of economic and criminal topics is consistently low among Cable and Blogs.

Civil rights, First Amendment, and Privacy cases compose the majority of the case-related coverage by Cable and Blogs. The same is true for Broadcast sources. Although “Rights” cases appear to compose a greater proportion of the AP and Newspaper corpora over time, as well, there is more parity between Rights cases and Economic/Criminal cases in these sources.

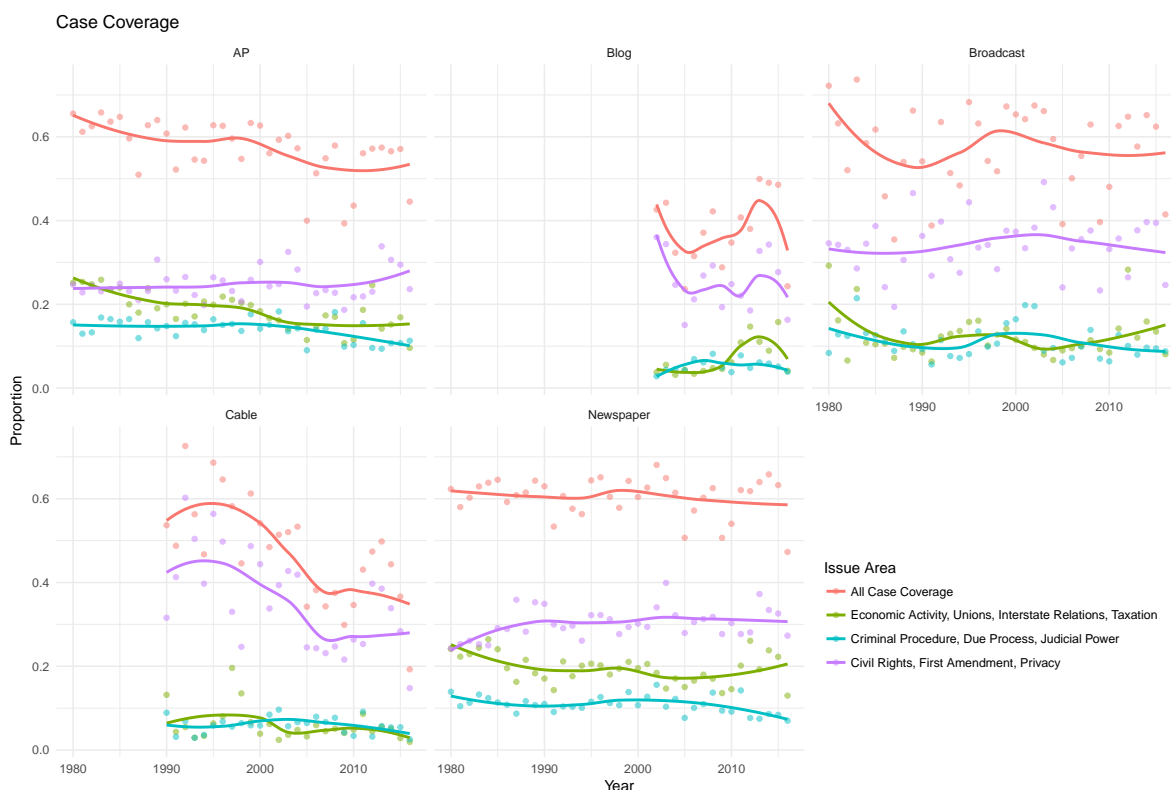


Figure 4.11: Proportion of each text corpus composed of case coverage over time. Data points are smoothed using loess regression. The red line represents the proportion of the corpus consisting of any case coverage in a given year. The green line illustrates the proportion composed of topics related to economic activity, unions, interstate relations, and federal taxation. The blue line displays the proportion composed of topics related to cases involving criminal procedure, due process, and judicial power. The purple line shows the proportion of topics addressing civil rights, first amendment, and privacy cases.

Figures 4.10 and 4.11 show that still further variation in coverage of both politicized topics and cases exists within each type of news source. Figure 3 details the

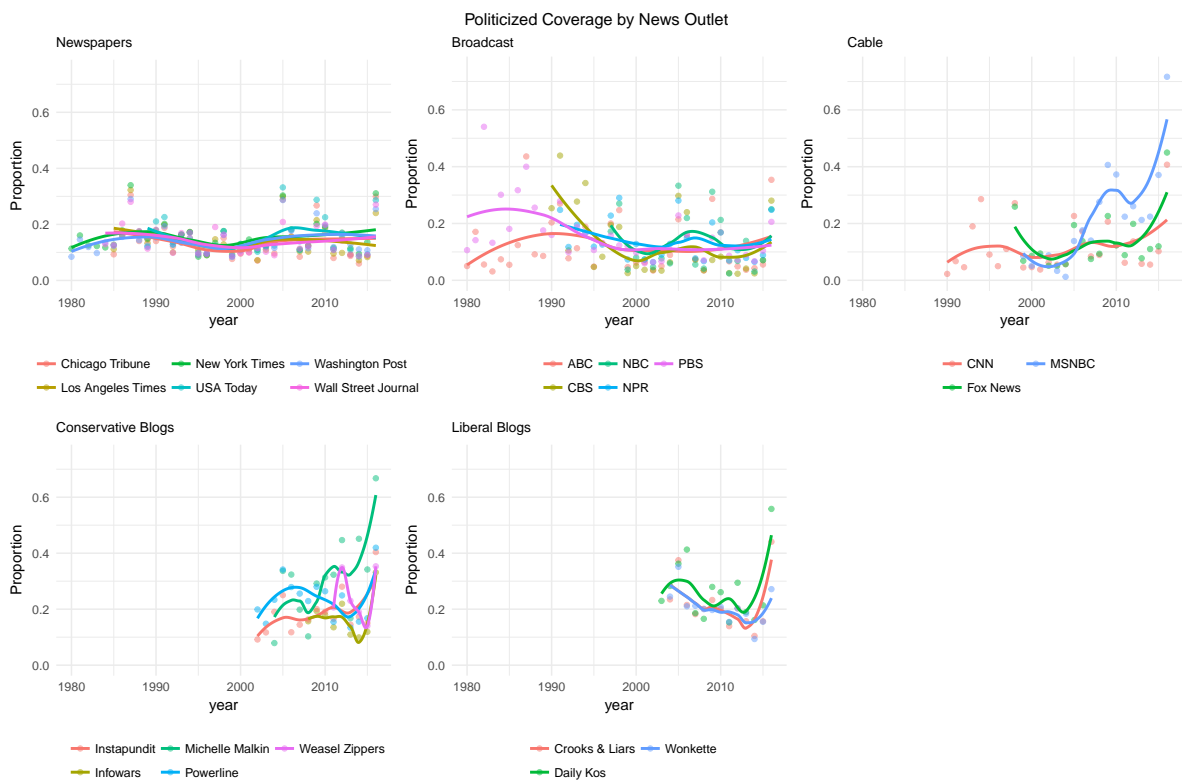


Figure 4.12: Proportion of documents from each individual news outlet addressing politicized topics. Data points are smoothed using loess regression.

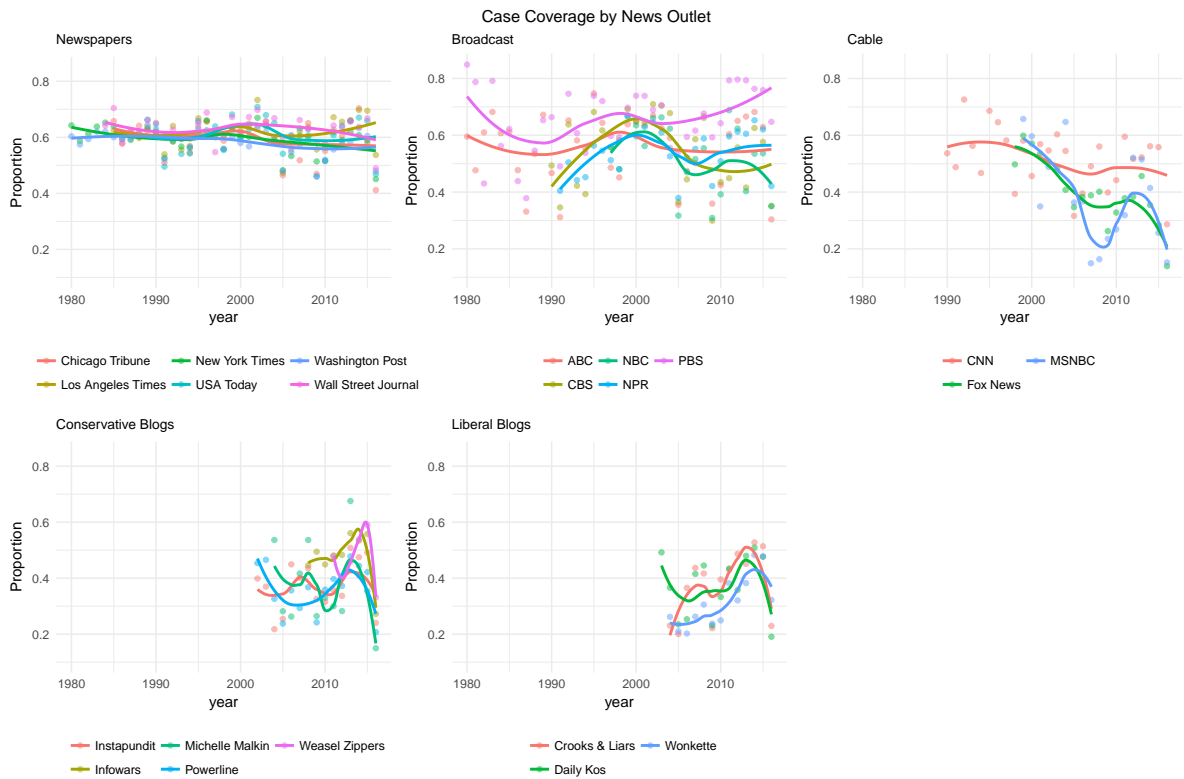


Figure 4.13: Proportion of documents from each individual news outlet addressing cases. Data points are smoothed using loess regression.

proportion of articles or transcripts from each individual news source which address politicized topics. For Cable television, all three major channels have increased coverage of political contexts dramatically since the early 2000s, but MSNBC has seen the steepest rise, moving from a low of about 5 percent in 2003 to over 60 percent of all coverage in 2016, dwarfing the high points of CNN and Fox News of approximately 40 percent in 2016.

