Public Opinion and The U.S. Supreme Court: FDR’s Court-Packing Plan

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I show the intimate connection between the actions of the justices and support for the Supreme Court during one of the most critical periods of U.S. political history, the four months of 1937 during which Franklin D. Roosevelt sought legislation to "pack" the high bench with friendly personnel. Over the period from 3 February through 10 June 1937, the Gallup Poll queried national samples on 18 separate occasions about FDR's plan. These observations constitute the core of my analyses. I demonstrate the crucial influence of judicial behavior and the mass media in shaping public opinion toward the Supreme Court. This research illuminates the dynamics of public support for the justices, contributes to a clearer understanding of an important historical episode, shows the considerable impact of the mass media on public attitudes toward the Court, and adds more evidence on the role of political events in the making of public opinion.

Political institutions require some minimal level of public support to survive and to thrive. It is, of course, exceedingly difficult to document the consequences of popular support or the lack thereof; but most political scientists seem to agree that it matters. For the Supreme Court, which has no budgetary power or military authority, standing with the public takes on an especially large dimension. Students of the Court and public opinion have emphasized the lack of information, instability of attitudes, and shallowness of support for specific decisions among the U.S. citizenry (Adamany and Grossman 1983; Casey 1974, 1976; Daniels 1973; Dennis 1975; Dolbeare 1967; Dolbeare and Hammond 1968; Kessel 1966; Murphy and Tanenhaus 1968a, 1968b; Tanenhaus and Murphy 1981). That characterization of the mass public—as ill informed about and indifferent toward the Court—undoubtedly captures the essence of opinion at the level of individuals. But in a recent article, I argued that "the responsiveness of public support for the Court in the aggregate to political events and shifts in the behavior of the justices stands in stark contrast to the conventional image of the American citizenry as out of touch with and unmoved by the Supreme Court" (Caldeira 1986, 1210).

Here I intend to show the intimate connection between the actions of the justices and support for the Supreme Court during one of the critical periods of U.S. political history, the four months of 1937 during which Franklin D. Roosevelt sought legislation to permit him to "pack" the high bench with friendly personnel. The argument is disarmingly simple: the justices themselves helped to shape events and build up institutional support with a series of well-timed decisions. More specifically, I demonstrate that in two crucial actions, the Court let the air out of FDR's sails; the president, despite a
magical touch, had little success in persuading the public of his program’s urgency; and the exposure of the proposal in the mass media expanded the “scope of conflict” and helped the justices appreciably. I do not, of course, wish to suggest that the Supreme Court routed President Roosevelt in the battle over constitutional politics in the 1930s. For, in the words of one scholar, the Court won the battle, and FDR won the war (Burns 1956). Nevertheless, the Supreme Court did influence public opinion in a significant fashion in the short run. This research is of consequence because it illustrates the dynamics of public support for the justices, contributes to a clearer understanding of an important historical episode, shows the considerable impact of the mass media on public attitudes toward the Court, and adds more evidence on the role of political events in the making of public opinion (see Dalton and Duval 1986; Kernell 1976, 1986; Lehne and Reynolds 1978; Ostrom and Simon 1985). The results suggest, again, that public support in the aggregate for the Supreme Court responds in a rational and explicable manner to the actions and decisions of political elites (see Caldeira 1986).

Quite unlike most issues, FDR’s proposal forced the public to choose between the widely approved policies of an extremely popular president and the institutional integrity of a controversial Supreme Court. Seldom in U.S. constitutional history have the president and the Court gone head-to-head in battle so directly for so long (see Murphy 1962; Nagel 1965; Schmidhauser and Berg 1972; Sciglano 1971). For five months, the mass media, Congress, and the president focused on little else. Indeed the political controversy was sufficiently warm to motivate George Gallup to mount an extended series of polls of the public on the question of the proposed change. Over the period from 3 February through 10 June 1937, the Gallup Poll queried national samples on 18 separate occasions about “Court packing” and related issues. This set of observations constitutes the core of the statistical analyses in the present paper. These data have with certain exceptions lain fallow for nearly 50 years (cf. Cantwell 1946; Handberg 1984). It is, altogether, an exceedingly rich lode of data on perceptions of the Supreme Court and on the dynamics of public support for political institutions.

