THE ALLOCATION OF SUPREME COURT AGENDA ATTENTION: INSTITUTIONAL ISSUE DYNAMICS

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ABSTRACT

RYAN J. WILLIAMS: The Allocation of Supreme Court Agenda Attention:
Institutional Issue Dynamics
(Under the direction of Kevin T. McGuire.)

Competing theories of the Supreme Court's issue agenda focus on the Court's ability to set its own agenda, how it responds endogenously to the issue agendas of the legislative and executive branches, and whether or not the Court responds to other exogenous pressures. In this paper, I present a model capable of evaluating these different perspectives. Using data from the Policy Agendas Project, I estimate a vector autoregression (VAR) model to examine the Court's attention devoted to four major policy topic areas: civil rights and liberties; law, crime, and family issues; labor and employment; and transportation. Results show that the Supreme Court's issue agenda is endogenously responsive to and drives the issue agendas of the other branches with respect to crime. However, other dynamics emerge for the other major topic areas, suggesting the importance of exogenous pressures and internal, institutional mechanisms in the Court's agenda setting process. Such findings indicate a need to supplement inter-branch explanations of Court agenda setting behavior with further research addressing the exogenous determinants of the Court's issue agenda.

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Introduction

In 1988, Congress granted the Supreme Court nearly total control over its agenda by eliminating mandatory Court review of certain writs of appeal. The 1988 act was the culmination of a half-century long trend toward Court discretionary docket control,[1] leaving the Court as master of its own agenda. Given the lifting of these impediments to full Court agenda control, identifying the factors underlying the Court's agenda attention becomes increasingly more important to understanding the institution. Thus, in this paper, I ask whether this discretionary docket control insulates the Court from extra-judicial forces in allocating its agenda attention. Much has been written on the Court's certiorari process and criteria for selecting cases.[2] However, unlike the traditional analysis of the individual case-level cues that lead justices to accept cases, I examine the determinants of the Court's agenda allocation from a broader, inter- and extra-institutional perspective.

This paper is concerned with the macro-dynamics of issue attention in the Supreme Court, one third of the institutional agendas of the three American political branches (Cobb and Elder 1972). Attention is a prerequisite for policymaking, and in the U.S. Supreme Court, attention is manifested in the issues it decides to hear via case selection. Moreover, compared to its brethren branches, the Supreme Court's breadth of attention is more limited. While presidential dominance of the news cycle allows presidents to pick and choose

[1] In 1925, Congress passed the Judges' Bill, which granted the Court the ability to accept the majority of appeals by the writ of certiorari. The Supreme Court's mandatory appellate jurisdiction was then limited to appeals of federal circuit decisions declaring state statutes unconstitutional. In the years between 1925 and 1988, Congress chipped away further at Court agenda requirements and, in 1988, converted all remaining appeals from lower courts to writs of certiorari.

[2] Rule 10 of the Rules of the Supreme Court of the United States officially governs review on the Writ of Certiorari. While Rule 10 specifically lists intra-appellate conflict, inter-court conflict among district and appellate courts, and conflict between Supreme Court precedent and lower court rulings as compelling reasons for the Court to grant certiorari, judicial scholars have identified a number of additional cues influencing the certiorari decision. See Tanenhaus, Schick, Muraskin and Rosen (1963) on cue theory, Caldeira and Wright (1988) on amicus influence, McGuire and Caldeira (1993) on repeat players, and Caplan (1987) and Black and Owens (2012) on the Office of the Solicitor General.

issues to address or respond to in press conferences and televised addresses to the nation, and while congressional committees have the power to initiate and conduct hearings on any issue within their jurisdiction, the Court can neither initiate litigation nor simply choose to decide a case on any given issue. Instead, the Court must choose from among the petitions for adjudication it receives from litigants appealing lower court rulings. The Court certainly does not lack for options from which to choose, as the Court is faced with potential cases in almost any issue given the influx of thousands of new cert petitions each term.[3] However, while Congress holds thousands of hearings each year, the Court, especially in recent years, has limited the number of cases it accepts per year to approximately eighty.[4] Thus, understanding the determinants of this limited attention to certain issue areas, as well as discovering the direction of attention flow, provide insight into the Court's agenda composition and the linkages between institutional agendas. This paper proceeds by first theoretically motivating a set of partially competing and partially complementary hypotheses of Court agenda attention. Specifically, I seek to test the extent to which the Court's issue agenda attention is a reflection of 1) the attention devoted by the president and Congress to similar issues, 2) societal pressures, or 3) a combination of both. I then draw on the Policy Agendas Project's[5] more than sixty years of data on post-war Supreme Court cases, and I describe the broad trends characterizing the Court's issue agenda over this time and develop a more in-depth look at a smaller subsection of the Court's agenda. In particular, I consider the intriguing trends observed for civil rights and liberties, labor and employment, transportation, and law, crime, and family issues cases. I utilize a Vector autoregression model to evaluate the competing hypotheses for these four issue areas, and I then conclude with implications for future work on Court agenda setting.

[3] See Figure 8 in the appendix for a graph of the trend of new case filings from 1941-2009.

[4] See Figure 9 in the appendix for a graph of the trend of cases disposed by full opinion in the post-war era.

[5] The data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant numbers SBR 9320922 and 0111611, and were distributed through the Department of Government at the University of Texas at Austin. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

The Macrodynamics of the Court's Agenda

Research on agenda setting within the American political context details a variety of macrodynamic issue attention patterns. Institutional agenda attention (attention by Congress, the Court, and the president) may be characterized by organized anarchy (Cohen, March and Olsen 1972) or by a more systematic horizontal pattern of issue attention. Under a system of organized anarchy, issue attention is stochastic and unstructured. Policy-making under such a system becomes akin to a "garbage can" (Kingdon and Thurber 1984), where problems, solutions, and politics move randomly and are joined together as a matter of circumstantial happenstance. The participation of actors in such a system is fluid, as these participants move in and out of the system due to political appointments, elections, or their own preferences.

Conversely, institutional attention may be more sequential and systematic. Constitutional design and institutional adaptations link attention among the branches. The legislative process and electoral considerations join presidential and congressional attention. Presidents enter office with campaign promises and initiatives that define their issue agendas. These priorities make their way to the legislative agenda. The legislative agenda also influences the president's agenda, as presidents often co-opt congressional issues to form their legislative packages (Light 1991*a*). The Court's agenda is linked to the president's agenda primarily through the influence of the solicitor general (Segal 1988, 1990; Salokar 1994; Bailey, Kamoie and Maltzman 2005), and, with respect to Congress, it is the passage of congressional legislation that provides an influx of cases to the federal court system.[6] Moreover, the president and the Senate determine the composition of the Court through the nomination and confirmation process. The dynamics of how the Court influences the other branches is less well understood. Certainly, when the Court strikes down congressional legislation, attempts to override these decisions necessitate legislative attention and presidential involvement (Eskridge Jr 1991; Eskridge 1991). Moreover, as Flemming, Wood

[6] According to the United States Supreme Court Database (Spaeth 1993), statutory construction is cited as the authority for decision in 3,628 cases, or approximately 42 percent of the cases adjudicated by the Court from 1946-2013.

and Bohte (1999) note, landmark Court opinions often find their way into the public consciousness and incite political debate and action (e.g. *Roe v. Wade*). Thus, under systematic institutional agenda attention, the patterns of attention flow across branches would resemble something akin to the reciprocal relationships depicted in Figure 1.

Scholarly investigation into these broad agenda patterns, however, has been limited, especially work that has focused on the Supreme Court's agenda (an exception being Yates, Whitford and Gillespie (2005)). Another notable exception, Flemming, Wood and Bohte (1999), demonstrates these hypothesized inter-branch linkages in certain issue areas, although the authors are concerned less with one specific institution than in how those institutions' agenda attentions interact and link. Thus, untangling these patterns of issue attention across institutions, whether stochastic or systematic and sequential, requires going further than the initial foray of Flemming, Wood and Bohte (1999) and requires developing a more theoretically driven explanation for these patterns. Having posited these institutional dynamics, I now motivate a set of competing hypotheses of the determinants of the Court's agenda, focusing on inter-institutional dynamics and societal pressures and delineating the expectations one should expect to observe from each.

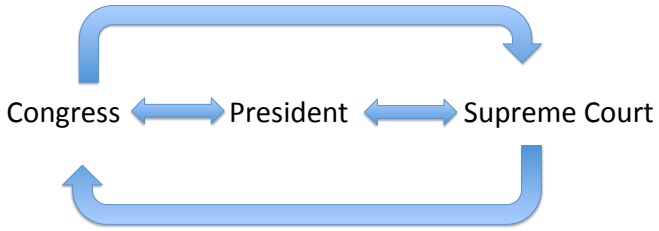

Fig. 1: Patterns of Institutional Agenda Attention

Separation of Powers and Inter-Branch Responsiveness

The first set of hypotheses concerns the Court's relationship to its brethren branches and how its agenda is shaped by, and itself shapes, the agendas of Congress and the president. Thus, in this section I examine the Court's agenda attention as both an output of the attention

of the other institutions and as an input in the attention calculus of the elected branches. Applying the New Institutionalist and strategic interaction judicial literature[7] on separation of powers to a theory of institutional agenda attention, I posit that the systemic, institutional relationship depicted in Figure 1 is driven by the interaction between strategic elite and non-elite actors in the policy process in such a manner as to create an inherently endogenous feedback loop.

Court Attention as Political System Output

Strategic interaction models posit justices as strategic actors who attempt to transform their policy preferences into law while operating within a system of constraints, both endogenous and exogenous. Judicial scholars have utilized this strategic approach to examine internal constraints, such as the certiorari process (Caldeira, Wright and Zorn 1999), the politics of opinion assignment (Epstein and Knight 1997), and the dynamics of opinion coalition formation (Maltzman, Spriggs and Wahlbeck 2000). Especially pertinent for this paper are the exogenous constraints influencing the Court's agenda-setting behavior. As Justice Felix Frankfurter noted in his dissent in *Baker v. Carr*,[8] "the Court's authority- possessed of neither purse nor sword- ultimately rests on sustained public confidence in its moral sanction." The Court's inability to force compliance with its decisions forces reliance on the popularly elected executive to implement its decisions. In addition, Congress controls the Court's budget and its jurisdictional purviews. Thus, concern for the efficacy of its rulings and, therefore, its institutional legitimacy should create incentives for the Court to engage in strategic action vis-a-vis Congress and the executive. Such propositions form the crux of separation of powers models, which explain Court decision-making in terms of this anticipation and reaction to the actions of the other political branches (Marks 2012; Baum 2009; Gely and Spiller 1990; Vanberg 2001; Helmke 2002). Derived formally, when the Court's preference is located within the pareto set (i.e., within the range of alternatives

[7] This literature has its foundation in Walter Murphy's *Elements of Judicial Strategy* (1964).