In contrast, readers of any of the six newspapers included in the dataset (the *Chicago Tribune*, the *Los Angeles Times*, the *New York Times*, *USA Today*, the *Wall Street Journal*, and the *Washington Post*) were exposed to very similar, low levels of coverage of political contexts consistently over time. From 1980 to 2016, levels of coverage of political context remained around 10 percent across all newspapers. The proportion of coverage of political contexts in Associated Press reports also remained stable at around 10-20 percent over the same period.

Among Blogs, we observe similar increasing trends in coverage of Political Contexts among liberal outlets (Crooks and Liars, Daily Kos, and Wonkette), with the largest rate of increase occurring in the last five years. Such coverage is also increasing among conservative outlets (Infowars, Instapundit, Michelle Malkin, Powerline, and Weasel Zippers), but the increase is much steeper for Michelle Malkin than other conservative blogs, and coverage fluctuates to a greater degree in Infowars and Weasel Zippers. Therefore, while blog readers' exposure to Political Contexts has increased over time regardless of the ideological slant of their preferred blog, certain blogs do discuss such topics to a greater degree.

Figure 4.13 presents similar patterns in coverage of specific cases and issues among

individual news outlets. Cable television channels again show the greatest disparities, with CNN providing the most case-oriented coverage over time. While such coverage has slightly declined at CNN, Fox News and MSNBC's attention to the Court's substantive work sharply decreased from approximately 60 percent of all coverage in the late 1990s to 20 percent in 2016 (with some fluctuations).

Newspapers once more address specific cases and legal issues at high, stable rates, regardless of the individual paper in question. Such coverage in the Associated Press has slightly declined, but still remains at about 60 percent of all coverage.

Again, liberal Blogs display similar levels of coverage of cases and issues over time, especially after 2005. While coverage of these subjects increased from 2005 to 2013, we observe an abrupt drop off after 2013. Trends among conservative Blogs are less consistent. While we observe a similar steep decline after 2013 in conservative coverage of specific cases and issues, levels of coverage in the preceding decade vary, with blogs such as Infowars and Powerline paying more attention to cases and issues and blogs like Instapundit discussing these topics to a lesser extent. However, case/issue-related coverage fluctuates in all five conservative blogs. Thus, while liberal blog readers appear to have received similar levels of exposure to case/issue-related topics over time, conservatives' exposure at various points in time depended to a greater degree on the individual blog they preferred.

4.5 Discussion

Overall, my findings show that modern news sources, cable channels and blogs, have covered the Supreme Court in the context of politics to an increasing extent over time, especially since the early 2000s. At the same time, coverage of actual cases and controversies before the Court has been declining in cable and blogs. Notably, in 2016, coverage of political contexts reached parity with case and issue-related coverage on cable television. In contrast, the majority of coverage of the Supreme Court among newspapers, the AP, and broadcast networks focuses on the Court's substantive work. Coverage of the Court alongside political actors is consistently low among these traditional sources. Therefore, Cable and Blogs are increasingly more likely to depict the Court as similar to politicians, undermining Gibson and Caldeira (2011)'s critical criterion which requires individuals to believe that the Court is "above politics" in order to grant it legitimacy. Furthermore, as Cable and Blogs discuss Court cases and legal issues to a lesser extent, individuals who consume these news sources may know less about the Court, making it less likely that they will believe that the Court exercises "principled discretion." As newer media sources rise in popularity, these trends may undermine both support for the Court and its legitimacy as an institution.

Chapter 5

Tone of Coverage

5.1 Introduction

As the previous chapter established, the content of media coverage of the Supreme Court varies by news outlet and has changed over time. In this chapter, I demonstrate how the style of media coverage of the Court also differs by medium and over time. In addition to simply what information is conveyed, how that information is communicated has important consequences (Berry and Sobieraj 2014, Edelman 1985, Hart, Childers and Lind 2013, Hart et al. 2004, Iyengar and Kinder 1987). I examine three aspects of the style of media coverage of the Supreme Court. First, I assess whether news stories are opinionated or neutral. Given that most Americans know little about the Court, and that its operations are often obscured by legal jargon and procedure, the general public is at an information disadvantage when it comes to learning about the Court. Laypeople are almost entirely dependent on what the news media tells them about the Court unless they want to undertake the time-intensive

endeavor of reading the Court's opinions and briefs themselves. Thus, whether a news source presents value judgments about whether actions of the Court are good or bad may be very influential in shaping their audiences' own views of the Court, especially if the audience trusts the news outlet and shares its general outlook on politics. Second, since existing research in judicial politics has found that an impartial view of the Court is essential to belief in the Court's legitimacy, I consider whether news media use particular word choice to politicize their coverage, which may create the impression that the Court favors or is biased against a particular party or ideological perspective, undermining its legitimacy. Furthermore, incivility in communication has been shown to decrease respect for opposing viewpoints and trust in political actors and processes, while at the same time engaging audiences to a greater degree, increasing their ability to recall information and their desire to spread the information to others (Mutz 2015). In the case of the Supreme Court specifically, scholars have posited that strongly expressed assertions about the alleged biases of the Court may be more damaging to its legitimacy than otherwise emotionally-neutral observations that the justices' personal views may play a role in their decision making (Gibson and Nelson 2017). Thus, I also consider the extent to which news sources dramatize discussions of the Supreme Court.

I use machine learning techniques to classify a large number of newspaper articles and blog posts about the U.S. Supreme Court according to whether they express opinions, are politicized, and are dramatized. Machine learning methods allow researchers to label a subset of their full data according to categories of interest, train a classification model to infer which features of the labeled subset are associated with

each class, assess the classification accuracy, and then apply the classifier to unlabeled data. The advantage of this technique is that it allows for the timely classification of a much larger number of data points than would be possible without using computer-assisted techniques. Machine learning can be especially useful when a pre-labeled dictionary, or list of words associated with particular classes, is not available. Creating a comprehensive new dictionary is time-intensive, and dictionaries created for other domains are often of limited use to applications outside of the domain they were created for due to domain-specific meanings of certain words. For example, if a researcher is interested in the positive or negative tone of text in the legal domain, a dictionary created for general purposes would likely label “murder” as negative, even though in the legal context it is a criminal charge that is included with the facts of a case, not necessarily a rhetorical device used by an author to convey a negative tone.

5.2 Review of Hypotheses

Newspapers as organizations generally target broad audiences. Economically, it is not in their interest to offend readers, as they still depend to some extent on subscriptions. For newspapers that are now publicly-traded companies or part of larger corporations, they cannot upset stockholders and corporate executives. Newspapers aim to report in the public interest, providing people with the information that they need to be responsible citizens. Thus, at an organizational level, newspapers are motivated to provide neutral, inclusive, and factually-accurate accounts of the news. At the individual level, newspaper reporters are trained to adhere to certain professional

standards, which the organization enforces on them through the supervision of editors. Newspaper reporters are trained not to give their own opinions in news stories, but to strive for objectivity and inform their audiences of multiple viewpoints on an issue, not just the ones they personally favor. Although newspaper columnists and editorial writers can express their opinions, they are still subject to the oversight of editors and cannot violate professional norms and standards such as those forbidding profanity or libel.

Blogs, on the other hand, are subject to very little oversight at the organizational or individual level. Political bloggers are not trained journalists, and there is no code of professional conduct for bloggers. Many bloggers operate independently and are not subject to editorial review by anyone else. Where newspapers want to avoid controversy, blogs want to attract it, as the goal of a blog is generally to maximize post views in order to earn as much advertising revenue as possible. Blogs can attract attention by sensationalizing content, and can interest their specific core partisan or ideological audience by providing politicized opinions about the news of the day.

Therefore, while newspaper staff are largely forbidden from expressing their opinions, providing a certain perspective is arguably the point of a blog. Similarly, for political blogs specifically, their goal is to attract adherents to a certain political viewpoint. Politicizing content by emphasizing the conflict between their views and the opposing views can be a helpful device in attracting partisan readers. Blogs also have more leeway to dramatize content to a greater extent, as they are not subject to professional standards that might prevent a newspaper reporter from exaggerating, insulting the subject of a news story, or using profanity.

Thus, I test the following hypotheses:

1. Blogs posts will express opinions more frequently than will newspaper articles.
2. Blog posts will politicize the subjects or issues discussed more frequently than will newspaper articles.
3. Blog posts will dramatize the subjects or issues discussed more frequently than will newspaper articles.