The Context of “Court Packing”

Scholars have told the tale, on several occasions and in considerable detail, of the fight in 1937 over President Roosevelt’s proposal to pack the Court; here I review the basic chain of events before moving on to the description and analysis of the data (see Adaman 1973; Alsop and Catledge 1938; Baker 1967; Irons 1982; Leuchtenberg 1966, 1969, 1985; Mason 1956). From the outset of the Roosevelt administration, the president and the Court were at cross-purposes. He did not make the decision to attack the Court overnight. The justices, or a majority of them, wanted to constrain national power; Roosevelt, with a “New Deal,” set out to expand the horizons of government. After a period of peace between the two branches, the Court in May of 1935 struck down a large segment of the New Deal—the Railway Pension Act, the National Industrial Recovery Act, and the Frazier-Lemke Act—and reversed FDR’s dismissals of a member of the Federal Trade Commission. Then, in January 1936, the Court invalidated part of the Agricultural Adjustment Act and in May found the Guffey Coal Act and the Municipal Bankruptcy Act contrary to the Constitution. To add insult to injury, the Court in Morehead v. ex rel. Tipaldo struck down the State of New York’s attempt to set a minimum wage for women. These and other cases signaled a
stubbend resistance on the part of the Court to the heart of the New Deal and, for that matter, the emerging modern state. In the view of four, and probably five, of the justices, neither the national nor the state governments had the constitutional capacity to take the actions FDR and others saw as necessary for economic recovery.

In May 1935, Roosevelt criticized the Supreme Court for "relegat[ing] us to the horse-and-buggy definition of inter-state commerce." Still, he took no action against the justices. Others, allies of the New Deal in Congress, introduced a variety of bills to strike at the Court or to amend the Constitution to clarify national legislative powers. Proposed methods of curbing the Supreme Court included the creation of new seats, mandatory retirement at a certain age, abolition of judicial review, the agreement of an extraordinary majority on the Court to invalidate a federal law, and a requirement of advisory opinions on the constitutionality of proposed statutes. During the latter part of 1935 and first half of 1936, the antagonism between the Court and the New Deal was a hot topic in the halls of Congress and in the press. The issue was weighty enough for the Gallup Poll to have asked the public several times in this period about restrictions on the Supreme Court's power to invalidate legislation (see Cantril and Strunk 1951; Murphy 1962, 61). Nevertheless, FDR bided his time, discussing the matter with advisors and maintaining a studied silence on the issue during the presidential campaign of 1936.

Finally, after the election, FDR and Attorney General Homer Cummings fastened upon a proposal from Professor Edward S. Corwin of Princeton; the president would request legislation to permit him to nominate one additional justice for every sitting member who had served 10 or more years and had declined to retire at the age of 70. This proposal, if enacted, would have given Roosevelt six nominations to the Court. Emerging from a veil of secrecy, the president announced the plan on 5 February to members of the cabinet, leaders of Congress, and a press conference. He added several bonuses to the bill as a smokescreen for the real purpose: additional lower federal judges, reassignment of judges by the Chief Justice to the busiest courts, and a proctor to supervise the flow of litigation. All of this FDR portrayed as a plan to make the justices more efficient and to bring them abreast of their work.

In the wake of the announcement, debate about the proposed restructuring of the Supreme Court poured forth and dominated the public agenda. Story after story—discussions of the plan from every conceivable angle—filled the nation's newspapers. Meanwhile, leaders in Congress, FDR's allies, had little enthusiasm for the program. Over the next few months, as we shall see, a number of political events shaped the ebb and flow of public support for curbing the Court.