[8] 369 U.S. 186

where adverse congressional and presidential reaction are unlikely), the Court is free to act upon its preference. When the Court is situated outside this set, concern for institutional legitimacy, according to separation of powers models, limits the range of actions the Court can consider.

The logic behind separation of powers models translates well to understanding the flow of agenda attention from the elected branches to the Court, as concerns for its institutional legitimacy should drive the rational expectations of the forward-looking Court. For example, in reaching a decision or choosing which cases to place on its docket, the Court may anticipate possible adversarial congressional reaction, such as attempts to overturn decisions, limit jurisdiction, or alter the Court's composition. In particular, Clark (2010) argues that congressional bills attempting to curb the power of the Court or alter its appellate jurisdiction serve as signals to the Court of the prevailing winds of public opinion. Here, the Court utilizes congressional Court-curbing legislation as information on the state of public opinion and alters the behavior it perceives as out of line with public sentiment.

This inter-branch dynamic also applies to the interaction between the president and the Court (Helmke 2002; Yates, Whitford and Gillespie 2005). The prerogative of the executive branch to enforce Court decisions necessitates Court anticipation of executive preference when reaching decisions. Empirical evidence of Court responsiveness to presidential agenda attention is provided by Yates, Whitford and Gillespie (2005), who examine Court allocation of agenda space as a function of external political signals and find support that the Court responds to the presidential agenda.[9] Moreover, presidential attention is filtered through the Office of the Solicitor General, which determines which cases the federal government lost at the lower court level to appeal to the Court, as well as when to file an amicus brief supporting a litigant's position. The importance of the solicitor general as an informational cue at the certiorari level is widely supported (Caldeira and Wright 1988; Black and

[9] Strategic interaction models focusing on the Court's reaction to and anticipation of executive action have also been utilized in the study of foreign courts. In her study of the Argentine Supreme Court, for example, Helmke (2002) demonstrates the strategic behavior of Argentine justices in their interactions with the executive regime, finding that justices begin to rule against regimes that appear to be losing support but continue to rule in favor of strong regimes.

Owens 2012), with some scholars noting that the solicitor general functions as "the tenth justice" (Caplan 1987). The Court's agenda then is reflective of the influence of the president via the solicitor general's involvement at the certiorari stage. Thus, the constrained nature of the Court requires anticipation and reaction to the attention of the other branches. I now turn to laying out a causal story linking institutional attention to issue area, focusing on the role of legislative activity in creating opportunities for litigation and the importance of salience in structuring Court certiorari decisions.

Central to the causal argument advanced in this work is the role of legislative action in creating litigation to be resolved by the courts.[10] The causal story begins with initial legislative activity in an issue area.[11] Congress introduces legislation in a given area, holds hearings, marks up the bill in committee sessions, and passes the legislation, which becomes public law upon the addition of the president's signature. Such legislative activity, however, creates policy winners and losers, both of whom organize to lobby for its preservation or repeal (Olsen 1965). In particular, policy losers, unsuccessful in the legislative sphere, expand the scope of conflict (Schattschneider 1975) and seek success in a different venue by sponsoring litigation in the judicial system. Such litigation then proceeds through the federal court system. Thus, increased activity in the legislative sphere creates the opportunity for greater litigant appeals for redress in the Courts.[12] The causal story need not rely

[10] Others argue that issues reach the Court's agenda due to legislative inaction. Legislative abdication of its policymaking role in complex issues (Lowi 1979; Tate and Vallinder 1997) leads courts to then take up these issues. This judicialization of policymaking, the increased resolution of political questions by the judiciary previously handled by legislatures (Tate and Vallinder 1997), results from a legislature either lacking requisite resources or perhaps even dodging salient political questions. The initial push by the NAACP in the courts for greater civil rights for African-Americans (i.e., *Brown v. Board of Education*) was partially a result of legislative inaction.

[11] Initial legislative activity at the state level can also be incorporated into the causal story presented in this section. The Court often hears constitutional challenges to state statutes, and court invalidations of state laws can prompt congressional response, as I illustrate below with *Texas v. Johnson*. Thus, Congress as an initiator of the process is not necessarily the key component of the story but rather the branch's anticipation and reaction to the Court that is instrumental for the dynamics in Figure 1 to be operational. Moreover, as discussed below with regard to the saga of the Communications Decency Act of 1996, Court decisions, even constitutional ones, can spark legislative reaction.

[12] Such a story arguably began with the rise of the regulatory state in the twilight years of the 19th century, which saw the federal government insert itself into a wide array of social and commercial activities, including anti-trust policy, insuring food and drug safety, regulating the railroads, etc. (Glaeser and Shleifer 2001). Interestingly, however, it was the Supreme Court's decision invalidating state regulations of interstate railroads

on legislative activity. The actions of the president can set events in motion that create the necessity of Court adjudication. Unilateral presidential directives such as executive orders can create attempts by Congress to rein in the executive (e.g., War Powers Resolution of 1973) and/or opportunities for litigation. The Court notably overturned President Truman's steel mill seizure in *Youngstown Sheet & Tube Co. v. Sawyer* (1952).[13] Moreover, President Reagan's controversial use of the "pocket veto" led to a Court decision in *Burke v. Barnes* (1987),[14] and the Court turned its attention to the president's use of executive orders to freeze Iranian assets in the United States in the wake of the Iran Hostage Crisis in *Dames & Moore v. Regan* (1981).[15] Clearly, institutional agenda interaction is a central component of the separation of powers system.

Yet the opportunity for adjudication is only part of the story, as four justices must still find a petition sufficiently worthy of adjudication to place the issue on the Court's docket. Given the limited agenda space available on that docket, justices voting to grant cert require signals of the appropriate adjudicability of the issue. Individual case-level cues such as the presence of lower court conflict and the direction of the lower court ruling are certainly important, although I expect that the impact of a case's salience on the likelihood of that case being granted cert becomes even more important with an increase in the number of opportunities for hearing cases within an issue area. Salience then should moderate the degree to which congressional attention should influence Court attention to certain issue areas. Non-salient issue areas such as labor and transportation do not tap into pre-existing attitudinal preferences like cases concerning civil rights and liberties and the rights of criminal defendants, where justices' personal, ideological attitudes are more easily tapped and

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as unconstitutional in *Wabash, St. Louis & Pacific Railway Company v. Illinois* (118 U.S. 557) in 1886, which paved the way for the passage of the Interstate Commerce Act in 1887. Thus, as will be stressed below, the Court is an important input in creating agenda attention and policy activity. Moreover, during the late nineteenth century, the House of Representatives saw a vast increase in its workload, as the number of bills introduced doubled from around 4,000 in the 42nd Congress (1871-1873) to over 8,000 in the 48th (1883-1885) (Hinds 1907).

[13] 343 U.S. 579

[14] 479 U.S. 361

[15] 453 U.S. 654

prevalent (Unah and Hancock 2006). Determining how the justices determine salience is beyond the scope of this work, although one factor is key at this juncture: the presence of the solicitor general. Through the solicitor general, the president's preferences are translated to the Court, as solicitor recommendations and involvement in a case provide an important signal to the justices that the case is salient. Thus, I expect particularly salient issue areas with wide public interest or concern to fit best with this causal story; crime is a particularly attractive candidate for this argument. This leads to my first set of hypotheses.

- Hypothesis 1A: Increased attention by Congress to a salient issue area should lead to increased attention by the Court to that same issue area.
- Hypothesis 1B: Increased attention by the president to a salient issue area should lead to increased attention by the Court to that same issue area.

The preceding discussion establishes the institutional dynamics of the Court's agenda as an output of political system activity. I continue the causal story by examining Court attention as a driver of agenda attention, completing the feedback loop introduced in Figure 1.

Court Attention as Political System Input

In this section, I focus on the role of the Court in creating attention to issues in the political system. A Court decision does not end the policy process, as an adverse Court decision may spur Congress to respond with corrective legislation.[16] Moreover, Congress may respond whether or not it was the original source of the struck law. Two examples illustrate this point well. The first concerns the long history of the congressionally enacted Communications Decency Act of 1996 (CDA) and its progeny. The second demonstrates congressional response to an invalidated state statute. The CDA was the first serious attempt by Congress to regulate pornography on the Internet and to protect children from indecent

[16] Unpopular or polarizing Court decisions may also lead Congress to introduce court-curbing legislation. Clark (2010) argues that these bills are important for signaling to the Court the state of public opinion. Because the Court relies on diffuse popular support to maintain its legitimacy, the Court should take corrective measures when it finds itself on the wrong side of public opinion. The events leading up to the "switch in time that saved nine" may reflect this argument.

content on the Internet. The American Civil Liberties Union (ACLU) challenged the statute on First Amendment grounds, and the Court struck down the CDA's anti-indecency provisions in *Reno v. American Civil Liberties Union* (1997)[17] as an unconstitutional violation of free speech guarantees. Congress responded in 1998 by passing the Child Online Protection Act (COPA), a more narrowly tailored law aimed at requiring commercial distributors to restrict minors from accessing their sites if they contained material deemed harmful. Again, the law was challenged by the ACLU, and, after a court ordered injunction and several Third Circuit rulings against the law, the Supreme Court upheld the lower court's decision in *Ashcroft v. American Civil Liberties Union* (2004).[18] The initial injunction against COPA, however, led to the Children's Internet Protection Act (CIPA), which employed Internet filters to protect children from harmful online content. The Court upheld the law in *United States v. American Library Association* (2003).[19] Additionally, Congress may respond to Court rulings regarding state statutes. Such a scenario occurred following the Court's decision in *Texas v. Johnson* (1989)[20] that invalidated a Texas statute prohibiting flag-burning. Following the decision, Congress responded by passing the Flag Protection Act of 1989, which was itself then struck down by the Court in *U.S. v. Eichman*.[21] As these examples demonstrate, congressional attempts to remedy legislation open new avenues for litigants to seek access to the federal courts. Legislative activity begets litigation; litigation creates opportunity for judicial adjudication.[22] Court decisions then create the possibility of

[17] 521 U.S. 844

[18] 542 U.S. 656. Following the *Ashcroft* decision, the case was referred back to the federal district court and faced several more iterations of lower court rulings before the Supreme Court finally declined to review the law in 2009.