5.3 Classification Using Naive Bayes

5.3.1 Naive Bayes Algorithms

I classify newspaper articles and blog posts about the Supreme Court according to whether they express opinion, are politicized, and are dramatized using a Naive Bayes classifier (Maron and Kuhns 1960). Naive Bayes algorithms are a family of classifiers based on Bayes' Rule which are "naive" because they employ the simplifying assumption of conditional independence that the probability of a feature occurring in a given class is independent of the probability of any other feature also appearing in that class.¹ The performance of Naive Bayes classifiers has been found to be relatively robust to the violation of this assumption (Manning, Raghavan and Schutze 2008). Naive Bayes classifiers use the common "bag of words" representation of text, which assumes that a document is represented by counts of the words appearing in

¹For example, when modeling textual data, Naive Bayes assumes that the probability of the word "supreme" appearing in a given class is independent of the probability of "court" appearing in that class, despite the fact that these two words often appear together.

it. A researcher trains a model based on which words appear in documents labeled as belonging to each class. For an unlabeled document, the model produces posterior probabilities that the document belongs to each class based on the prior probability that it belongs to each class, updated by the likelihood of the document given the class. The likelihood of the document given the class is the product of the individual likelihoods of each word belonging to a given class.

Therefore, using Bayes' Rule,

$$P(c|d) = \frac{P(d|c)P(c)}{P(d)} \quad (5.1)$$

Furthermore,

$$P(d|c) = \prod P(w_i|c) \quad (5.2)$$

$P(c|d)$ is the posterior probability of a document (d) belonging to a class (c). $P(c)$ is the prior class probability. $P(d|c)$ is the empirical likelihood of the document given the class, which is the product of the individual probabilities of each word, w_i , given the class. These individual word probabilities are calculated using the number of times word w_i appears in documents of class c , divided by the total count of all words appearing in class c (Jurafsky and Martin 2018).

Since $P(d|c)$ is a product, it will be zero if there are any words which never appear in a given class. Naive Bayes therefore uses Laplace, or “add one” smoothing to add one to each word count. The model then applies a decision rule which assigns each document to the class with the highest posterior probability.

The specific algorithm used in my analysis is multinomial Naive Bayes. Multinomial Naive Bayes models each document as composed of words drawn from a multinomial distribution. Each document is represented by a vector of word frequencies. Multinomial Naive Bayes performs better on longer documents, like newspaper articles, than do other specifications of Naive Bayes (McCallum and Nigam 1998). I use uniform priors, meaning that I assume that a given document has an equal probability of belonging to each class. Using document-frequency priors, or assuming that the prior probability that a given document belongs to a given class depends on the prevalence of that document class in the training set, does not change my results. Naive Bayes algorithms have been shown across applications in computer science and computational linguistics to model text well in comparison to other popular classification algorithms, in addition to performing well on small training sets (Jurafsky and Martin 2018, Ng and Jordan 2002). I estimate three classifiers, using the same assumptions and modeling procedures for all three.

5.3.2 Training and Test Sets

I begin with a set of 50,705 newspaper articles and blog posts about the Supreme Court published from 1980 to 2016.² I selected a random sample of newspaper articles and a random sample of blog posts to label as opinionated/not opinionated, politicized/not politicized, and dramatized/not dramatized. I labeled 1,505 newspaper articles (approximately 3 percent of all newspaper articles) and 724 blog posts (about 10 percent of all blog posts) for a total of 2,229 labeled documents (approx-

²Data collection procedures are outlined in the previous chapter.

mately 4 percent of the total number of documents). I applied standard preprocessing steps for textual data to the text of each article and blog post: converting all words to lowercase, removing punctuation, numbers, and stop words, stemming words, and converting documents to “bag of words” document-feature matrix (Grimmer and Stewart 2013). After preprocessing, each document is represented in the document-feature matrix by a count of the number of times each word in the corpus appears in the document.

5.3.3 Cross Validation and Prediction

I use stratified 10-fold cross validation to estimate the performance of each of my three models (opinion, politicized, dramatized). 10-fold cross validation divides the labeled data into 10 parts. For each iteration, nine parts are used to train the model and one part is used to test its performance (Jurafsky and Martin 2018). The advantage of using K-fold cross validation is that all labeled observations are used to train and to test a given model, which can be important when the amount of labeled data is small (Hastie, Tibshirani and Friedman 2009). Stratified cross-validation ensures balanced representation of classes the the training and test sets by grouping the labeled data into folds, or partitions, such that each fold includes roughly the same number of observations belonging to each class. I average the performance measures from the 10 iterations to provide a measure of overall performance.

After performing cross-validation, I use the full set of labeled data to train the final Naive Bayes classifier. I use this model to classify the unlabeled data, which

consists of 48,476 documents.

5.3.4 Robustness: Other Specifications

I also ran models using common alternate specifications of the Naive Bayes algorithm (Bernoulli, binary multinomial) as well as using term frequency-inverse document frequency weighting, bigrams, trigrams, and a part-of-speech tagged corpus. None of these methods outperformed multinomial Naive Bayes.

5.4 Models

5.4.1 Opinion

I label stories as not expressing, or expressing, an opinion. A story expresses an opinion when it takes an explicit stance on an issue or makes an argument about whether a development is good or bad, positive or negative, or right or wrong. Opinionated news articles consist of the author's or speaker's value judgments about, and normative evaluations of, the subject of the story. For example, in Figure 5.1, headlines like "Too Far Too Fast on Abortion," "USA can't absorb refugees," and "Don't reward a party's bad behavior" take clear stands. Other headlines indicate disagreement by using words implying a normative evaluation, such as "unbelievable" "lawless," and "dangerous." Authors can also be very direct in their evaluations, using phrases like "THIS HAS TO BE WRONG:," "the right...decision for the wrong...reason," and "GOOD:." The use of the first person also clearly indicates opinion, as is the case in

the headline opening with “I Am Mad.”

Headline	Source
"Too Far Too Fast on Abortion"	Chicago Tribune, Jul. 26, 1985
"USA can't absorb refugees"	USA Today, Jun. 22, 1993
"Unbelievable Roberts Court Ruling On Evidence In Illegal Searches"	Crooks and Liars, Jan. 17, 2009
"A lawless president looks for a lawless Supreme Court Justice"	Powerline, May 1, 2009
"The Dangerous Supreme Court"	Infowars, Dec. 23, 2011
"THIS HAS TO BE WRONG: The Same SCOTUS that Upheld ObamaCare May Make it Harder to Sell Your Old Corolla"	Instapundit, Oct. 10, 2012
"Free-Speech 'Buffer' Rebuffed; The right Supreme Court decision for the wrong legal reason"	Wall Street Journal, Jun. 27, 2014
"I Am Mad About A Thing: Go Big For The Ladies, Democrats, Or GTF0"	Wonkette, Jul. 9, 2014
"GOOD: GOP Judiciary: No hearing on Obama court nominee."	Instapundit, Feb. 2, 2016
"Don't reward a party's bad behavior"	Washington Post, Feb. 27, 2016

Figure 5.1: Examples of Opinionated Headlines

Table 5.1 summarizes the performance of the opinionated classifier. The opinionated classifier achieves 84 percent accuracy ($p < 0.00$). Accuracy gives the proportion of correctly-classified documents according to the human-defined labels

$\left(\frac{\text{true positives} + \text{true negatives}}{\text{true positives} + \text{false positives} + \text{true negatives} + \text{false negatives}}\right)$. Kappa provides an adjusted measure of accuracy, taking into account the expected accuracy of a random classifier based on the number of observations of each class in the training data,

$\left(\frac{\text{observed agreement} - \text{expected agreement}}{1 - \text{expected agreement}}\right)$. For example, if 90 percent of the training set consisted of Class A, a classifier could randomly assign the Class A label to 90 percent

of observations in the test set and achieve 90 percent accuracy. Kappa thus takes into account the expected performance of a classifier based on random chance alone.

Although scholars differ on the interpretation of Kappa, Landis and Koch (1977)

consider a Kappa of 0.64 to be within the “substantial” range of 0.61 to 0.8. Precision measures the proportion of documents correctly predicted to be positive (in the opinion class)

$\left(\frac{\text{true positives}}{\text{true positives} + \text{false positives}}\right)$, which is 0.87 for this model. Recall measures

the proportion of documents classified as positive, or in the opinion class, which are

Table 5.1: Opinionated Classifier Performance Statistics

Statistic	Value
Accuracy	0.84
Kappa	0.64
Precision	0.87
Recall	0.82
F_1	0.84

actually positive ($\frac{\text{true positives}}{\text{true positives} + \text{false negatives}}$), which is 0.82 for this model. F_1 is the harmonic mean of precision and recall, and is 0.84 for this model ($\frac{2PR}{P+R}$).

Figure 5.2 shows the 50 words with the highest posterior probabilities of belonging to the opinion class among the 1000 most frequent words in the corpus. I consider only the 1000 most frequent words in the corpus to exclude words which only appear a small number of times and therefore may have a high posterior probability of appearing in a given class because they only appear in one or two documents which happen to be in that class. As Figure 5.1 demonstrates, a number of words with high probabilities of appearing in documents classified as opinionated convey judgments, such as “bad”, “better”, “true”, “great”, and “wrong”, or feelings, such as “love”, or “danger”, in line with my definition of a story expressing an opinion.