**Political Events and Public Opinion**

Many ingredients influence the outcomes of political campaigns; President Roosevelt's failed attempt to "pack" the Court was the result of a complicated train of events and nonevents. And the first half of 1937 was filled with events of far-reaching historical importance (for a list, see Cantwell 1946, 925). Yet, after a careful review of the period, I have identified four crucial events as particularly instrumental in the battle between the Supreme Court and the president. These events appear over and over again in narratives on the critical junctures in the debate on the Court. Furthermore, of the train of events from February through June, this set of four was the most visible and logically related to shifts in public
opinion. First, on 4 March in a speech at the Democratic Victory Dinner and again in a fireside chat on 8 March, President Roosevelt took the case for Court packing to the people. At the dinner with the faithful, he called for partisan loyalty on the issue. Over the air waves, he called attention to the Supreme Court’s alleged usurpation of political power. These speeches and the attendant follow-up by lieutenants, I believe, increased public support for the plan; FDR certainly intended them to do so.

Second, on 29 March, the Court announced the decision in West Coast Hotel v. Parrish, upholding the State of Washington’s minimum-wage law and overruling the odious precedent of Adkins v. Children’s Hospital. This decision marked an apparent retreat from the nullification of state legislative power in Morehead v. Tipaldo, an opinion delivered less than a year before. The hospitable attitude the Court exhibited in Parrish provided a stark contrast to FDR’s claims that the justices opposed all forms of social progress. Opponents of the plan, naturally, cited the decision in Parrish as proof in part that the nation did not need to restructure the Supreme Court.

Third, on 4 April, the Court validated a major element of the New Deal, the Wagner Act, in four separate cases; NLRB v. Jones and Laughlin Steel Company has come down in history as the landmark. Because of the Wagner Act’s sweeping nature and the justices’ previously demonstrated hostility to broad exertions of national power, the Supreme Court’s decision came as somewhat of a surprise. Chief Justice Hughes articulated a vision of national power ample enough to accommodate much of the New Deal. With this display of liberality toward the regulation of interstate commerce, the Supreme Court by deed called the urgency of FDR’s scheme into serious question.

Fourth, on 18 May, Justice Van Devanter announced his retirement from the Court. As one of the “Four Horsemen,” Van Devanter had contributed a consistent vote in a 5–4 coalition against President Roosevelt’s measures and variants of the “little New Deals” from the states. Moreover, although not a productive writer, Van Devanter functioned as the intellectual leader of the Supreme Court’s conservatives. With Justice Van Devanter out of the picture and a Rooseveltian in his place, the administration could hope for a 5–4 majority in most of the crucial cases. FDR could not, of course, count on ironclad support from the justices; but the future looked much brighter after 18 May.

In sum, then, I anticipate that President Roosevelt’s speeches, the Court’s decisions in West Coast Hotel v. Parrish and NLRB v. Jones and Laughlin Steel, and Justice Van Devanter’s departure influenced public support for the proposed restructuring. Later, I shall set out more specific expectations.

**Effects of Mass Communications**

Even a casual perusal of the literature quickly establishes that scholars have not arrived at a consensus on the impact of mass media in politics. There are, in fact, at least two main questions at issue: Do the media influence what people think about? and Do the media persuade the public in one direction or another? Until quite recently, most scholars agreed that “because individuals were firmly anchored in an original set of beliefs and social network of friends, family, and fellow workers, messages from the media worked primarily to reinforce the dispositions first held” (MacKuen 1931, 21; see, for example, Klapper 1960). The press, Cohen said in a conventional assertion, “may not be successful much of the time in telling people what to think, but it is stunningly successful in telling readers what to think about.”...
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on their attention, powerfully determining what they will be thinking about, and talking about, until the next wave laps their shore" (Cohen 1963, 13). Lamentably, the earliest researchers targeted the capacity of the mass media to influence evaluations of political candidates and issues to the exclusion of the agenda-setting function of the various modes of communication.

It is now clear, after a spate of scholarly activity in the 1970s, that the press and broadcasting play large roles in bringing issues and personalities to the forefront of public consciousness and keeping them there; the mass media, in sum, help to set the national agenda (e.g., Funkhouser 1973). At the crudest level, some analysts model public opinion as a simple, "mirror image" of an issue's or personality's salience in the mass media: the greater the coverage, the greater the awareness among the citizenry. Others have taken a more sophisticated approach. Thus, for example, MacKuen (1981) has demonstrated the significant impact of media attention on the concerns of the public, but he also finds events and objective conditions to be crucial elements of the equation (see also Erbring, Goldenberg, and Miller 1980; Iyengar, Peters, and Kinder 1982).