[19] 539 U.S. 194

[20] 491 U.S. 397. See also the history of the Religious Freedom Restoration Act, a congressional response to the Court's decision in *Employment Division v. Smith, 492 U.S. 872*, which upheld an Oregon law criminalizing Peyote use. The RFRA resulted from pressure from religious groups concerned with the possibility that the Court's precedent could be used to regulate common religious practices. The Court invalidated the RFRA in *City of Boernes v. Flores* as an unconstitutional exercise of Congress' enforcement power.

[21] 496 U.S. 310

[22] A related literature considers how litigation responds to changes in social development. See Friedman (1973) on this relationship as well as Grossman and Sarat (1974) on how states with high industrialization

congressional response. These examples provide evidence of the cyclical attention patterns among governmental institutions posited thus far.

In addition to prompting a congressional response, Court attention and decisions may also provide important signals to future litigants. This piece of the causal story relies on the interaction between the Court and strategic litigants and the ability of the Court to affect its own agenda. As Baird (2007) argues, justices use politically salient decisions to signal to future litigants that they desire to hear more cases in a similar policy area. The Court then relies on strategic litigants to bring more well-framed cases for adjudication.

- Hypothesis 2A: Increased attention by the Court to a given salient issue area should lead to increased attention by Congress to that same issue area.
- Hypothesis 2B: Increased attention by the Court to a given salient issue area should lead to increased attention by the president to that same issue area.

Finally, implicit within such a causal story, however, is a significant time element. It takes time for a case to make its way through the court system, to be placed on the Supreme Court's docket, to be scheduled for oral argument, and, finally, to be decided. Such a process can take years for a single case to be appealed through the federal court hierarchy. The odyssey of the CDA and its progeny, COPA and CIPA, illustrate this well, as it took nearly a decade for constitutional challenges to this set of cases to be resolved by the courts. Therefore, I would expect a lagged effect between governmental attention to an issue and Court attention due to the duration of the federal litigation process and the time necessary for congressional/executive response. In sum, the causal arrow should flow from congressional attention to an issue area, via hearings or enacted bills, to legislative process losers shifting their attention to the courts, and, then, to the Court accepting more cases in those areas it recognizes as particularly salient. Court decisions will then create opportunities for congressional and presidential reactions and will present signals to future litigants to direct more cases through the federal court system. This dynamic inter-relationship among

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saw increased legal activity and litigation over time.

the three branches results in the aforementioned feedback loop of anticipation and reaction, indicating an inherently endogenous relationship between the branches. The wheel in the institutional sky thus keeps on turning.

Societal Pressures

Alternatively, the Court's agenda may be less a reaction to the attention of the other branches than a response to prevailing technological and societal changes. I do not mean to imply that these two perspectives of Court agenda attention are mutually exclusive. In fact, I expect that these perspectives will complement one another or prove operative in differing issue areas. While making different predictions regarding the source of the Court's agenda, both explanations rely on the Court's concern for its institutional legitimacy, which is at odds with the dominant model of judicial decision-making in political science: the attitudinal model. Attitudinal explanations of Court decision-making argue that the institutional structure of the American political system affords the Court sufficient insulation from the constraining influences of Congress and the president (Rohde and Spaeth 1976; Segal and Spaeth 2002). Discretionary docket control provides great latitude for the Court in deciding which issues it will and will not hear, and the presence of multiple veto points in the legislative process means that congressional attempts to overturn Supreme Court statutory rulings is difficult. This implies that the Supreme Court enjoys a certain degree of protection from congressional oversight.[23] With lifetime tenure, no electoral connection, and no progressive ambition, attitudinalists argue justices are free to vote in accordance with their personal policy preferences and, with regard to the agenda stage, free to focus on the issues they find of greatest concern.

The attitudinal perspective outlined above is well-traversed in the Court literature. Less articulated, however, is an extra-governmental explanation of Court issue attention in terms of prevailing societal change. The Court may be hearing more of a certain type of issue because technological or societal changes require that this issue be adjudicated. Caldeira

[23] See Ignagni and Meernik (1994) and Meernik and Ignagni (1995, 1997) for more work on the congressional decision to override Court decisions.

(1981) was among the first to posit the Court's agenda as a function of societal factors. Theorizing that the Court's attention to criminal issues is a function of the rate or level of crime, the change in the crime rate, and media coverage, among other factors, the author found no support for these societal variables. However, Caldeira's work, while foundational as an initial foray into the question of Court agenda building, relies only upon simple bivariate analysis. Work on the Court and public opinion also theorizes that Court decisions on the merits is partly a reflection of social forces (Casillas, Enns and Wohlfarth 2011). The Court's place in the separation of powers system provides good reason to expect the Court to respond to these societal pressures. Returning to the Felix Frankfurter quotation, the Court's authority rests on the perceived legitimacy of its decisions, including the selection and resolution of important constitutional questions. Failure to attend to the important legal questions of the day may decrease the diffuse support enjoyed by the Court and may threaten its legitimacy and relationship with the other branches and their incentives to comply with Court decisions. Such perceived abdication of its constitutional role could be detrimental to the Court (Clark 2010; Mondak 1992, 1994). Thus, we may need to look outside the sphere of governmental attention to understand the Court's agenda attention. I theorize above that the Court's issue attention may reflect prevailing changes in the societal climate or the forward march of technological progress that creates new issues necessitating adjudication by the nation's highest court. I operationalize attention to societal change by using media coverage of a given issue area. If major news outlets such as the *New York Times* are attending to an issue, such attention may signal to the Court an issue area's adjudicability. This leads to the competing hypothesis:

- Hypothesis 3: The Court's issue agenda attention is a function of prevailing societal change. As media coverage of an issue rises, the Court will be more likely to hear more cases in that issue area.

Data

I utilize the Policy Agendas Project's more than sixty years of data on post-war Supreme Court cases to describe the broad trends characterizing the Court's agenda over this period, and I develop a more in-depth look at a smaller subsection of the Court's agenda. In particular, I examine the factors impacting the agenda space allocated to labor, crime, and transportation, as well as civil rights and liberties. As an issue area, civil rights and liberties has been a mainstay of the Court's agenda, rising in prominence as the Court shifted its focus away from macroeconomics in the years following the Great Depression and Roosevelt's New Deal Pacelle (1991).[24] The importance of this issue area over time, especially beginning with the Warren Court, makes it an obvious inclusion. Moreover, given hypotheses 1 and 2, I expect that more salient issue areas should better reflect the macrodynamic institutional attention patterns reflected in Figure 1. Thus, in addition to civil rights and liberties, I expect that attention to the issue area of crime should exhibit the hypothesized patterns. Moreover, Court attention to crime has resulted in some of the landmark cases of the post-war era (*Mapp v. Ohio (1961); Gideon v. Wainwright (1963)*). Labor and transportation, on the other hand, are objectively lower salience issue areas, far from public consciousness. Thus, I have chosen two salient and two non-salient issue areas to examine in light of my expectations.

Figure 2 corroborates Pacelle's (1991) findings and helps to justify the decision to study crime, labor, transportation, and civil rights and liberties. Figure 2 is a stacked area graph depicting the percentage of the Court's agenda taken up by twenty-one issue areas from 1946 to 2009. Data is derived from the Policy Agendas Project, and the issue areas correspond to the now twenty-one different major topics in the database. As can be discerned from the figure, both civil rights and liberties and crime and law cases have comprised a large portion of the Court's agenda during this era, whereas labor and transportation have trended downward over the time series. Moreover, the trends depicted in Figure 2 corroborate Pacelle's analysis with regard to the decrease in the Court's focus on issues of a

[24] See also Lanier (2003), who proceeds in a similar fashion to Pacelle, but backdates the analysis to 1877.

macroeconomic nature.

Fig. 2: Percentage of Supreme Court Cases by Major Topic Area: 1946-2009

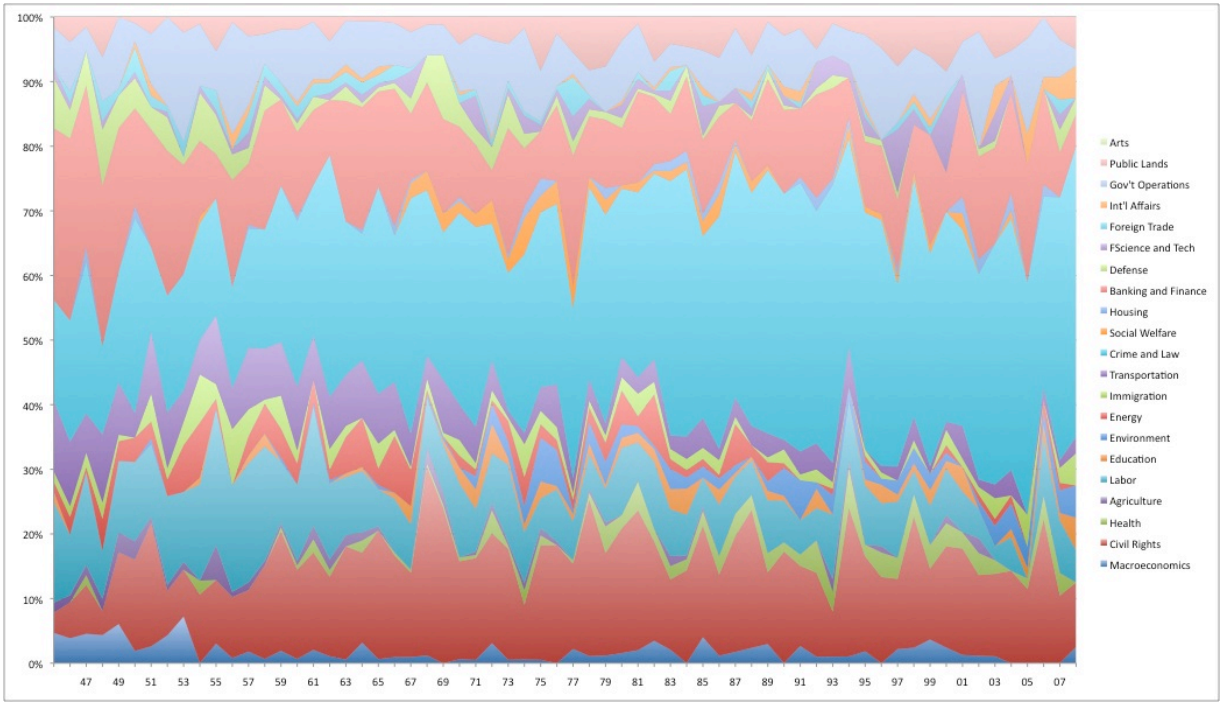


Table 1 presents summary statistics for each of the Policy Agendas Project's twenty-one major topic areas. I have provided the means and standard deviations for the topic areas expressed as both percentages and as counts.