Figure 5.3 displays the proportion of stories classified as opinionated for blogs versus newspapers over time. Table 5.2 gives the results of three regressions. Model 1 is a simple bivariate model regressing the type of news source (blog or newspaper) on the proportion of stories classified as opinionated. Model 2 interacts the type of news source with year. Model 3 restricts the interaction to years in which blogs and newspapers are both in the sample (2002 to 2016). As Model 1 shows, without considering the effect of time, newspaper articles are 59 percent less likely to be

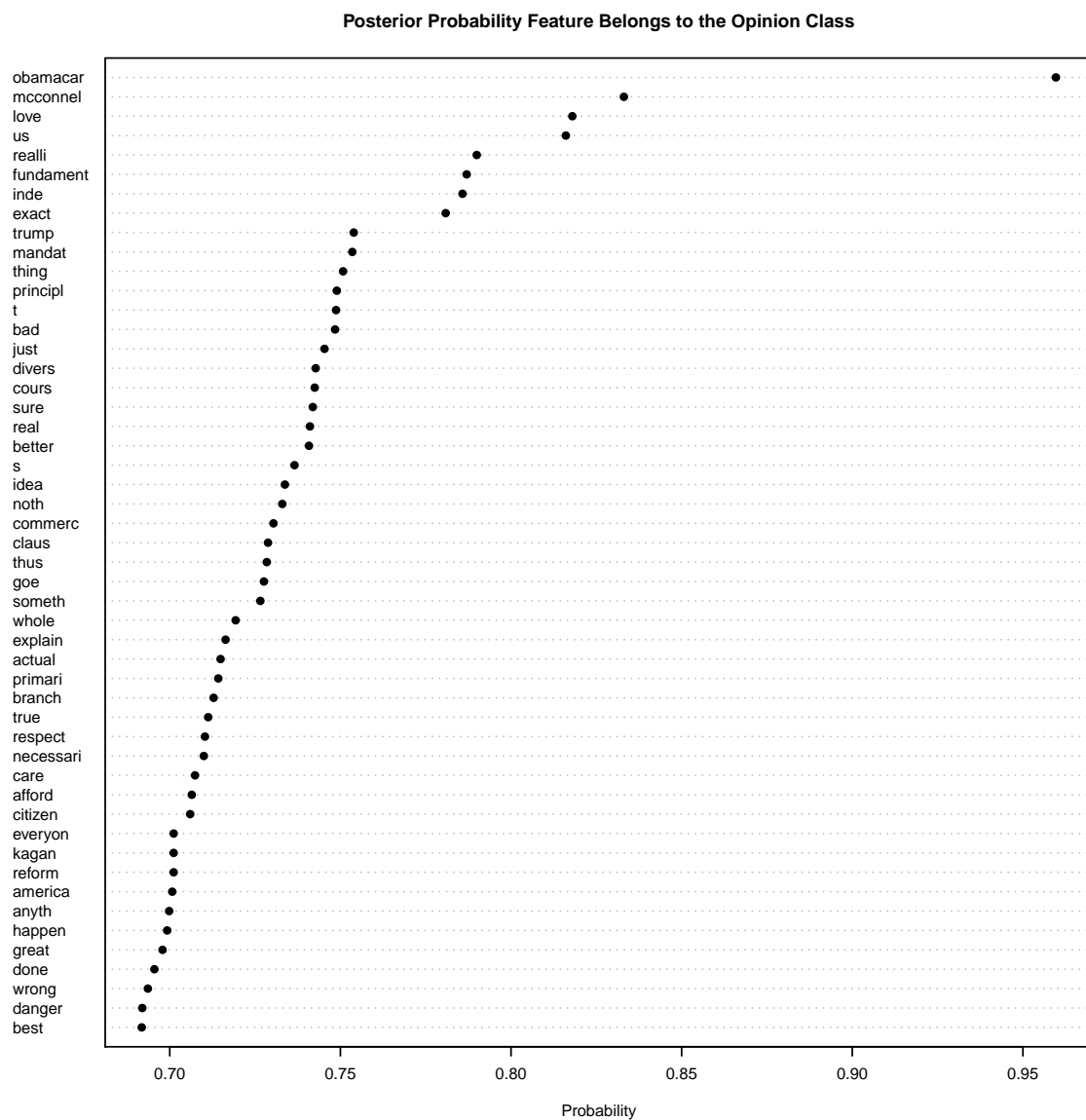


Figure 5.2: **Highest posterior probability words for the opinionated class.** Within the top 1000 most common words in the corpus. Words are stemmed.

opinionated than are blog posts. Model 3 shows that in 2002 (year 0 in this model), newspaper articles are 64 percent less likely to be opinionated than are blog posts. The effect of source type on proportion of opinionated stories is statistically significant across the three models. Models 2 and 3 show that the effect of time on proportion of opinionated stories increases by 0.01 to 0.02 each year for newspapers.

Table 5.2: Regression Results

	Proportion Opinionated		
	(1)	(2)	(3)
Year		-0.003 (0.003)	-0.003 (0.003)
Newspaper	-0.586*** (0.023)	-0.794*** (0.090)	-0.639*** (0.033)
Year x Newspaper		0.010*** (0.003)	0.018*** (0.004)
Constant	0.812*** (0.020)	0.907*** (0.089)	0.835*** (0.024)
N	52	52	30
R ²	0.927	0.969	0.971
Adjusted R ²	0.925	0.967	0.968
Residual Std. Error	0.076 (df = 50)	0.051 (df = 48)	0.048 (df = 26)

*p < .1; **p < .05; ***p < .01

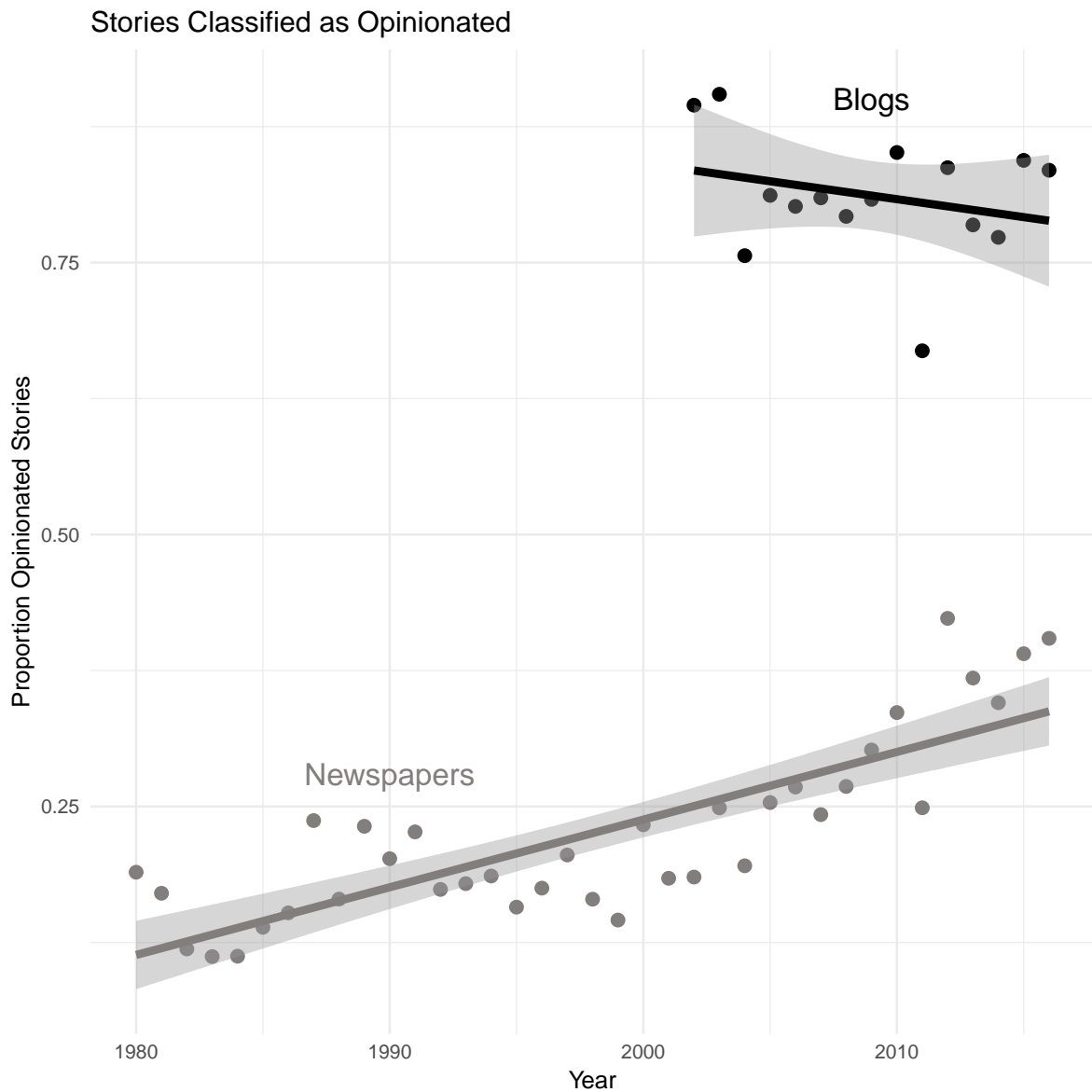


Figure 5.3: **Proportion of opinionated stories over time.** The dark gray dots represent the proportion of newspaper articles classified as opinionated in each year. The black dots show the proportion of blog posts classified as opinionated in each year. The lines illustrate the effect of year on proportion of opinionated stories for blogs (black line) and newspapers (dark gray line). The light gray regions are 95 percent confidence intervals.

5.4.2 Politicization

I label stories as not politicized or politicized. Politicized stories invoke or discuss partisan or ideological divisions as related to the central issue, including substantive references to right versus left, Democrats versus Republicans, liberal versus conservatives, or phrases like the “liberal stance” or the “Republican position.” Politicized stories often identify a party or ideology with a specific point of view, such as in the headlines “Republicans cheer Supreme Court decision on recess appointments,” “Supreme Court Rules In Favor Of Hobby Lobby! Update: Libs Hyperventilating,” and “Supreme Court upholds Obamacare subsidies: GOP sobs” in Figure 5.4. Politicized stories may defend or attack political or ideological groups, showing solidarity with or criticizing the groups, as in the headlines “How low will the Democrats sink?,” “Republican Smear Jobs,” and “Dem supporters of Constitution-skirting president accuse GOPers of skirting Constitution.” Such stories may also portray members of a particular party or adherents to an ideology as acting in a bloc, as in “Court’s Conservatives Make Presence Felt; Reagan Appointees Lead Move Rightward” or “Liberal unity, conservative disarray led court to the left,” creating the impression that individuals’ behavior is motivated by partisan or ideological group membership.