Quite apart from agenda setting, in the last few years, several students of persuasion have mounted a concerted challenge to the conventional wisdom that the mass media exercise "minimal effects" on political decisions and outcomes. In a study of newspapers during the congressional election of 1974, Miller and his associates discovered that readers of highly critical papers displayed more distrust in government than did others: "media style in reporting . . . events . . . had an effect on the degree of popular disaffection found in America" (Miller, Goldberg, and Erbring 1979, 80). Similarly, Coombs (1981) reports that in 1972 and 1974, newspaper endorsements had a measurable impact on a candidate's chances of victory at the polls.

Here I anticipate a significant relationship between the media's coverage of the Supreme Court and support for Court packing (on the Court and the press, see Grey 1972; Newland 1964). There is, unfortunately, no readily available, comprehensive indicator of the extent of the mass media's attentiveness to the Court and President Roosevelt's plan. Of the major newspapers, only the New York Times has an index that reaches back into the 1930s. So far as I can tell, the radio networks have not published or archived indexes of their broadcasts (but see Murrow 1937). For my indicator of the media's coverage, I have adopted the number of stories in the New York Times. That measure, taken weekly in the first six months of 1937, correlates strongly with the number of stories on the Court collected in The Reader's Guide to Periodical Literature. To be sure, the number of stories in the New York Times at best taps indirectly the amount and kind of information the public possesses on a particular subject; after all, its readers constitute a highly educated, elite stratum of U.S. society. Nevertheless, as the correlation between coverage in the New York Times and The Reader's Guide attests, the coverage in this elite newspaper tracks closely with other sources of information. Furthermore, reports in the New York Times undoubtedly diffuse throughout the nation in a "two-step flow" of information. (For a defense of a similar measure, see MacKuen 1981, 63–64.)

Figure 1 displays the number of stories on the Supreme Court in the New York Times on a daily basis from 1 February through 15 June 1937. Coverage of the Supreme Court varied a good deal in intensity, from a high in early February to a low in May, and declined across the period. Discussion of the Court did occur daily until late in May, so the public was subjected to a continuous barrage of
information. The peaks in coverage, naturally, correspond to key events in the campaign over Court packing. Thus, for example, the announcement of the decision in NLRB v. Jones and Laughlin Steel set off a raft of stories on it and related matters. What is most remarkable here is the length and intensity of attention to the Supreme Court. Surely the Court has not since then surfaced so long and so prominently on the public agenda, even during the salad days of the Warren Court.

Specifically, I expect a negative relationship between the intensity of coverage and support for Court packing. Public attention to the Court operated, I believe, in classic fashion; Schattschneider wrote of the "socialization of conflict" (1960; see also Truman 1951). That is, as the mass media focused on the issue, more and more groups, institutions, and individuals entered into the fray. After a reading of the news for that period, one gathers the cumulative impression, especially in the latter half, of a cacophony of voices and actors for and against the plan. Enemies of FDR and of Court packing did all they could to mobilize potential opponents. And, of course, as more interest attended the issue, more questions inevitably arose. In his study of presidential popularity, Mueller (1973) has characterized a similar phenomenon over the course of a chief executive's term as a "coalition of minorities"; the more exposure a president receives, the more critics he acquires. In any event, the number of stories in the New York Times provides a neat index of the expansion of conflict. Extended focus on a subject should, in addition, foster
more coherence among the citizenry. Accordingly, media coverage did indeed help to crystallize public opinion toward the president’s plan; as the number of stories increased, the percentage of the public with no opinion decreased ($b = -0.06; r^2 = .15$).