Table 1: Summary Statistics: Post-War Court Cases by Major Topic Area

Topic Area	Mean(%Year)	SD(%Year)	Mean(Count)	SD
Macroeconomics	1.79	1.57	2.41	2.04
Civil Rights	14.36	5.09	20.70	11.14
Health	1.68	1.55	2.20	2.06
Agriculture	0.80	0.98	1.13	1.33
Labor and Employment	8.87	4.12	12.47	6.65
Education	1.18	1.26	1.66	1.99
Environment	1.56	1.69	2.11	2.64
Energy	2.38	2.31	3.70	4.05
Immigration	1.96	1.75	2.69	2.33
Transportation	4.77	3.01	6.92	4.95
Law, Crime, and Family Issues	28.97	8.28	39.86	16.39
Social Welfare	1.00	1.27	1.64	2.30
Housing and Community Development	0.59	0.83	0.81	1.17
Banking and Finance	13.55	5.48	18.70	9.63
Defense	2.23	2.31	3.16	3.38
Space, Science, Technology, and Communications	1.57	2.05	2.11	2.50
Foreign Trade	1.04	1.18	1.58	1.95
International Affairs and Foreign Aid	0.67	1.15	0.72	0.98
Government Operations	7.71	3.73	10.55	5.42
Public Lands and Water Management	3.34	2.34	4.72	3.83
Arts and Entertainment	0	0	0	0

The intriguing trends described above for crime, labor, transportation, and civil rights and liberties become more evident in Figure 3, which plots the individual trends for the four issue areas across the post-war period. Moreover, utilizing ordinary least squares regression, I estimate separate parameter estimates for each of the twenty-one Policy Agendas Project's major topic areas. The dependent variable is the percentage of total cases a given issue topic composes, and the independent variable is "year." The model is simple, but its use is primarily in obtaining a sense of the over-time increase or decrease of a given topic area. Table 2 shows the coefficient estimates obtained for each of the twenty-one linear

regressions, along with their corresponding R^2 values. Of the twenty-one major topic areas, the coefficient estimates on crime, labor, and transportation are among the largest. Thus, I have chosen two issue areas that have trended upward in the post-war period and two issue areas that have trended downward.

Fig. 3: Percentage of Supreme Court Cases: 1946-2009

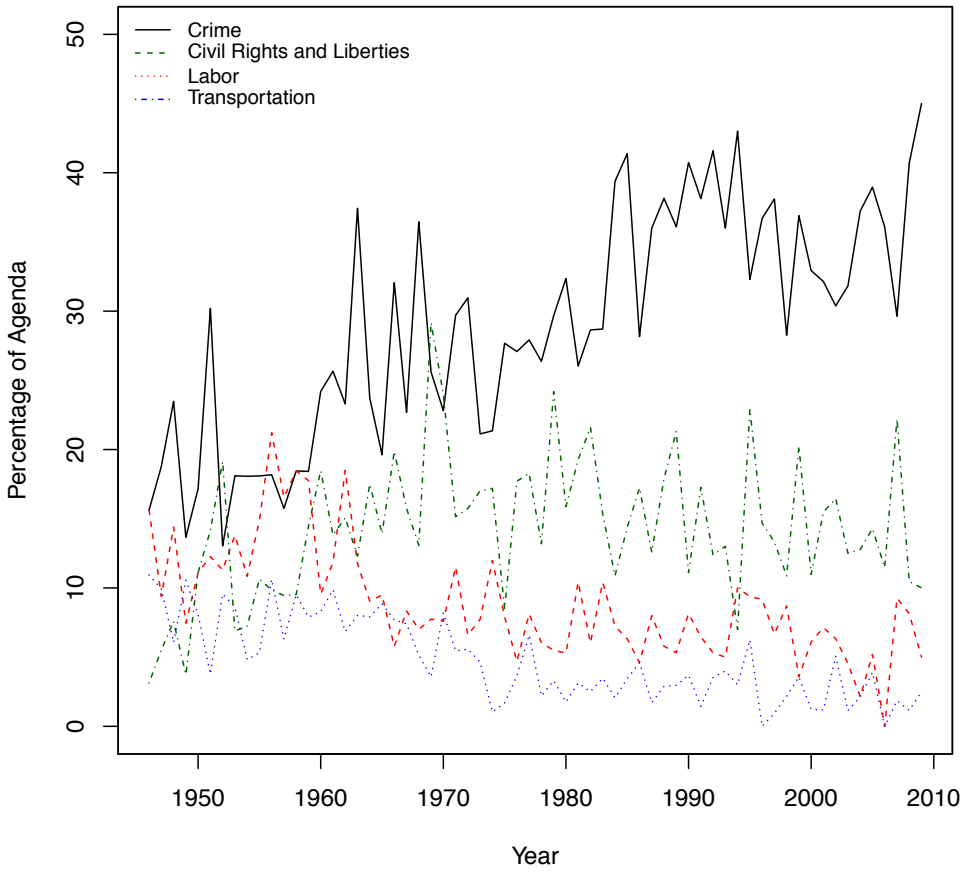


Table 2: Major Topic Areas Regressed on Year

	β(Year)	R^2
Macroeconomics	-0.03	0.15
Civil Rights	0.07	0.06
Health	0.05	0.41
Agriculture	-0.03	0.25
Labor and Employment	-0.15	0.44
Education	0.03	0.14
Environment	0.05	0.33
Energy	-0.06	0.22
Immigration	-0.02	0.05
Transportation	-0.13	0.61
Law, Crime, and Family Issues	0.35	0.62
Social Welfare	0.01	0.02
Housing and Community Development	0.01	0.06
Banking and Finance	-0.14	0.22
Defense	-0.08	0.38
Space, Science, Technology, and Communications	0.03	0.09
Foreign Trade	-0.02	0.14
International Affairs and Foreign Aid	0.02	0.14
Government Operations	-0.02	0.01
Public Lands and Water Management	0.05	0.14
Arts and Entertainment	0	NA

Note: Dependent Variable is the percentage of cases devoted to major topic area per year

Correlations and Time Series Trends

Turning to methodology, my primary dependent variable of interest is the percentage of Supreme Court cases devoted to a particular major topic area over time (1946-2009). The unit of analysis is the percentage of cases devoted to a given area per year. I measure the president's agenda in terms of the percentage of State of the Union policy mentions of a particular topic area per year. While not a perfect measure of the president's agenda

attention, the use of State of the Union policy quasi-mentions is a common measure of presidential issue priority (Yates, Whitford and Gillespie 2005; Light 1991*b*).[25] For the congressional agenda, I use the percentage of congressional hearings per year for a given major topic area (Yates, Whitford and Gillespie 2005; Flemming, Wood and Bohte 1999). I present summary statistics for these variables for each issue area in the Appendix. Data for the congressional, Supreme Court, and presidential agendas are derived from the Policy Agendas Project. Using this data, I have graphed the time series trends of the three variables for crime, labor, transportation, and civil rights and liberties below. Figure 4 shows the governmental agenda attention to crime. Interestingly, as hypothesized, the trends for the Supreme Court and Congress seem to move together, and the president's agenda also mirrors its brethren agendas, although to a lesser degree. Figure 5 shows the governmental agenda attention to labor. Similar trends emerge for the Court and Congress, but not so for the president's agenda. Once again, Congress and the Court appear to be moving in similar directions for transportation in Figure 6, but the president's agenda appears much more volatile. Finally, Figure 7 depicts the government agenda allocation devoted to civil rights and liberties. Of the four time series graphs, civil rights and liberties appears to show the least degree of correlation among the agendas.

[25] Light (1991) argues that State of the Union mentions are the principle indicators of presidential policy priorities. Moreover, the literature on the president going public indicates that spending more time on a certain issue should convey to the other branches that the president is serious about the issue (Kernell 1986).

Fig. 4: Percentage of Governmental Agendas: Crime

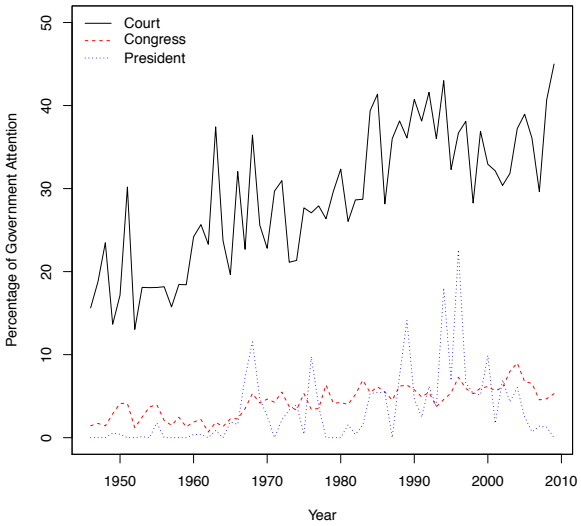


Fig. 5: Percentage of Governmental Agendas: Labor

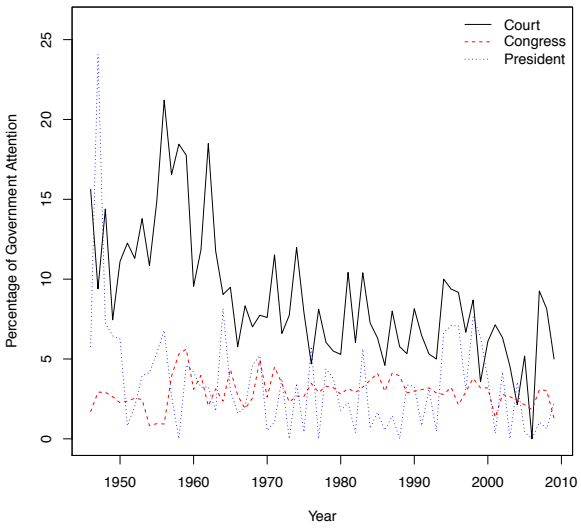


Fig. 6: Percentage of Governmental Agendas: Transportation

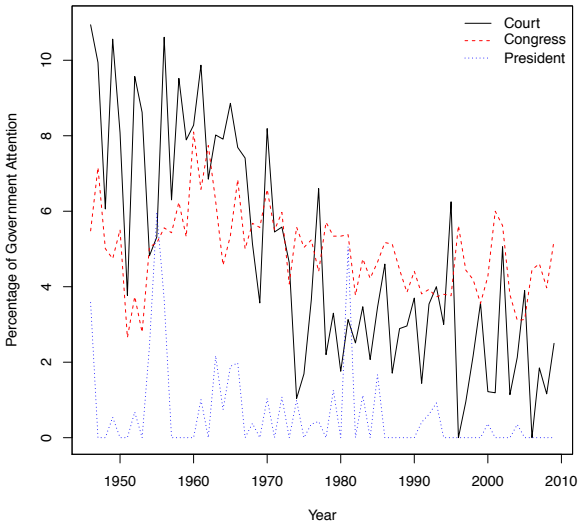
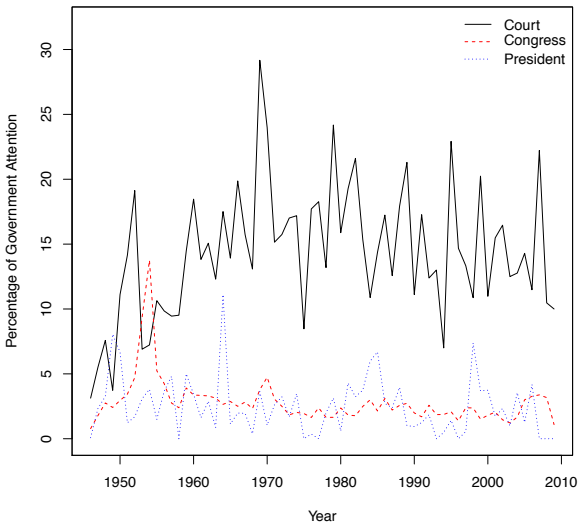