Headline	Source
"Court's Conservatives Make Presence Felt; Reagan Appointees Lead Move Rightward"	Washington Post, Jul. 2, 1995
"How low will the Senate Democrats sink?"	Powerline, Feb. 24, 2005
"Democrats Urge Strategic 'No' Votes on Alito"	New York Times, Jan. 19, 2006
"Democrats Lose Texas Case"	Powerline, Jun. 28, 2006
"Republican Smear Jobs"	Crooks and Liars, Mar. 3, 2010
"G.O.P. Field Stoking Anger At U.S. Courts"	New York Times, Oct. 24, 2011
"DEMOCRATIC LEADERS TO SUPREME COURT: If You Don't Vote Our Way, You're Being Political"	Instapundit, Jun. 6, 2012
"Republicans cheer Supreme Court decision on recess appointments"	Washington Post, Jun. 26, 2014
"BREAKING: Supreme Court Rules In Favor Of Hobby Lobby! Update: Libs Hyperventilating"	Weasel Zippers, Jun. 30, 2014
"Supreme Court upholds Obamacare subsidies: GOP sobs (while secretly breathing a sigh of relief)"	Daily Kos, Jun. 25, 2015
"Liberal unity, conservative disarray led court to the left"	USA Today, Jul. 2, 2015
"Dem supporters of Constitution-skirting president accuse GOPers of skirting Constitution"	Michelle Malkin, Feb. 14, 2016

Figure 5.4: Examples of Politicized Headlines

Table 5.3: Politicized Classifier Performance Statistics

Statistic	Value
Accuracy	0.82
Kappa	0.55
Precision	0.83
Recall	0.92
F_1	0.87

As Table 5.3 shows, the politicized classifier achieves 82 percent accuracy, ($p < 0.00$), with a Kappa of 0.55 (in the “moderate” range of 0.41 to 0.6 according to Landis and Koch (1977)). The precision of 0.83 shows when the classifier predicts a document is politicized, it is correct 83 percent of the time. The recall of 0.92 conveys that the classifier correctly identifies 92 percent of all politicized documents. The F_1 of 0.87 summarizes precision and recall.

Figure 5.5 displays the 50 words with the highest posterior probability of appearing in documents belonging to the politicized class (among the 1000 most common words in the corpus). Most of these words are partisan or ideological labels, such as “republican,” “democrat,” “conserv,” and “liber.” Descriptions of political actors

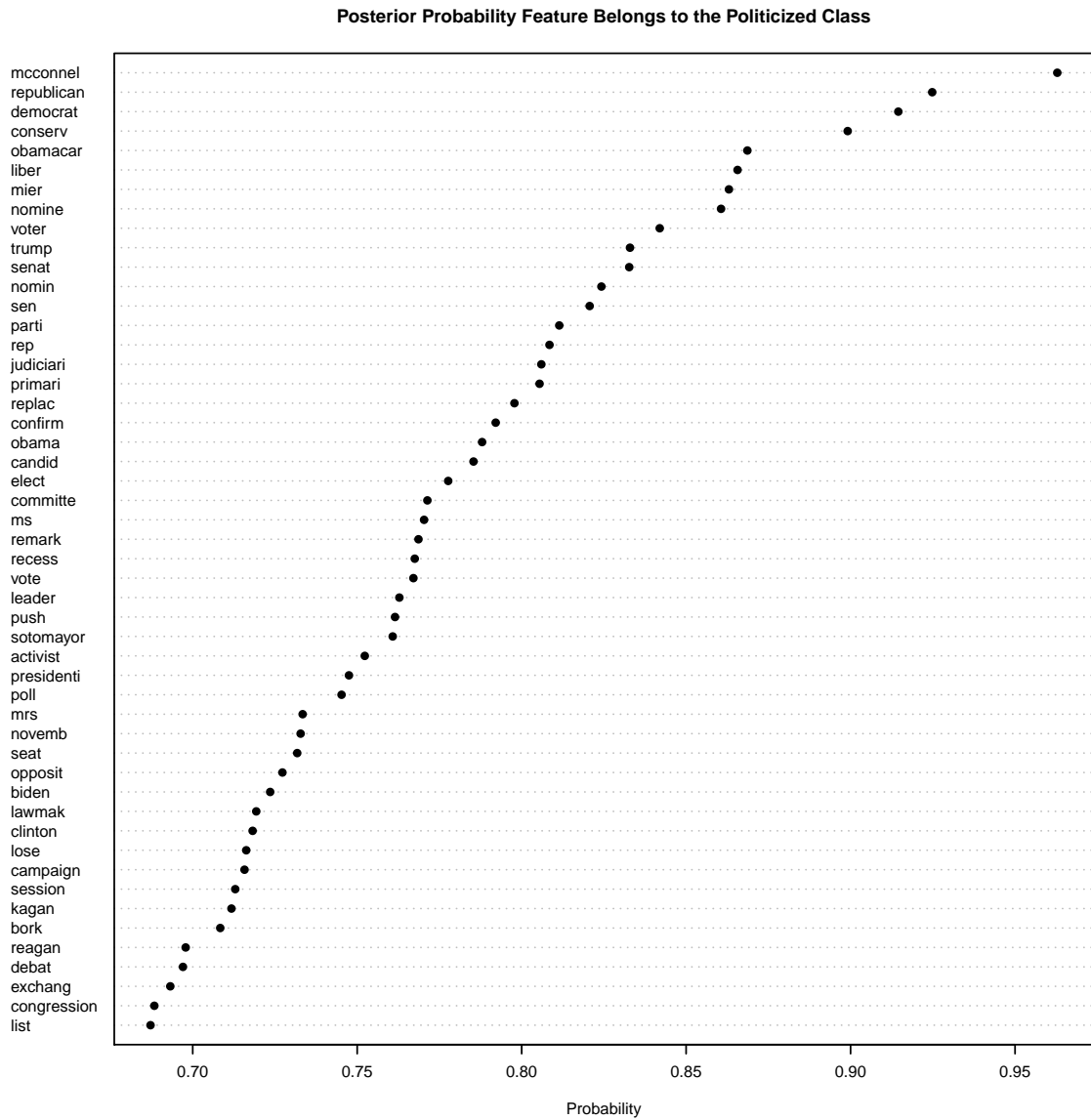


Figure 5.5: Highest posterior probability words for the politicized class. Within the top 1000 most common words in the corpus. Words are stemmed.

or bodies are also present, for instance “voter,” “senat,” “parti,” “candid,” and “activist.” Events and actions pertaining to electoral politics have a high probability of appearing in politicized documents, namely “presidenti,” “poll,” “campaign,” “congression,” “primari,” “elect,” and “vote.” Names and titles of politicians also appear, like “mcconnel,” “trump,” “sen,” “rep,” “obama,” “biden,” “clinton,” and “reagan.” Finally, the name of a high-profile and contentious policy, “obamacar” has a high probability of appearing in documents in the politicized class.

Figure 5.6 displays the proportion of stories classified as politicized for blogs versus newspapers over time. Table 5.4 gives the results of three regressions. The bivariate model regressing the type of news source (blog or newspaper) on the proportion of stories classified as politicized estimates that newspaper articles are 32 percent less likely to be politicized than are blog posts. When incorporating the effect of time and restricting the regression to years in which newspaper articles and blog posts both exist (Model 3), the difference between newspapers and blog posts is still statistically significant. The effect of time on proportion of politicized stories does not differ between newspapers and blog posts, as shown by the lack of statistical significance of the main effect for “Year” and of the interaction terms in Models 2 and 3.