Figure 2 portrays the directional balance of stories on the Supreme Court in the *New York Times* from February through mid-June 1937. To create this variable, I have divided stories into categories of positive, negative, and neutral toward the Supreme Court. I then excluded the neutral reports. The percentages in Figure 2 represent the portion of the remaining stories I could classify as supportive of Court packing. Throughout the period under consideration, the coverage of the issue ran against President Roosevelt. In only two weeks did favorable views of Roosevelt’s position on the Court hit 50% or higher—immediately after his fireside chat and in the final part of the series as interest in the issue faded. Actually, these last two observations are probably somewhat misleading because the number of stories by that time had decreased to a handful. On average, about 39% of the categorized stories placed FDR’s proposal in a favorable light. If these data are at all representative of the mass media’s treatment of Court packing—and I believe they are—then FDR clearly received little aid and comfort from the press. Naturally, I expect that as the content of coverage became more positive toward the proposal, the segment in the nation in favor of Court packing grew apace. There is, incidentally, no relationship between the level of media coverage and the direction of the stories.

**Methods, Models, and Data**

To test for the effects of the four events, I have chosen a multiple interrupted time-series design (see McDowall et al. 1980).

In its most elementary form, interrupted time-series analysis “attempts to answer a simple question: Does the occurrence of a particular event change a variable’s behavior over time?” (Lewis-Beck 1986, 209). Since I specify other independent variables, the model differs from the typical one. Under the best circumstances, I would include for each event a term to pick up a shift in the slope and one to detect a change in the intercept. Two considerations militate against that strategy here. First of all, the number of observations involved ($N = 18$) is small, and the period of time short (18 weeks). The inclusion of nine parameters for the four events (two for each plus one for the trend), as normal practice indicates, brings on unacceptable levels of multicollinearity and exhausts degrees of freedom. Signs of coefficients go astray. Second, even if full specification were a technical option, I would probably argue for a more limited and parsimonious approach. Because of the briefness of the series in question, a shift in the slope for
an event seems implausible. Instead, we need to monitor sudden, step-level changes in public opinion as a result of the four political events—in other words, to watch for shifts in the intercept.

These ruminations imply the following equation to model the hypothesized consequences of political occurrences:

\[ S_t = b_0 + b_1 FDR_{3t} - b_2 PAR_{2t} - b_3 NLRB_{3t} - b_4 VDV_{4t} - b_5 TRENDS_{5t} + \varepsilon_t \]

where \( S_t \) = 18 time-series observations on the dependent variable, percentage in the sample in favor of Court packing; \( FDR_{3t} \) = a dichotomous dummy variable scored 0 for observations before 10 February and 1 after the fireside chat; \( PAR_{2t} \) = a dichotomous variable scored 0 before 1 April (the Court announced \textit{West Coast Hotel v. Parish} on 29 March) and 1 thereafter; \( NLRB_{3t} \) = a dummy variable denominated 0 before 12 April and 1 afterward (\textit{NLRB v. Jones and Laughlin Steel} came down on 12 April); \( VDV_{4t} \) = a dichotomous variable scored 0 before Justice Van Devanter’s resignation on 18 May and 1 thenceforth; and \( TRENDS_{5t} \) = a dummy variable counter for time from 1 to 18. In this model, \( b_1, b_2, b_3, \) and \( b_4 \) estimate any post intervention changes in the intercept. So, for instance, \( b_1 \) represents the immediate impact of President Roosevelt’s speech. Based on the considerations outlined in the Political Events and Public Opinion section, I anticipate \( b_1 > 0 \) and \( b_2, b_3, \) and \( b_4 < 0 \).

In the previous section, I discussed the sources and properties of the two indicators of the mass media’s treatment of the Supreme Court. For the direction of stories in the \textit{New York Times}, as in Figure 2, I rely on a simple percentage. The indicator of media attention poses one problem. With such a profusion of stories at the outset of the period (see Figure 1), the series contains a formidable trend downward (\( NYST_t = 83.9 - 4.24 \) \( TRENDS_t; \ r^2 = .85 \)). The series is, in econometric parlance, “nonstationary.” To make the series stationary, I have differenced the number of stories—change in attention is a function of this week’s coverage minus last week’s coverage. The final model, then, is