Fig. 7: Percentage of Governmental Agendas: Civil Rights and Liberties



Computation of correlations among the governmental agendas confirms these graphical results. The correlations are reported in Table 3 below. Outside of civil rights and liberties,

the correlations between the Supreme Court's agenda and the congressional agenda and between the Court's agenda and the president's agenda are positive and moderately strong. The correlations are highest for crime, followed by transportation and then labor.[26] The preceding figures and tables provide evidence of a link between the agenda attention allocations of the respective governmental branches. I now turn to exploring statistical evidence for the causal linkages between the agendas, with an emphasis on how the presidential and congressional agendas impact the cases that the Court hears and how the Court, in turn, drives issue attention.

Table 3: Correlations between Cases and Hearings and State of the Union

%Cases	% Hearings	% State of the Union
SC Transportation	0.39	0.28
SC Labor	0.04	0.20
SC Crime	0.66	0.46
SC Civil Rights/Liberties	-0.14	-0.05

Vector Autoregression and Agenda Dynamics

The theoretical framework above motivates competing expectations regarding the dynamics of institutional agenda attention. Hypotheses 1 and 2 posit that issue attention proceeds in a horizontal pattern across institutions, while under hypothesis 3, exogenous pressures structure an institution's agenda attention. In this section, I formulate a model for testing hypotheses 1 and 2. The dynamic elements of these two hypotheses make the specification of a structural equation model difficult. Thus, I turn to a modeling strategy capable of accounting for these competing dynamics by placing fewer restrictions on model specification and estimation: vector autoregression (Sims 1972, 1980). Vector autoregression is a method of time-series modeling that attempts to capture dynamic interaction over time without the placement of undue restrictions on the nature of that interaction (Carsey,

[26] Correlations between percentage State of the Union and percentage Hearings for each issue are presented in the appendix.

Jackson, Stewart and Nelson 2011). VAR models do not assume a correct "causal" structure for the underlying data generating process for the time series. VAR attempts to account for the dynamics of all the variables in a time series without initially assuming whether they are endogenous or exogenous, thus simultaneity bias resulting from incorrect specification of an endogneous variable as exogenous is avoided (Brandt and Williams 2007). In a VAR model, "current values of each variable are expressed as functions of their own past values, the past values of the other variables in the analysis, and a residual" (Carsey et al. 2011). Contemporaneous relationships existing between the variables in the model are included in the residuals of each equation, allowing the residuals across equations to contemporaneously correlate. The residuals are exogenous shocks and innovations. Because VAR models do not assume an a priori structure among related time series, the benefit of using this approach is that multiple theories can be compared and evaluated without the identification and specification assumptions of a typical structural equation model. In essence, one starts with an admitted ignorance about the relationship between the variables in a time series and models the dynamic structure by accounting for the past history of each variable. One then utilizes a system of equations where each equation regresses a potentially endogenous variable upon its own values and the past values of the other variables in the system. Having specified the model, one then proceeds by evaluating the causal effects of the potentially endogenous variables on the others (Granger causality) and then accounting for the amount of variance in each variable that can be attributed to changes in both itself and the other variables in the model (Forecast Error Variance Decomposition).

In this study, the current values for the agendas of the Supreme Court, Congress, and the president are modeled as functions of their own past values and the past values of the

other branches' agendas.[27,28] Thus, the Court's agenda is a function of its past agendas, past congressional agendas, and past presidential agendas. The same logic applies to modeling the presidential and congressional agendas, resulting in a total of three equations. Concern for omitted variable bias is lessened because everything affecting the previous agendas of the branches is fully captured by the lagged values. For example, all the factors accounting for the Court's agenda at $t-1$ or $t-2$ is captured in those variables. Thus, only those factors not fully incorporated in the decision-making process for previous agendas are outside the scope of this modeling approach.

For each issue area, I estimate a vector autoregression model[29] with three equations. The dependent variable in each equation is a measure of one institution's agenda attention and is regressed on past values of itself and on past values of the other measures of agenda attention. I then perform Granger causal testing and compute forecast error variance decompositions to evaluate the relations between the variables. Granger testing in the VAR

[27] A key decision in utilizing vector autoregression is the choice of the number of lags to include in the model. Including too few lags is akin to omitted variable bias, as one is leaving some dynamics modeled, but including too many lags results in inefficiency. Specifying lag order relies upon a combination of theory and statistical tests. From a theoretical standpoint, when choosing the number of lags, one should include enough lags to capture the full data cycle. Agenda dynamics need a certain amount of time to fully play out, and lag structure should be chosen to account for the entirety of this structure. For each issue area, I employ both theory and these statistical tests to assist in the selection of an appropriate lag length.

[28] VAR literature offers two classical tests: Likelihood Ratio (Sims 1980) and Information Criteria (Judge, Hill, Griffiths, Lutkepohl and Lee 1988). A likelihood ratio test compares the maximum values of two models' likelihoods. One model is estimated with p lags and the second with $p-1$ lags. The null hypothesis under this test is that the VAR model has $p = p_0$ lags. The alternative hypothesis is that the VAR model has $p = p_1$ lags where $p_1 > p_0$. This test is distributed χ^2 with $m^2(p_1 - p_0)$ degrees of freedom. See Flemming, Wood and Bohte (1999) and Brandt and Williams (2007) for the mathematical formula to compute the χ^2 test statistic. However, this approach is biased towards the inclusion of longer lag lengths because as more parameters (lags) are added to the model, the better the model fits and the larger the final log-likelihood value (Brandt and Williams 2007). Thus, incorrect lengths may be chosen because the likelihood ratio does not take into account the cost of more lags. The second method of determining lag length uses information criteria, including Akaike's information criterion (AIC), the Bayesian (or Schwarz) information criterion (BIC or SC), and the Hannan-Quinn criterion (HQ). These criteria are computed across different values of p and penalize for adding parameters, in this case lags, to the model. The choice of p that results in the smallest criterion is considered the best fitting model. See Brandt and Williams (2007) for the proper computation of these criteria.

[29] This paper follows the approach conducted by Flemming, Wood and Bohte (1999). However, I use different data with a longer time series and tackle different issue areas, with the exception of civil rights and liberties. The coefficients and standard errors for the VAR model estimated for each issue area are reproduced in Tables 18, 19, 20, and 21 in the Appendix. I relegate these results to the Appendix because the coefficients estimated with VAR are impossible to interpret without the aid of Granger tests and other methods of analysis. Thus, within the body of this paper, I interpret VAR results using Granger testing and innovation accounting.

context is a multivariate extension of the direct Granger approach. To give an example, if one has a bivariate VAR model with two time series variables (Y_t and X_t), Granger causality assesses whether the behavior of past values of X_t can better predict Y_t than only the past values of Y_t. If true, X_t is said to Granger cause Y_t. Of course, this concept works in reverse as well to evaluate the impact of Y_t on X_t. Formal hypothesis testing for Granger causality is done using either an F or a χ^2 test to assess the joint exogeneity[30] of each variable's lags.[31] The null hypothesis, then, is a joint hypothesis that the coefficients of the lags for a given variable are indistinguishable from zero. However, Granger tests offer no understanding of the dynamics of the VAR system, obscuring reciprocal relationships among the variables. To assess these relationships, I utilize "innovation accounting" to interpret the interrelated dynamic changes of the VAR model. Innovation accounting estimates the amount of variation in each of the endogenous variables in the systems of equations due to changes in each of the other endogenous variables over some specified period of time. Specifically, innovation accounting decomposes "the variance of the variables in each equation into the amount of variation from each of the other variables in the system" (Brandt and Williams 2007, p. 46). We are interested, then, in how innovations in each variable affect the variance of each equation. I present the decomposition of the forecast error variance in tables below for each issue area. The numbers in the column are the percentage of a variable's forecast error variance that can be attributed to both itself and the other variables. The *t* column is the number of steps after the innovation. A variable that is exogenous to the rest of the system should account solely for its variance across time, and one would see percentages approaching 100 or unity in the given institution's own column.

[30] As noted, the VAR multivariate approach to Granger testing uses block exclusion tests for causality. Block exogeneity allows for a block of several variables and each of their lags to be tested at one time. With block exclusion tests, one tests whether the system is dependent upon a block of variables.

[31] I conduct the χ^2 version of the Granger causality test using a Wald test.