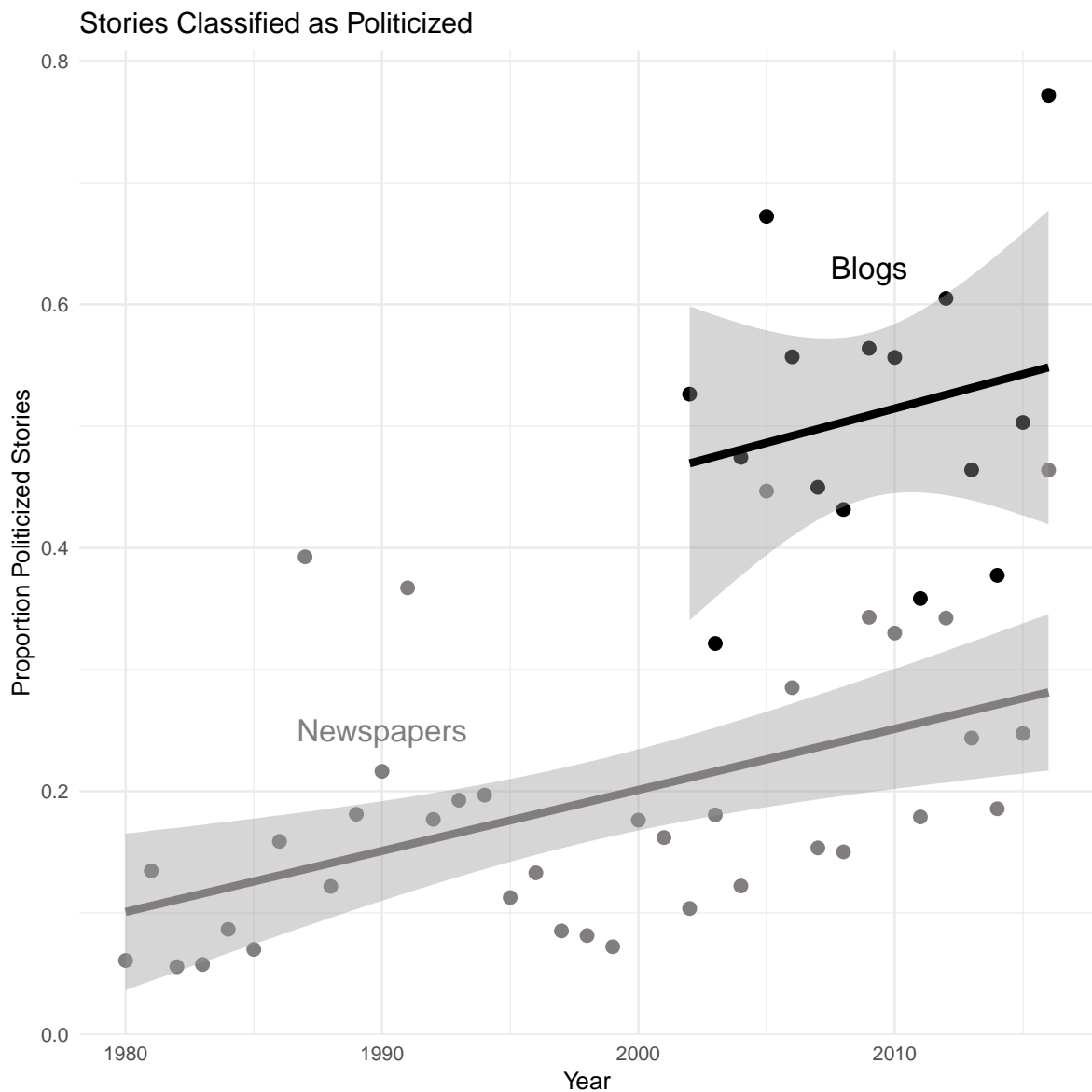


Figure 5.6: **Proportion of politicized stories over time.** The dark gray dots represent the proportion of newspaper articles classified as politicized in each year. The black dots show the proportion of blog posts classified as politicized in each year. The lines illustrate the effect of year on proportion of politicized stories for blogs (black line) and newspapers (dark gray line). The light gray regions are 95 percent confidence intervals.

Table 5.4: Regression Results

	Proportion Politicized		
	(1)	(2)	(3)
Year		0.006 (0.006)	0.006 (0.007)
Newspaper	-0.318*** (0.035)	-0.245 (0.187)	-0.288*** (0.080)
Year x Newspaper		-0.001 (0.006)	0.004 (0.010)
Constant	0.509*** (0.029)	0.345* (0.184)	0.469*** (0.057)
N	52	52	30
R ²	0.626	0.692	0.608
Adjusted R ²	0.618	0.673	0.563
Residual Std. Error	0.114 (df = 50)	0.105 (df = 48)	0.115 (df = 26)

*p < .1; **p < .05; ***p < .01

5.4.3 Dramatization

I label stories as not dramatized or dramatized. A dramatized tone attempts to create excitement or provoke an emotional response from the audience in order to attract attention or interest. Linguistic devices which generate drama include exaggeration or hyperbole (often stressing significance or magnitude), emphasizing conflict and controversy, the use of insults or profanity, and directly telling the audience to feel certain emotions. For example, in Figure 5.7, the headlines “Cities Fear Court Ruling May Bring Flood of Suits,” “K12 IMPLOSION UPDATE: Not safe to display American flag in American high schools,” and “Future of Freedom in Peril After Supreme Court Justice Dies” invoke feelings of fear. The headline “Women: Your Bodies Now Belong to the State” directly addresses members of the audience, personalizing the issue to create fear. Other headlines dramatize events by focusing on conflict, such as “Is Court Too Split to Sanction Death?” and “Judge reaffirms Constitution-free zones near border, teeing up high court fight.” The word choice in dramatized stories is often exaggerated, invoking abstract concepts such as “tyranny,” “freedom,” and “democracy” to play to values like one’s sense of loyalty or patriotism. Exaggeration can also create the impression of the overwhelming magnitude of a development through the use of words like “flood,” “floodgates,” or “Constitution-free.” Dramatized stories may also use insults, such as calling the Supreme Court “misogynist” and comparing it to the “Taliban.” Notably, the authors of dramatized stories frequently employ a number of these devices at the same time to heighten their impact.

As Table 5.5 shows, the dramatized classifier achieves 72 percent accuracy ($p =$

Headline	Source
"Cities Fear Court Ruling May Bring Flood of Suits"	New York Times, Apr. 5, 1982
"Is Court Too Split to Sanction Death? 5–4 Votes May Signal It Lacks Legitimacy to Open Floodgates"	Los Angeles Times, Apr. 27, 1987
"Women: Your Bodies Now Belong to the State"	Washington Post, July 16, 1989
"The tyranny of an unelected judiciary"	Chicago Tribune, Jun. 24, 2002
"Judge reaffirms Constitution–free zones near border, teeing up high court fight"	Infowars, Jan. 13, 2014
"K–12 IMPLOSION UPDATE: Not safe to display American flag in American high school"	Instapundit, Feb. 2, 2014
"Supreme Court Upholds Sacred Right To Scream Baby Murderer! In Women's Faces"	Wonkette, June 26, 2014
"Democrats Craft Bill To Protect Womens Access To Contraception Defying Misogynist Christian Taliban SCOTUS"	Crooks and Liars, Jul. 9, 2014
"Future of Freedom In Peril After Supreme Court Justice Dies"	Infowars, Feb. 15, 2016
"SCOTUS GRAPPLES WITH CASE THAT COULD CHANGE DEMOCRACY"	Daily Caller, Oct. 3, 2017

Figure 5.7: Examples of Dramatized Headlines

Table 5.5: Dramatized Classifier Performance Statistics

Statistic	Value
Accuracy	0.72
Kappa	0.36
Precision	0.77
Recall	0.82
F_1	0.79

0.16), with a Kappa of 0.36 (in the “fair” range of 0.21 to 0.4 according to Landis and Koch (1977)). The precision of 0.77 shows when the classifier predicts a document is dramatized, it is correct 77 percent of the time. The recall of 0.82 conveys that the classifier correctly identifies 82 percent of all dramatized documents. The F_1 of 0.79 summarizes precision and recall. Therefore, the classifier is overpredicting that documents are dramatized and could be improved by training it on additional data.

Figure 5.8 shows the 50 words with the highest posterior probability of belonging to the opinion class among the 1000 most frequent words in the corpus. A number of these words dramatize through exaggeration, stressing significance or magnitude, such as “fundament,” “danger,” “save,” “ever,” “anyth,” “realli,” “whole,” “everi,” and “noth.” Several emphasize conflict or controversy, like “lose,” “fight,” “risk,” and “us.”

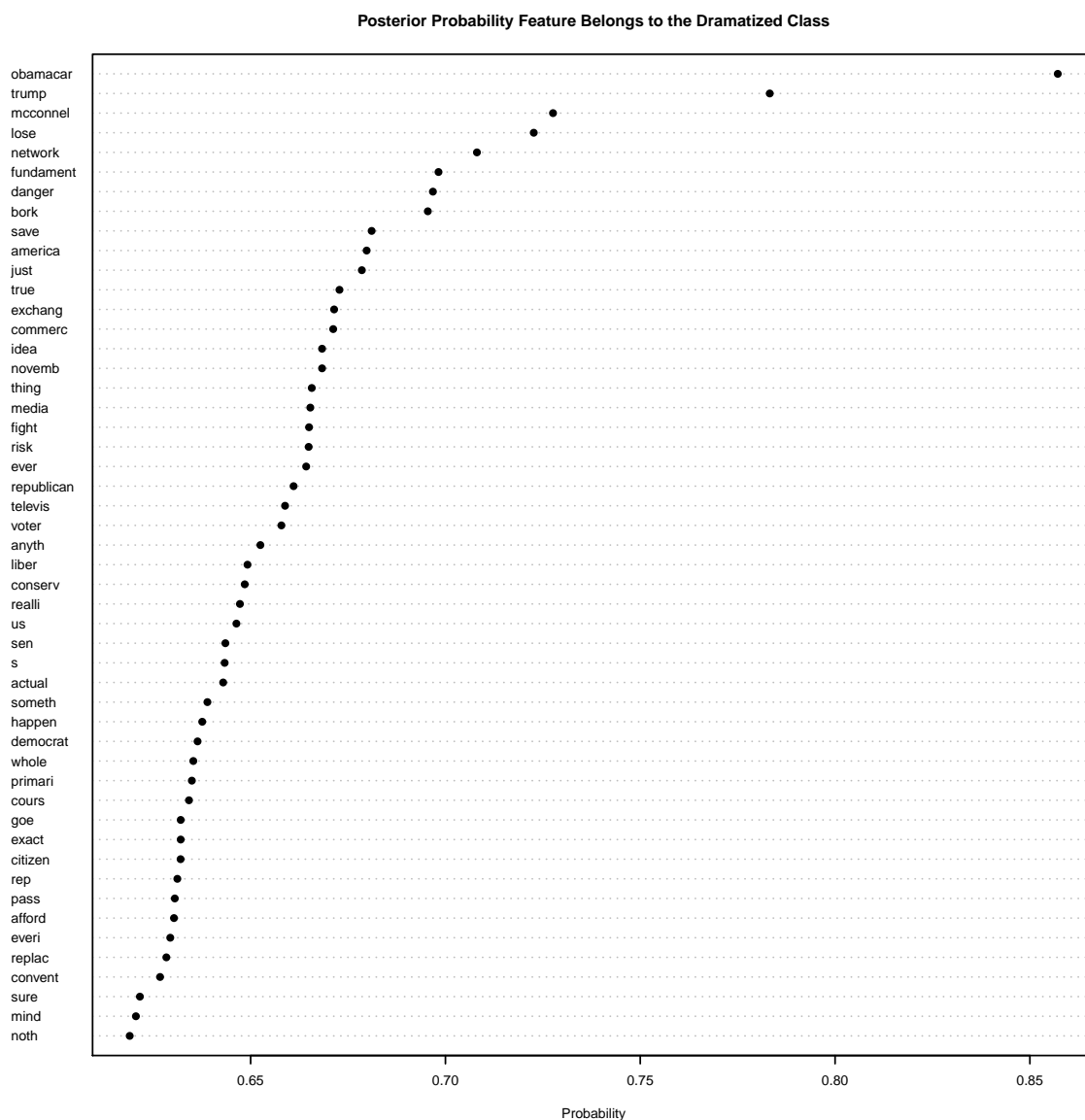


Figure 5.8: **Highest posterior probability words for the dramatized class.** Within the top 1000 most common words in the corpus. Words are stemmed.