\[ S_t = b_0 + b_1 FDR_{3t} - b_2 PAR_{2t} - b_3 NLRB_{3t} - b_4 VDV_{4t} - b_5 TRENDS_{5t} + b_6 NYBAL_{6t} - b_7 CNYST_{7t} + \varepsilon_t \]

where the notation through \( TRENDS_{5t} \) remains as before; \( NYBAL_{6t} \) = the balance of stories in the \textit{New York Times} in favor of Court packing and FDR’s approach to the Court, counted weekly, in percentages; \( CNYST_{7t} \) = the change in the number of stories from one period to the next; and \( \varepsilon_t \) is a term for errors. On the basis of the discussion in the Effects of Mass Communications section, I expect \( b_6 > 0 \) and \( b_7 < 0 \). In the initial runs, the coefficient for \( TRENDS_{5t} \) failed to reach statistical significance; therefore, in the interest of conserving degrees of freedom, I dropped it in subsequent analyses. To estimate the coefficients, I have used a method equivalent to generalized least squares.\(^5\)

Now is the time to cast an eye on and describe the dependent variable, support for Court packing. Figure 3 records support for, opposition to, and lack of, opinion on FDR’s plan among 18 national samples.\(^6\) Support for FDR’s proposal varied from a high of 46% immediately after his fireside chat to a low of 31% in the wake of Justice Van Devanter’s resignation. Over the entire period, support averaged about 39%. Opposition to Court packing ranged from a low of 41% on 24 March to a high of 49% on 3 March. On average, about 46% of each sample indicated opposition to President Roosevelt’s proposed legislation. And it is clear that, after a surge from an early push by FDR, the public support for re-
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structuring the Court rapidly melted. Without extensive analysis of the original surveys, one cannot know with certainty, but I surmise from the patterns that most of the ups and downs in Roosevelt's support probably resulted from movements to and from the realm of no opinion. Opposition remained relatively steady. The proportion with no opinion bobbed around a good deal, from a low of 9% on 3 March to a high of 25% on 19 May.

The Results

Table 1 presents the products of a multiple regression of support for Court packing on the independent variables, corrected for autocorrelation. In general, the results are crisp: five of the six coefficients reach statistical significance, the direction of signs makes sense, and the fit is tight ($R^2 = .88$). Figure 4, a plot of the actual observations of support for Court packing on the predicted values, illustrates the high quality of the statistical explanation; only a few substantial residuals materialize.

The coefficients in Table 1 dramatically demonstrate the considerable latitude the Supreme Court has in shaping the contours of public opinion. President Roosevelt's efforts to persuade the Democratic party and the public of the plan's urgency, on 4 March at the victory dinner and over the air on 8 March, did make a statistically significant—if substantively marginal—impact on support for his bill. In the short run, at least, FDR's speeches boosted support by nearly 3% ($b_1 = 2.7$). Nevertheless, in comparison to the Supreme Court's actions, the president's campaign made only a modest dent in public opinion.

Somewhat surprisingly, the overruling of Adkins v. Children's Hospital in West Coast Hotel v. Parrish on 29 March made little or no difference in the pattern of public support ($b_1 = -1.2; t = -.6$). In the scholarly literature and the textbooks,
of course, Parrish marks a watershed in constitutional development; but after fits and starts in the Court’s hospitality toward state regulation of business, it is doubtful whether many observers saw the decision that way. Moreover, because the Supreme Court in Parrish dealt with a state law, the connection between the decision and the New Deal was only indirect. This is so even though the overruling of Adkins signaled a retreat and commentators rank it as important as NLRB v. Jones and Laughlin Steel. It expressed a change in attitude, and that was apparently too subtle for the public to detect; for we know that few members of the relevant political elites actually read the Court’s opinions or make themselves familiar with their contents. And, clearly, even a smaller segment of the mass public monitors as much as the general direction of the Court’s jurisprudence, let alone specific decisions. It is probably too much to expect the public to react sharply to subtle shifts in public policy.