Issue Area Results

Crime

Table 4 shows the results of Granger causality Wald tests for crime.[32] These tests present evidence of significant interdependent relationships across the institutions, as expected for a salient issue area. Beginning with this paper's primary institution of interest, the U.S. Supreme Court, the Granger tests exhibit evidence of a reciprocal relationship between the Court and the president's attention to crime (P-values lower than the 0.1 significance level). Court attention Granger causes presidential attention, and presidential attention Granger causes Court attention. However, while the Court Granger causes congressional attention, the reverse relationship is not present. Table 5 confirms the impact of the Court on the other institution's agenda attentions. At each period following a shock to congressional attention, the Court explains a substantial portion of the congressional error variance. Seven years after the initial shock, for example, the Court explains about 23.40 percent of Congress' forecast error variance, and this pattern continues in subsequent periods. The Court is perhaps even more influential with regard to the president. Seven years following a shock to presidential attention, the Court explains about 40.53 percent of the forecast error variance. Again, this trend is even more pronounced in subsequent years. The Court's attention also displays path dependence, as past values of its own attention Granger causes current attention. However, Congress and the president are both influential in explaining the Court's attention. While a substantial portion of the Court's attention is explained by its own past, the other branches are also important. Eight years after a shock to Court attention, presidential attention explains about 9.54 percent of the Court's forecast error variance. Moreover, while Congress does not Granger cause Court attention, Table 5 indicates that congressional attention has a moderate impact on explaining the Court's forecast error variance,

[32] These results are derived from a VAR model with six lags for each variable. This lag order specification was determined using likelihood ratio tests and information criteria. From a theoretical standpoint, six lags would account for the dynamics of the full six-year election cycle, as any effects resulting from the presidential election and the full Senate cycle should have time to filter through the system. While a longer lag structure makes sense with a salient and ever-increasing issue like crime, including a larger number of lags would suggest an unrealistic capacity for long-term institutional memory, particularly with less salient issues like labor and transportation. For those issues, a shorter lag specification should be expected.

particularly in later years following a shock. The Granger tests in Table 4 also indicate a reciprocal relationship between presidential attention and congressional attention. Furthermore, congressional attention is modestly important in explaining the president's forecast error variance. Six years after the initial shock to presidential attention, congressional attention explains about 12.86 percent of the forecast error variance. Ultimately, what results from this analysis of crime is evidence of a highly interdependent system of institutions displaying horizontal agenda attention dynamics. The Court, in particular, emerges as the key institution driving agenda attention in this area.

As depicted in Figure 4, crime occupies a significant portion of institutional attention across institutions. Moreover, crime has been an important electoral issue in the post-war era, particularly during the 1968 presidential election, and is frequently an important concern among the general public, particularly in densely populated urban areas. Furthermore, a number of the Supreme Court's landmark decisions in the post-war era concerned this issue area. For example, the Warren Court's expansion of defendants' rights is encapsulated in *Miranda v. Arizona* (1965), *Mapp v. Ohio* (1961), and *Gideon v. Wainwright* (1963). These cases are among the most salient and legally influential in post-war America. Given the salience of the cases in this area, as well as the issue's high valence nature, it is not surprising that the institutional agendas appear highly interdependent. Indeed, crime is the issue area I would expect to display the most evidence of institutional interdependence. Thus, with regard to crime, the results provide support for Hypotheses 1 and 2.

Table 4: Crime Granger Causality Tests

Equation	Coefficient Block	Chi Square Statistic	P-Value
Court	Court	18.97	0.09
	Congress	9.38	0.154
	President	10.77	0.096
Congress	Court	21.39	0.002
	Congress	33.34	0.001
	President	10.711	0.098
President	Court	50.55	0.00
	Congress	20.47	0.002
	President	67.244	0.00

Table 5: Forecast Error Variance Decomposition: Crime

Equation	t	Court	Congress	President
Court	1	100.00	0	0
	2	95.55	0 .07	3.77
	3	93.12	2.20	4.70
	4	93.12	2.53	4.35
	5	90.83	2.87	6.30
	6	89.64	4.12	6.20
	7	85.94	4.75	9.30
	8	83.48	6.98	9.54
	9	82.60	8.52	8.88
	10	80.63	10.10	9.27
Congress	1	21.13	78.87	0
	2	17.63	82.08	0.29
	3	18.25	80.24	1.52
	4	16.98	81.47	1.56
	5	17.97	80.42	1.61
	6	19.61	74.90	5.49
	7	23.40	71.32	5.28
	8	28.48	66.50	5.02
	9	33.37	61.16	5.47
	10	36.00	58.64	5.36
President	1	2.75	0.86	96.38
	2	4.71	0.87	94.42
	3	4.40	7.38	88.23
	4	13.12	11.80	75.08
	5	27.10	9.91	62.99
	6	33.08	12.86	54.06
	7	40.53	11.61	47.86
	8	41.50	11.41	47.09
	9	42.44	11.70	45.86
	10	42.90	11.61	45.50

Labor

Table 6 presents Granger tests for the labor issue area.[33] The pattern of labor agenda attention is certainly less interdependent than what was presented for crime and accords well with the expectations for a lower salience issue area. The Granger tests in Table 6 indicate that congressional attention Granger causes Court attention, but the relationship is

[33] These results are derived from a VAR model with one lag for each variable. This lag order specification was determined using likelihood ratio tests and information criteria.

not reciprocal. Table 7 shows that six years after a shock to Court attention, congressional attention explains about 7.96 percent of the Court's error variance, while presidential attention never explains more than 2.12 percent in any period. The Granger results also indicate that presidential attention does not Granger cause Court attention, but Court attention does Granger cause presidential attention. However, Court attention explains very little of the forecast error variance for the president. More of presidential attention error variance is explained by congressional attention and by the president's own history of attention.

Finally, congressional attention is not Granger caused by any of the other institutional variables, and appears exogenous. This result is confirmed by the forecast error variance decompositions in Table 7, as even ten years after the initial shock to congressional attention, 95.91 percent of congressional error variance is explained by its own past values. Thus, while some evidence of agenda linkages emerges, the pattern of labor agenda attention across institutions is much less interdependent than for crime, and only moderate support is found for the inter-branch hypotheses. Of the institutional agendas, the president's agenda attention appears most dependent on the other branches, followed closely by the Court's. These results indicate that Congress is the most important institution with respect to its influence on attention to labor issues.

Table 6: Labor Granger Causality Tests

Equation	Coefficient Block	Chi Square Statistic	P-Value
Court	Court	1.06	0.30
	Congress	2.99	0.08
	President	4.34	0.11
Congress	Court	1.20	0.27
	Congress	1.30	0.52
	President	0.27	0.60
President	Court	4.29	0.04
	Congress	3.41	0.07
	President	7.47	0.02

Table 7: Forecast Error Variance Decomposition: Labor

Equation	t	Court	Congress	President
Court	1	100.00	0.00	0.00
	2	95.83	3.08	1.08
	3	92.58	5.72	1.69
	4	90.92	7.12	1.96
	5	90.21	7.73	2.06
	6	89.94	7.96	2.10
	7	89.8	8.04	2.11
	8	89.82	8.07	2.11
	9	89.81	8.08	2.12
	10	89.80	8.08	2.12
Congress	1	0.91	99.09	0.00
	2	2.60	97.07	0.33
	3	3.33	96.31	0.35
	4	3.60	96.04	0.35
	5	3.70	95.60	0.35
	6	3.72	95.92	0.36
	7	3.73	95.91	0.36
	8	3.73	95.91	0.36
	9	3.73	95.91	0.36
	10	3.73	95.91	0.36
President	1	0.31	0.01	99.68
	2	2.96	4.28	92.76
	3	3.92	6.15	89.94
	4	4.12	6.80	89.02
	5	4.26	7.01	88.73
	6	4.28	7.08	88.64
	7	4.29	7.10	88.62
	8	4.29	7.11	88.61
	9	4.29	7.11	88.61
	10	4.29	7.11	88.61

Transportation

Table 8 presents Granger tests for the transportation issue area.[34] Results indicate that attention dynamics are even less interdependent than either labor or crime, as the horizontal attention patterns that emerged for crime, and to a lesser degree for labor, are absent. Neither congressional nor presidential attention Granger causes Court attention, and presi-

[34] These results are derived from a VAR model with one lag for each variable. This lag order specification was determined using likelihood ratio tests and information criteria.

dential attention is not Granger caused by Court or congressional attention. Attention does, however, flow from the Court to Congress, but, again, this relationship is not reciprocal. This result is observed in Table 9, which shows that five years after a shock to congressional attention, Court attention explains over 14 percent of Congress' forecast error variance. The Court's attention is fairly exogenous, as congressional attention explains a very modest amount of the Court's forecast error variance, only slightly more than presidential attention. Ultimately, weak support is uncovered for the inter-branch hypotheses in this issue area. Like with labor, the absence of significant "causality" flowing from presidential and congressional agendas to the Court is not surprising given transportation's low salience nature. Indeed, as Figure 3 demonstrates, during the post-war era, transportation cases occupy the least amount of Court agenda attention of the issues analyzed in this paper.

Table 8: Transportation Granger Causality Tests

Equation	Coefficient Block	Chi Square Statistic	P-Value
Court	Court	3.57	0.17
	Congress	1.74	0.19
	President	1.51	0.22
Congress	Court	4.92	0.03
	Congress	5.03	0.08
	President	0.03	0.87
President	Court	0.19	0.66
	Congress	0.02	0.90
	President	0.19	0.91

Table 9: Forecast Error Variance Decomposition: Transportation

Equation	t	Court	Congress	President
Court	1	100.00	0	0
	2	96.24	2.26	1.49
	3	94.33	3.62	2.05
	4	93.53	4.23	2.23
	5	93.22	4.49	2.29
	6	93.10	4.59	2.31
	7	93.04	4.64	2.32
	8	93.02	4.65	2.32
	9	93.02	4.66	2.32
	10	93.01	4.66	2.32
Congress	1	1.84	98.16	0.00
	2	7.81	92.16	0.03
	3	11.54	88.40	0.06
	4	13.28	86.59	0.13
	5	14.03	85.79	0.18
	6	14.34	85.45	0.20
	7	14.46	85.32	0.22
	8	14.52	85.26	0.23
	9	14.54	85.24	0.23
	10	14.55	85.23	0.23
President	1	5.53	2.69	91.79
	2	5.26	2.82	91.92
	3	5.29	2.82	91.89
	4	5.31	2.82	91.87
	5	5.32	2.82	91.86
	6	5.33	2.82	91.85
	7	5.33	2.82	91.85
	8	5.33	2.82	91.85
	9	5.33	2.82	91.85
	10	5.33	2.82	91.85

Civil Rights and Liberties

The fourth and final issue area covered in this analysis is civil rights and liberties. Volumes have been and can be written on the importance of this issue area to all aspects of American politics. Like crime, civil rights and liberties occupies a sizable portion of the institutional agendas. With regard to the Court, first amendment concerns, for example, permeate the Court's docket year in and year out. Given the weight placed on this issue area by the institutions, particularly the Court, the results from this analysis are quite surprising.