Figure 5.9 displays the proportion of stories classified as dramatized for blogs versus newspapers over time. Table 5.6 gives regression results for the effect of type of news source (blog or newspaper) on the proportion of dramatized stories (Model 1), the interaction of type of news source and time from 1980 to 2016 (Model 2),

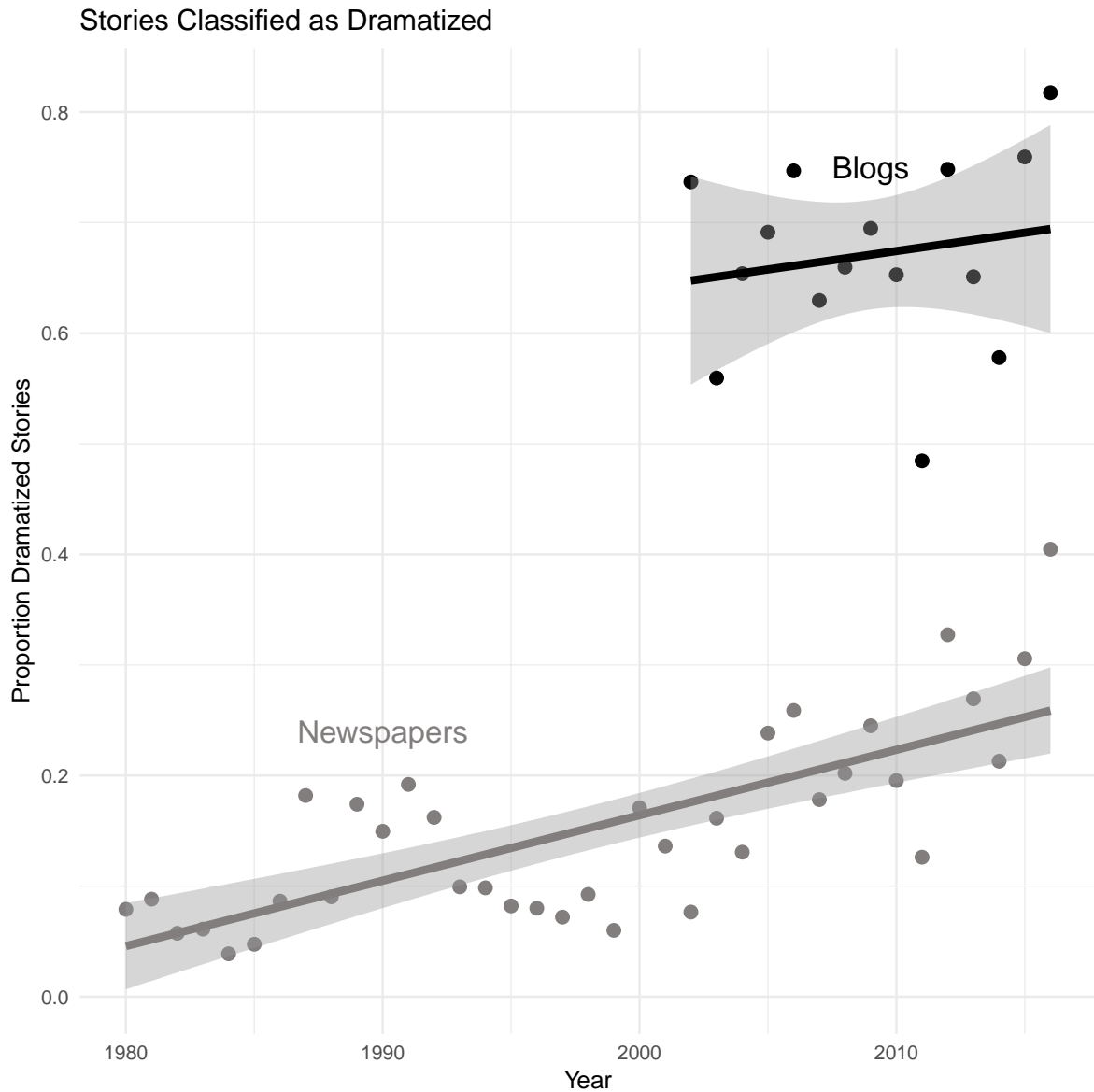


Figure 5.9: **Proportion of dramatized stories over time.** The dark gray dots represent the proportion of newspaper articles classified as dramatized in each year. The black dots show the proportion of blog posts classified as dramatized in each year. The lines illustrate the effect of year on proportion of dramatized stories for blogs (black line) and newspapers (dark gray line). The light gray regions are 95 percent confidence intervals.

and the interaction between news source and time for the period in which blogs existed (2002-2016, Model 3). The effect of news source type is statistically significant

across the three models, the percentage of dramatized stories is 52 to 53 percent less in newspaper articles than in blog posts. Neither the main effect of time nor the interaction between time and type of news source are statistically significant.

Table 5.6: Regression Results

	Proportion Dramatized		
	(1)	(2)	(3)
Year		0.003 (0.004)	0.003 (0.005)
Newspaper	-0.519*** (0.027)	-0.529*** (0.122)	-0.520*** (0.053)
Year x Newspaper		0.003 (0.004)	0.010 (0.006)
Constant	0.671*** (0.022)	0.575*** (0.120)	0.648*** (0.038)
N	52	52	30
R ²	0.884	0.931	0.912
Adjusted R ²	0.882	0.926	0.901
Residual Std. Error	0.087 (df = 50)	0.069 (df = 48)	0.076 (df = 26)

*p < .1; **p < .05; ***p < .01

5.5 Discussion

Overall, using machine learning techniques to classify newspaper articles and blog posts according to whether they express an opinion, are politicized, and are dramatized shows that there are important differences in how newspaper and articles present information about the U.S. Supreme Court. Blogs post substantially higher proportions of opinionated, politicized, and dramatized content than do newspapers. Therefore, blog readers are more likely to be told whether actions of the Court or its justices are good or bad and whether they should agree or disagree with them. Sup-

plying an audience with a direct opinion stands in stark contrast to the traditional legacy media news approach of objectivity, which aims to give members of the audience the information they need to form their own opinions about issues and events.³ The issues which come before the Supreme Court can be complex and at times confusing to members of the public, making it easier for people to simply follow or adopt the opinion expressed in the blog post, especially if it comes from a source with which they feel partisan or ideological solidarity and therefore trust. Blogs also mention the partisan and ideological circumstances surrounding issues related to the Court more frequently, politicizing situations surrounding the Court at a higher rate than newspaper articles. Regular blog readers may thus doubt the Court's impartiality to a greater degree than newspaper readers, as the biased nature of the Court and its involvement in politics are constantly highlighted in blogs. Finally, blogs also generally dramatize stories about the Court more often, exaggerating situations involving the Court and detracting from the staid, dignified image that the Court attempts to project. Scholars have documented that the Court goes to great lengths to create the impression that it is sober, conscientious, and therefore worthy of respect (Gibson and Caldeira 2009). However, blog readers may routinely receive the opposite impression if the information they consume about the Court is hyperbolized and conveyed in a disrespectful tone.

Furthermore, blogs and other online news sources are not the only news organizations subject to economic incentives to supply more opinionated, politicized, and

³Although, of course, editorials and opinion pieces in legacy media do exist; however, they do not comprise the bulk of the content legacy news organizations create.

dramatized news. Although newspapers have traditionally adhered to strict professional and ethical standards, the transition of news consumption from print to the Internet has provided a space and a rationale for newspapers to provide more content that will draw attention and increase digital advertising revenues. Although the models presented above do not show statistically significant effects of time on the proportion of opinionated, politicized, or dramatized content in newspapers, there does appear to be some trend in that direction. Future work should pay attention to how these trends progress.

Chapter 6

Conclusion

Overall, this dissertation provides a model of how developments in the American landscape over time produce change in diffuse support for the Supreme Court. I present the intuitions behind my theory in Chapter 2, positing that technological and economic developments in the media landscape have led to a change in media coverage of the Court. In turn, this has produced a change in the information about the Supreme Court to which people are exposed. Available information about the Supreme Court is now more politicized than it was in previous years. Since beliefs in the legitimacy of the Court depend on public perceptions that it is impartial and unbiased, an increase in information that portrays the Court as favoring particular partisan and ideological positions has undermined the Court's basis of support.

Chapter 3 demonstrates how the process of reporting on the Court has changed over time, using interviews with journalists who cover the Court to show that demands on legacy media reporters have intensified over time. The reporting process is now rushed, and at times inducing legacy journalists to churn out reports which in a

previous era would not have met their standards of newsworthiness. Furthermore, interviews with journalists from modern media illustrate that online news sites vary drastically in the attention they pay to the Court and what aspects of the Court's work they believe to be newsworthy. Modern media journalists often look for partisan angles on cases or cases which concern substantive topics of interest to their ideological audiences in order to drive web traffic to their work. Importantly, this motivation for covering the Court differs from that of legacy media, who choose cases and actions of the Court to cover based on broad interest and significance to general society.