Upholding the Wagner Act, a contemporary linchpin of the New Deal and salient because of the recent sit-down strikes, helped enormously in building opposition to the president’s measure. As a result of NLRB v. Jones and Laughlin Steel, FDR and his allies lost more than 4% of the public ($b_3 = -4.3; t = -2.3$). In the short run, the president’s loyalists tried to shore up support and portrayed the decision on the Wagner Act as a temporary, strategic retreat on the part of the justices. That approach obviously did not work. Key political actors, inside and outside the halls of Congress, who understood the decision could readily see the radical departure from the narrow conception of interstate commerce dominant on the Court during the 1930s that Chief Justice Hughes’s opinion implied. These results suggest that elite views diffused among the general public in the well-known two-step flow of information and opinions.

Justice Van Devanter’s resignation—expected all along—sent the enemies of the Supreme Court into a tailspin. The announcement of Van Devanter’s exit alone subtracted more than 5% ($b_4 = -5.6$) from the segment supportive of restructuring the Court. With that resignation, the prospect of a new justice, and
the streak of 5–4 decisions, it must have seemed clear to many that FDR had a chance to have a sympathetic if small coalition on the Court. Van Devanter’s departure, on the heels of *NLRB v. Jones and Laughlin Steel*, made it difficult for even the most loyal New Dealers to demonstrate the need for radical judicial reform.

Two crucial events—*Jones and Laughlin Steel* and Justice Van Devanter’s resignation—spelled doom for FDR’s bill to enlarge the Court and pack it with justices favorable to the New Deal. Between the two decisions, the Supreme Court decreased support for President Roosevelt’s proposal by nearly 10%. Commentators and the justices themselves speak of the Supreme Court as relatively helpless in the arena of public opinion; but these results suggest the contrary. Planned or not, the Court’s actions played a dramatic role in defeating the president. Chief Justice Hughes’s active participation and superb timing in supplying information and surfacing in the news on occasion during the crisis indicate a great deal of political savvy (Mason 1956). Hughes, of course, had served in many political roles, and he behaved in a manner we might expect from an experienced politician.

The mass media’s treatment of the Supreme Court made an appreciable impact on the shape of public sentiment for restructuring. For each 12% increase in favorable coverage of the plan in the *New York Times*, support for Court packing increased 1% \( (b_6 = .08) \). Since on average 40% of the stories put FDR’s plan in a positive light, the *New York Times* treatment contributed about 3.2% to the coalition in support of Court packing.

Change in media coverage, on the other hand, detracted from the plan’s support: for each increase of 25 stories, the segment in favor of the proposal declined by about 1% \( (b_7 = -.4) \). Thus, as I suggested, the bright light of increased scrutiny actually hurt its chances. This finding dovetails nicely with results I have reported elsewhere: in a study of public support for the Court in 1966–84, increases in media coverage of the Court increased support for the justices. The opponents of FDR managed to expand the scope of conflict to include all manner of people and groups heretofore unorganized. Extended media attention to the issue aided and abetted that mobilization. The intensity and direction of media coverage apparently exercised an equal influence on support for Court packing—after standardization, for media attention, \( B_4 = -.20 \); for the balance of coverage, \( B_5 = .19 \). In sum, then, media coverage made a difference in the battle over public opinion.

**Conclusions**

Public support for Court packing varied considerably over the space of 18 weeks and defies a simple account; but I have tried to trace meaningful shifts and to frame and evaluate explanations of the dynamics of public opinion on this issue. How can we explain the ebb and flow of sentiment for the president’s plan (and presumably against the Supreme Court)? The rival hypotheses included political events—FDR’s speeches, the Court’s decisions in *Parrish* and *Jones and Laughlin Steel*, and Van Devanter’s resignation—and the salience and direction of coverage in the mass media. Political events and mass communication both shaped public attitudes on the issue in the aggregate. Even more important, for present purposes, the actions taken by the Court and the justices played a crucial part. Historians will no doubt continue to argue about the political motivations behind and the timing of the Supreme Court’s decisions; but regardless of the intentions of the participants, the Supreme Court’s behavior made a difference. And to the outside observer, the Supreme Court did
not seem to be a passive party, sitting idly by on the sidelines.