Table 6 presents Granger tests for the civil rights and liberties issue area.[35] The results indicate that little interdependence characterizes agenda attention across institutions, a finding that runs counter to the Flemming, Wood and Bohte (1999) VAR analysis of this issue area. These authors find significant evidence of horizontal institutional agenda attention to civil rights and liberties. However, the authors utilize different data and measurements in their analysis of institutional agenda attention. Moreover, they separate civil rights and liberties into two categories and run separate VAR models on these categories. My analysis lumps together the two areas. Viewing the Granger tests in the table, only Court attention Granger causes presidential attention, and no reciprocal Granger causal relationships are uncovered. Table 11 indicates a high degree of exogeneity for each institution's agenda attention. Past congressional attention explains more than 99 percent of the forecast error variance of its current attention even ten years after an initial shock. Court and presidential attention forecast error variance are also substantially explained by their own past histories. Ultimately, institutional issue attention is least interdependent and is the most exogenous with respect to civil rights and liberties. Thus, no support is found for the inter-branch hypotheses, and I now turn to exploring a possible exogenous influence on institutional agenda attention.

Table 10: Civil Rights and Liberties Granger Causality Tests

Equation	Coefficient Block	Chi Square Statistic	P-Value
Court	Court	2.02	0.37
	Congress	1.88	0.17
	President	0.26	0.61
Congress	Court	0.023	0.88
	Congress	0.024	0.99
	President	0.00	0.97
President	Court	5.23	0.02
	Congress	0.003	0.96
	President	5.31	0.07

[35] These results are derived from a VAR model with one lag for each variable. This lag order specification was determined using likelihood ratio tests and information criteria.

Table 11: Forecast Error Variance Decomposition: Civil Rights and Liberties

Equation	t	Court	Congress	President
Court	1	100.00	0	0
	2	98.19	1.47	0.35
	3	97.00	2.63	0.37
	4	96.45	3.19	0.37
	5	96.21	3.42	0.37
	6	96.11	3.52	0.36
	7	96.07	3.56	0.36
	8	96.06	3.58	0.36
	9	96.05	3.59	0.36
	10	96.04	3.59	0.37
Congress	1	0.72	99.28	0.00
	2	0.61	99.39	0.00
	3	0.57	99.43	0.00
	4	0.56	99.44	0.00
	5	0.55	99.44	0.00
	6	0.55	99.45	0.00
	7	0.55	99.45	0.00
	8	0.55	99.45	0.00
	9	0.55	99.45	0.00
	10	0.55	99.45	0.00
President	1	0.00	1.31	98.62
	2	6.85	1.21	91.94
	3	7.42	1.30	91.29
	4	7.43	1.37	91.20
	5	7.43	1.42	91.15
	6	7.43	1.44	91.13
	7	7.43	1.43	91.13
	8	7.43	1.45	91.12
	9	7.43	1.45	91.12
	10	7.43	1.45	91.12

Modeling the Exogenous Pressures

The null findings associated with the VAR models for the non-salient areas of transportation and labor, as well as for civil rights and liberties, lead to the testing of the impact of extra-governmental factors on the Court's agenda. The dependent variable in each model is the percentage of cases the Court hears in a given issue area in a given year. Given the continuous nature of the dependent variable, I employ ordinary least squares (OLS) regres-

sion for crime and an iterative procedure for the other issue areas as estimation tools.[36] I continue to control for the effects of inter-governmental agenda attention, using the same measures and lag structures detailed above. The key independent variable in this model is a measure of societal change. Media coverage seems an appropriate proxy for dealing with prevailing societal change, and it is logically sound to expect that the media serves as a conduit for societal and technological information to the Court. I operationalize media attention using the *New York Times* Index measure, and I again use the percentage of a given issue per year. The results[37] are presented below in Table 12,[38] and the evidence appears to support the exogenous support hypothesis for transportation and labor.

Columns 1 and 2 present the results for transportation and labor. The *New York Times* coefficient is statistically significant and is in the expected positive direction. An increase in *New York Times* attention to transportation and labor leads to a corresponding increase in Supreme Court attention to those areas. While the *New York Times* coefficient is in the expected positive direction for civil rights and liberties, the coefficient does not attain statistical significance. In addition, no significant result emerges for crime with respect to the *New York Times* coefficient. Thus, moderate evidence is uncovered to support hypothesis 3.

Turning to inter-branch explanations of the Court's attention, the Court's issue agenda attention appears path dependent across issue areas. The impact of past values of Court attention is consistently significant and positive in direction. This indicates that Court decisions do not themselves provide the final word on political and legal questions, but instead beget the need for further clarification. Such a finding accords well with that of Baird's (2009), who argues that politically salient Court decisions signal to potential litigants the

[36] I originally estimated OLS models for each major topic area. However, upon detection of serial correlation in the models for labor, transportation, and civil rights and liberties, I estimated these parameters with the Prais-Winston, Cochran-Orcutt iterative procedure. The results from these models are reported in the table for these three issue areas along with robust standard errors. No serial correlation was detected from the OLS model for crime. Thus, I report OLS coefficients for this topic area. I also tested for multicollinearity among the many coefficients for the crime model, but the issue was not present.

[37] Cases, Hearings, and State of the Union are lagged six years for crime, and one year for labor, transportation, and civil rights and liberties. The *New York Times* series is also lagged one year.

[38] I only report estimates from the first lag for crime. Full results are in the appendix in Table 22.

Court's desire to hear more cases in that issue area.

On the other hand, the results for inter-branch effects are uneven, as Hearings and State of the Union quasi-mentions are never both positive and significant. While evidence of inter-branch relationships emerged in the VAR analysis for crime, the weak findings for inter-branch explanations for labor, transportation, and civil rights and liberties in that analysis suggests the need to incorporate other factors of attention to these areas in terms of exogenous factors. While *New York Times* attention was significant for transportation and labor, the low R^2 value for civil rights and liberties indicates that important dynamics are being left unmodeled. Future work should utilize different and more informed measures of exogenous pressures.

Table 12: Effects of Exogenous and Inter-Branch Pressures

	Crime	Labor	Transportation	Civil Rights and Liberties
(Intercept)	-2.62	3.79**	-0.82	8.26**
	(4.67)	(1.67)	(1.07)	(2.56)
Cases	0.18	0.77**	0.47**	0.42**
	(0.17)	(0.09)	(0.13)	(0.13)
Hearings	-0.37	-0.82*	0.24	-0.56**
	(0.77)	(0.44)	(0.26)	(0.25)
State of the Union	-0.35	-0.04	0.07	0.05
	(0.26)	(0.08)	(0.28)	(0.27)
New York Times	-0.40	0.43*	0.64**	0.88
	(0.71)	(0.25)	(0.27)	(0.53)
N	58	62	62	62
R^2	0.73	0.71	0.71	0.32

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

Conclusion

This paper builds on the work of Flemming, Wood and Bohte (1999) in demonstrating evidence of interdependent and horizontal attention flow across issue areas and across institutions. Using different data with different measurements, I uncover evidence of inter-institutional agenda attention, particularly with respect to the salient issue area, crime. How-

ever, much less interdependent agenda attention is found for labor, transportation, and civil rights and liberties. This result for civil rights and liberties is curious and runs counter to Flemming, Wood and Bohte's (1999) earlier finding for these issue areas. This result may be due to a number of factors. For one, Flemming, Wood and Bohte (1999) partition civil rights and liberties into separate issue areas and run VAR models on both areas. Moreover, our different data sources and differing measures of the institutional agenda attentions may be driving some of these disparate results. As noted above, my measures of attention are derived from the Policy Agendas Project, while Flemming, Wood and Bohte (1999) use the Supreme Court Judicial Database (Spaeth 1993), the proportion of all hearing days as reported by the *Congressional Information Service Index (CIS)*, and an index of presidential attention using *The Public Papers of the President*. Regardless, both projects provide evidence of inter-institutional agenda attention across different issue areas.[39]

What drives the agenda attention of the United States Supreme Court? This paper motivates and tests a series of competing and complementary hypotheses regarding this agenda attention, and, to some extent, the results provide evidence for both inter-branch and exogenous explanations. I theorize that Court agenda attention is a reaction to attention to salient issues by the other branches, but also drives attention from itself to Congress and the president. Granger causality tests and innovation accounting analysis provide support for this expectation, particularly with regard to crime. The role of the Court as agenda setter is perhaps this project's most interesting finding, as the importance of the Court as an attention driver for the American political system is often not emphasized. Such a finding speaks to the importance of studying the three branches together rather than in isolation as a means to further our understanding of the relationships underlying the political system.

Additionally, OLS and iterative estimation uncover support for an exogenous pressures explanation for transportation and labor. These results suggest the importance of incorporating both inter-branch and exogenous explanations to studies of Court agenda-setting and developing a more unified theory for explaining the macrodynamic patterns of the Court's

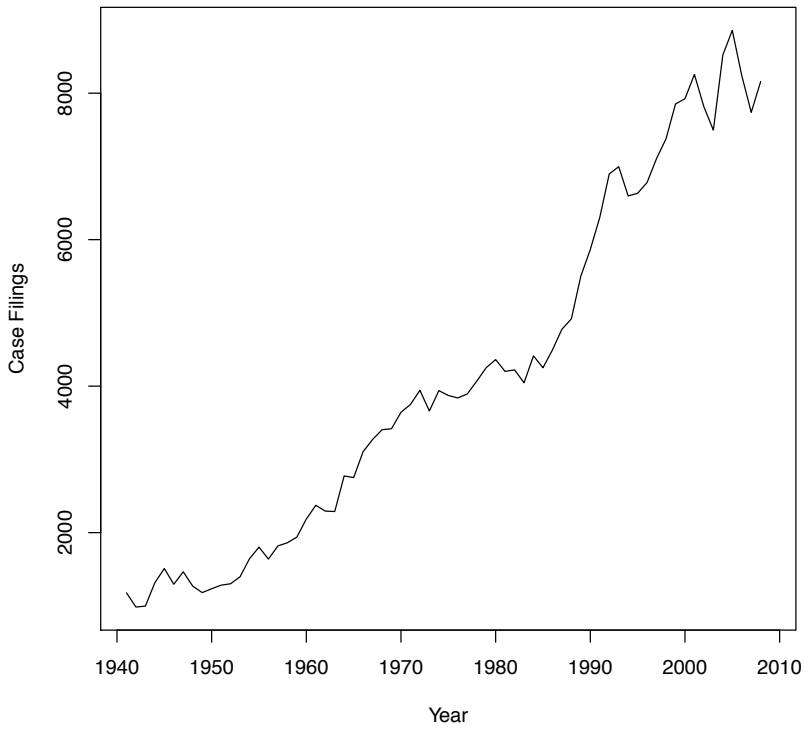
[39] Environmental issues and civil rights and liberties f Flemming, Wood and Bohte (1999) and primarily crime for this paper.

agenda issue attention. This paper began by discussing the Court's nearly complete discretionary control over its docket. However, while the Court may possess control over its agenda, this control is not without limits. As these results show, the Court does not act completely of its own volition. The Court sets its agenda partly as a response to the agenda attention of Congress and the president, as well as in response to changing societal attention. Future work should improve upon the measures utilized in this analysis, incorporating better indicators of societal and technological change to help us more fully understand the nature of Court agenda setting and to subject the expectations laid out in this paper to empirical scrutiny with regard to additional issue areas. Moreover, in addition to expanding my analysis to other major topic areas, looking at the agenda patterns across subtopics within the Policy Agenda's Project's major topic areas presents another potential avenue with which to further pursue the research agenda begun in this work.