Using an original data set of newspaper articles, wire service reports, broadcast television transcripts, cable television transcripts, and blog posts encompassing the period from 1980 to 2016, I show in Chapter 4 the content of media coverage of the Supreme Court has indeed changed over time and that there are important differences between types of media in areas of focus when discussing the Court. Whereas the majority of the coverage of newspapers and the Associated Press concerns the actual cases and controversies before the Court, cable news and blogs cover the political circumstances surrounding the Court to a greater degree. Thus, people receiving news from cable news and blogs received an unbalanced view of the Court as very involved in politics and only deciding a few contentious cases.

Chapter 5 demonstrates that, in addition to what is covered, how the media covers the Court has also changed. Blog discourse about the Court is opinionated, politicized, and dramatized to a greater degree than is newspaper coverage of the institution. Those receiving news from blogs therefore do not receive the dignified, detached view of the Court as "different" from other governmental bodies and "above

politics” that newspapers often portray, and that the Court itself views as important to its legitimacy. Whereas the style of newspaper reporting can encourage the perception that the Court deserves deference, blogs often explicitly criticize and trivialize the Court, framing issues the Court is involved in as political or ideological fights.

6.1 Modern Media Threaten Judicial Legitimacy

Thus, coverage of the Supreme Court in modern media sources, namely cable television news and political blogs, is precisely of the type that extant experimental work finds would harm the Court’s legitimacy. Importantly, for Gibson and Caldeira’s “positivity theory” to operate (that “to know courts is to love them” due to the influence of the legitimizing symbols that surround the judiciary and the Supreme Court), the public must actually be exposed to these legitimizing symbols. Modern media do not follow traditional journalism norms and actively work to provide an alternative perspective on politics in order to attract attention. There is little incentive for modern media to be deferential towards the Court in how they portray the Court, and I find that they cover the Court’s actual decisions to a lesser extent than do legacy media. Thus, for the Court to be able to endure challenges to its legitimacy when large segments of the public disagree with its rulings, it must have at its disposal a “reservoir of goodwill” that has been built up by exposure to legitimizing symbols. The decreasing presence of legitimizing symbols and the concurrent increase in politicized portrayals of the Court may provide a smaller reservoir of goodwill for the Court to draw on in times of controversy. In the current context, members of the media,

the public, and the Court itself are currently concerned about how the Court will be perceived if Justice Kavanaugh's recent confirmation results in the consolidation of a "conservative" or "Republican" majority on the Court which consistently rules against the interests of liberals or Democrats. In remarks at Princeton University in October 2018, Justice Kagan raised this concern, saying that the presence of a "swing" justice on the Court in the recent past has provided the impression that the Court can be persuaded and would not rule in favor of one party or ideology by rote because of its composition.¹ Moving forward, if the Court does not have such a justice, it may be more difficult not to immediately cite ideology and partisanship as the reasons for specific rulings, especially in light of the current universal congruence of justice ideology with the party of the appointing president. Furthermore, President Trump often makes statements closely identifying his appointees with conservatism, the Republican party, and specific policy positions, especially on abortion. During the 2016 presidential campaign, candidate Trump promised to appoint pro-life justices who would vote to overturn *Roe v. Wade*, saying that the precedent would be overturned "automatically" if he were able to appoint members of the Court.² If the Court were to do as liberals fear and overturn *Roe v. Wade*, for instance, lower levels of diffuse support for the Court among liberals may create concerns about enforcement and compliance for the Court. We have already witnessed an increase in Court-curbing proposals by liberal politicians and media figures, indicating that a

¹<https://www.cnn.com/videos/justice/2018/10/05/justice-elena-kagan-supreme-court-sot-princeton-vpx.cnn>

²<https://www.presidency.ucsb.edu/documents/presidential-debate-the-university-nevada-las-vegas>

crisis of support among liberals may already be occurring.³

Do Americans actually obtain their news from these problematic modern sources? According to the Pew Research Center, 93 percent of Americans get at least some news online in 2017 and about a third of Americans watch cable news (Pew Research Center 2018*b*). There are generational differences, however. Older Americans are more likely to consume all types of news, with cable news as one of their preferred sources. In 2016, the Pew Research Center estimated that 58 percent of Americans over age 65 watched cable news. Younger Americans, on the other hand, are less interested in news. When they do consume news, however, it comes from websites or social media. Websites and apps were the most common news source for Americans between the ages of 18 and 29 in 2016 (34 percent), with social media a close second at 32 percent (Mitchell et al. 2016). Scholars posit that beliefs about the Court are largely formed in childhood or young adulthood through a process of socialization and education. Today, younger Americans are more likely to use technology from a young age and spend large amounts of time online. If online discourse about the Court is more politicized, younger Americans may internalize this view of the Court. The content and style of online news about the Supreme Court, then, may be the most consequential to long-term views of its legitimacy. While the effect of politicized cable news discourse may be mostly confined to older Americans who were socialized to believe in the Court's legitimacy prior to the advent of partisan news, young Americans are undergoing the process of belief formation about the Court while receiving information about the institution from politicized sources.

³<https://www.nytimes.com/2018/10/07/us/politics/democrats-kavanaugh-supreme-court.html>

Overall, the way in which the media portrays the Court is very important. If certain types of media encourage perceptions of the Court as politicized and not deserving of deference, that may impact compliance with Court rulings among groups or individuals who consume these media and therefore believe the Court is biased. As the Court has no other recourse beyond public support to enforce or implement its rulings, substantial losses in public beliefs in its legitimacy may imperil the rule of law in the United States.

6.2 Can Legacy Media Save the Court's Image?

Given that the way in which modern news media portray the Supreme Court is detrimental to how citizens view its impartiality and legitimacy, is the answer to encourage greater consumption of legacy media? Unfortunately, trends toward media convergence in recent years have resulted in legacy news sources increasingly resembling modern news sources as legacy news struggles to maintain relevance and economic viability. Major newspapers like the *New York Times* are reorganizing their news gathering structures to put digital news production first, and they are increasingly branching out into different types of content, such as podcasts (Ember 2017). Furthermore, political polarization in American politics generally is increasing over time (Abramowitz 2011). The issues on which the Court is called to rule, and the process of staffing the Court, are increasingly politicized. Even if legacy news sources wanted to maintain a neutral image of the Court, broader developments in society are making it mandatory for all news organizations to show the Court as involved

in partisan politics. Thus, as legacy news sources increasingly portray the Court in political contexts, and modern news sources intentionally politicize and dramatize the style of their coverage of the court, there will be no segment of the population that is continually exposed to the kind of news that is promoting a view of the Court as mechanically applying the law, or even engaging in the use of principled discretion.

6.3 Future Directions

6.3.1 Open Questions

Although previous experimental work has established that politicized coverage of the Court damages individual-level evaluations of the Court's legitimacy, this study raises a number of related questions which could benefit from experimental inquiry. I have identified one type of news content, politicized topics of coverage, and three stylistic devices, opinionated, politicized, and dramatized tone, which previous work suggests may undermine the Court's legitimacy. However, these features of the content and style of media coverage of the Court often co-occur. Experimental work which isolates each feature individually could more directly estimate the effect of each on legitimacy. Moreover, the interaction of politicized topics and stylistic devices deserves more investigation, especially in the common context of nominations to the Supreme Court. Given the high visibility of nominations, can certain neutral stylistic features of media coverage moderate the effect of coverage of the Court in this politicized circumstance on individuals' evaluations of the Court's legitimacy, or will the nomination process

always damage the Court's image in a politically-polarized era?

6.3.2 Can the Court Save Itself?

The responses of a number of current justices, such as Roberts, Kagan, and Sotomayor, to the contentious Kavanaugh confirmation hearings has been to use their public appearances to address and reinforce the Court's impartiality and the importance of preserving it. However, it is unlikely that the justices will change their behavior in consequential ways because the justices face a collective action problem regarding their individual public images. The Court as an institution, and the individual justices as members of that institution, would have more authority and power if the public believed the Court to be impartial. However, there is no coordinating mechanism for the justices' behavior. Although the Chief Justice is technically the leader of the Court, he mainly leads by example. He cannot force individual justices to follow his demands; indeed, the only existing sanction of justice is impeachment, which is very rarely attempted. Furthermore, justices of the Court do not have to follow the U.S. Code of Conduct for other federal judges. Thus, Supreme Court justices have immense freedom. Ideally they would attempt to stay out of the limelight, but they have monetary incentives to write books and make public appearances for partisan and ideological audiences to try to sell their work. Furthermore, the justices do care about policy and have ideological preferences. Although it would be in the best interests of the Court's image for the justices to grant less contentious cases, avoid "political questions," decide cases narrowly, and avoid polemical dis-

sents, institutional-level sanctions do not exist to rein in the individual ideologically-motivated behavior of the justices.

Over time, the justices have shown themselves to be reluctant to actively engage with the news media. However, given that it is unlikely that the justices will cede their power to resolve important societal disputes, can changes in the Court's media relations help prevent a legitimacy crisis for the institution? If the Court were to consider explaining its rulings to a greater degree, either through a spokesperson or through addenda to opinions, perhaps reporters and commentators would not wield as much control over the Court's image as they do currently. More direct communication with the public might decrease the average person's reliance on the media to interpret the Court's decisions, and would generally help the Court shape the media narrative surrounding its work. Given the complex nature of Supreme Court rulings, it is easy for journalists to focus on simple features of a decision like which justices voted together and who dissented. Interpretation by the Court itself could avoid fixation on politicized aspects of rulings, in addition to preventing inaccuracies in reporting.

However, the given the Court's past reticence to engage with the media and the public, is unlikely that the Court will take proactive outward steps to shape its own image. If consumption of modern news sources continues to increase and legacy news sources continue to adapt and converge, when coupled with growing political polarization in society, the Supreme Court may face a crisis of legitimacy in the near future.

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