APPENDIX

Note that the data utilized for Figures 8 and 9 are derived from the Supreme Court Compendium (Epstein, Segal, Spaeth and Walker 2011) and the Federal Judicial Center,[40] respectively. The numbers featured in Tables 13 through 16 reflect percentages.

Fig. 8: Number of New Case Filings



[40] The Federal Judicial Center data is available at http://www.fjc.gov/history/caseload.nsf/page/caseloads_Sup_Ct_method_of_disposition and http://www.fjc.gov/history/caseload.nsf/page/caseloads_Sup_Ct_Methods_of_Disposition_2.

Fig. 9: Number of Cases Disposed by Full Opinion

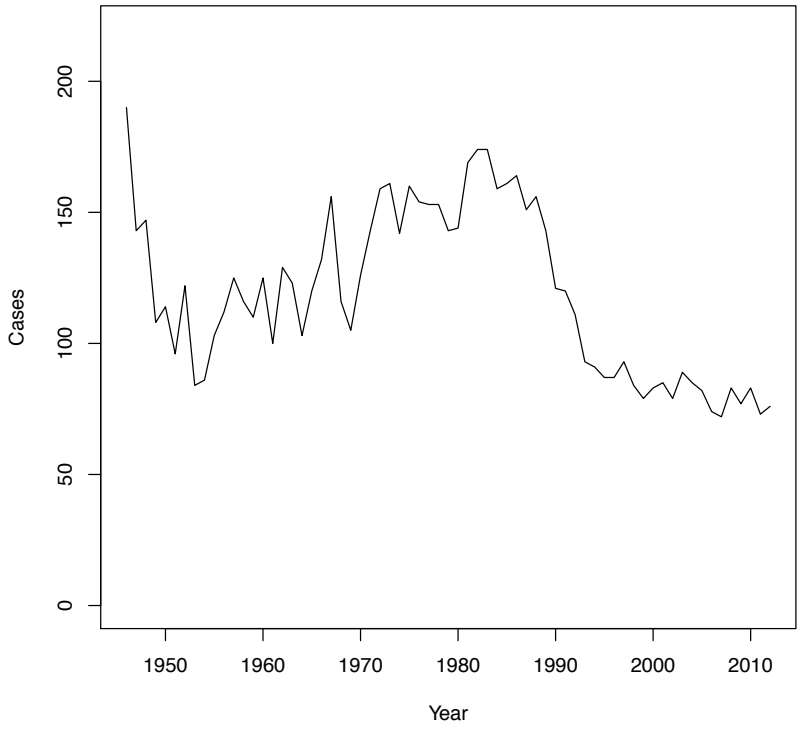


Table 13: Summary Statistics for Crime

Variable	Mean	Std. Dev.	Min.	Max.
Cases	28.97	8.28	13.04	45
Hearings	4.31	1.87	0.68	9
State of the Union	0.40	4.49	0	22.62

Table 14: Summary Statistics for Labor

Variable	Mean	Std. Dev.	Min.	Max.
Cases	8.87	4.12	0.00	21.21
Hearings	2.93	0.95	0.83	8.1
State of the Union	3.36	3.52	0	24.08

Table 15: Summary Statistics for Transportation

Variable	Mean	Std. Dev.	Min.	Max.
Cases	4.77	3.01	0	10.94
Hearings	4.95	1.11	2.65	13.76
State of the Union	0.64	1.21	0	5.97

Table 16: Summary Statistics for Civil Rights and Liberties

Variable	Mean	Std. Dev.	Min.	Max.
Cases	14.35	5.09	3.13	29.17
Hearings	4.31	1.87	0.68	9
State of the Union	2.53	2.22	0	11.11

Table 17: Correlations between Hearings and State of the Union Mentions

Issue Area	% State of the Union
% Hearings Transportation	0.18
% Hearings Labor	-0.06
% Hearings SC Crime	0.48
% Hearings SC Civil Rights/Liberties	0.13

Table 18: Vector Autoregression Results for Crime

	Court Cases	Hearings	State of the Union
(Intercept)	-2.62	-0.85	-11.67
	(4.63)	(1.00)	(2.28)
% Cases$_{t-1}$	0.18	-0.09 **	-0.08
	(0.16)	(0.04)	(0.11)
% Cases$_{t-2}$	0.06	0.02	0.06
	(0.18)	(0.04)	(0.12)
% Cases$_{t-3}$	0.47 **	-0.03	-0.21*
	(0.18)	(0.04)	(0.12)
% Cases$_{t-4}$	0.03	0.11**	0.27**
	(0.17)	(0.04)	(0.11)
% Cases$_{t-5}$	0.37*	0.02	0.44**
	(0.19)	(0.12)	(0.09)
% Cases$_{t-6}$	0.04	0.07	0.36**
	(0.22)	(0.05)	(0.14)
% Hearings$_{t-1}$	-0.34	0.59**	-0.08
	(0.76)	(0.14)	(0.11)
% Hearings$_{t-2}$	1.01	-0.23	-0.99*
	(0.87)	(0.18)	(0.57)
% Hearings$_{t-3}$	-1.46*	0.51**	-0.39
	(0.85)	(0.18)	(0.56)
% Hearings$_{t-4}$	0.24	-0.28	0.30
	(0.91)	(0.20)	(0.60)
% Hearings$_{t-5}$	0.59	0.27	-0.41
	(0.90)	(0.19)	(0.59)
% Hearings$_{t-6}$	0.68	-0.27	-0.05
	(0.80)	(0.17)	(0.52)
% State of the Union$_{t-1}$	-0.31	0.02	-0.17
	(0.25)	(0.05)	(0.16)
% State of the Union$_{t-2}$	-0.17	0.01	0.09
	(0.23)	(0.05)	(0.15)
% State of the Union$_{t-3}$	0.15	-0.05	-0.05
	(0.23)	(0.05)	(0.15)
% State of the Union$_{t-4}$	-0.14	-0.01	-0.10
	(0.22)	(0.05)	(0.15)
% State of the Union$_{t-5}$	-0.10	-0.09*	-0.23
	(0.22)	(0.05)	(0.14)
% State of the Union$_{t-6}$	-0.39	0.05	-0.02
	(0.20)	(0.04)	(0.13)
N	58	58	58
R^2	0.73	0.76	0.65
adj. R^2	0.60	0.65	0.49

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

Table 19: Vector Autoregression Results for Labor

	Court Cases	Hearings	State of the Union
(Intercept)	5.44 **	1.77**	3.31*
	(1.65)	(0.46)	(1.70)
% Cases$_{t-1}$	0.57**	0.03	0.21**
	(0.10)	(0.03)	(0.10)
%Hearings $_{t-1}$	-0.74*	0.33**	-0.81*
	(0.44)	(0.12)	(0.46)
% State of the Union $_{t-1}$	0.12	-0.02	0.18
	(0.12)	(0.04)	(0.12)
N	63	63	63
R^2	0.40	0.13	0.16
adj. R^2	0.37	0.08	0.12

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

Table 20: Vector Autoregression Results for Transportation

	Court Cases	Hearings	State of the Union
(Intercept)	0.20	2.64**	0.47
	(1.27)	(0.54)	(0.65)
% Cases$_{t-1}$	0.52**	0.10**	-0.02
	(0.12)	(0.04)	(0.05)
%Hearings $_{t-1}$	0.52**	0.10**	-0.02
	(0.12)	(0.04)	(0.05)
% State of the Union $_{t-1}$	0.29	-0.02	0.23 *
	(0.24)	(0.10)	(0.12)
N	63	63	63
R^2	0.42	0.28	0.05
adj. R^2	0.39	0.25	0.01

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

Table 21: Vector Autoregression Results for Civil Rights and Liberties

	Court Cases	Hearings	State of the Union
(Intercept)	12.33**	0.90	4.13**
	(2.31)	(0.69)	(1.04)
% Cases$_{t-1}$	0.22 *	0.01	-0.12**
	(0.12)	(0.04)	(0.05)
%Hearings $_{t-1}$	-0.45	0.65**	-0.01
	(0.34)	(0.10)	(0.13)
% State of the Union $_{t-1}$	0.14	0.00	0.08
	(0.28)	(0.08)	(0.09)
N	63	63	63
R^2	0.09	0.43	0.09
adj. R^2	0.04	0.40	0.04

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

Table 22: OLS Estimates for Crime

	Court Cases
(Intercept)	-2.62
	(4.67)
% Cases$_{t-1}$	0.18
	(0.17)
% Cases$_{t-2}$	0.06
	(0.18)
% Cases$_{t-3}$	0.45^{**}
	(0.18)
% Cases$_{t-4}$	0.03
	(0.17)
% Cases$_{t-5}$	0.42^{*}
	(0.21)
% Cases$_{t-6}$	0.20
	(0.24)
% Hearings$_{t-1}$	-0.37
	(0.77)
% Hearings$_{t-2}$	0.98
	(0.88)
% Hearings$_{t-3}$	-1.43
	(0.86)
% Hearings$_{t-4}$	0.40
	(0.96)
% Hearings$_{t-5}$	0.54
	(0.51)
% Hearings$_{t-6}$	0.51
	(0.86)
% State of the Union$_{t-1}$	-0.34
	(0.26)
% State of the Union$_{t-2}$	-0.16
	(0.23)
% State of the Union$_{t-3}$	0.19
	(0.24)
% State of the Union$_{t-4}$	-0.18
	(0.23)
% State of the Union$_{t-5}$	-0.08
	(0.23)
% State of the Union$_{t-6}$	-0.42
	(0.20)
% New York Times $_{t-1}$	-0.40
	(0.71)
N	58
R^2	0.73
adj. R^2	0.59

* $p < 0.10$, ** $p < 0.05$

Note: Standard errors in parentheses.

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