Scholarship on the origins and defeat of FDR's plan to restructure the federal judiciary, like so much else written on the Supreme Court, often subscribes to a mythical view of public attitudes toward the high bench (for an old but classic example, see Lerner 1937). Thus, for example, a recent student of the skirmish states that "for various reasons, Americans generally have regarded the judicial process as somehow outside or above politics" (Nelson 1986, 14). Trying to fathom FDR's failure in the arena of public opinion, a distinguished historian of the period has concluded that the "greater the insecurity of the times, the more people cling to the few institutions that seem unchangeable" (Leuchtenberg 1963, 235–36). Perhaps members of the public hold the Supreme Court in reverence and that is why FDR's proposal went up in flames. Yet the evidence accumulated over the years goes against that notion of the relationship between the public and the Court. I prefer, instead, a much more straightforward account: the Supreme Court outmaneuvered the president. Through a series of shrewd moves, the Court put President Roosevelt in the position of arguing for a radical reform on the slimmest of justifications.

Those moves, of course, spelled an important jurisprudential retreat on the part of the Court. President Roosevelt, in essence offered the Supreme Court a choice between substantive policy and structural integrity. The Court wisely chose to give up on the substantive issues and preserve its structural integrity. And public opinion, as we have seen, supported the Court in this choice. Perhaps one lesson we can extract from these results is that if the justices wish to gain public support in battles with the popularly elected branches, they must first assess whether the public stands with the president and Congress on the substantive issue; and, if so, the Supreme Court can preserve its institutional integrity by retreating on the issue. The results I have reported here suggest that the public will support existing constitutional arrangements or, at a minimum, existing arrangements as they pertain to the judiciary, so long as these arrangements are the sole issue. It is not at all clear what the public would have done if the Court had insisted on continuing its opposition to the New Deal. Congress and the president cannot successfully diminish the Supreme Court's structural integrity unless they have a major substantive dispute with the Court on issues to which the public has a strong commitment. Even then, we do not know whether the public would choose structural integrity or substantive policy. We do know that even an overwhelmingly popular public official cannot attack the structural integrity of the Court without the benefit of a very important policy issue for which he or she has overwhelming public support.

The research reported here raises many related questions. Did the political events in the spring of 1937 exert a differential impact across strata in the population? It is quite plausible, for example, that Democrats and union members responded differently to the issue than did Republicans and white-collar workers. Did FDR's fireside chat make a bigger mark among his loyalists and in parts of the nation more sympathetic to the New Deal than among others? Observations over time can help us to come to grips with that sort of question. In the cross-sectional case, can we identify the social, political, and economic bases of support for and opposition to the Supreme Court? The answers to these and other questions have important implications for the study of public opinion and the Supreme Court.
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Notes

For some of the data presented here, I appreciate the assistance of the staff of the Roper Opinion Research Center. Michael S. Lewis-Beck advised on some statistical issues, and Peverill Squire made thoughtful comments on an earlier draft.

1. In this section and the next, I have relied heavily on the historical accounts cited here. To smooth the narration, I have refrained from making references to particular books or articles along the way. In his three articles, Leuchtenberg (1966, 1969, 1985) provides an especially good collection of sources on Court packing.

2. If a story, letter to the editor, or editorial praised, endorsed, or sympathized with President Roosevelt's approach to the Court, I coded it as anti-Supreme Court. If, on the other hand, coverage placed the Court in a positive light or reported criticism of FDR's proposal, I designated it as pro-Supreme Court. Letters to the editor and editorials created few problems. Straight reports proved more difficult. If a story reported on someone who criticized the proposed legislation, I classified it pro-Court. Since few people or institutions adopted a neutral stance, I had relatively little trouble in making judgments.

3. Naturally I would like to have data on the balance of coverage from a wide variety of newspapers. That would have entailed far more resources than I had at my disposal. Since the data from the New York Times mask the variations among newspapers across the nation and attenuate the relationship between the direction of coverage and changes in public opinion, I have undoubtedly underestimated the impact of the mass media on support for Court packing.

4. For simple interrupted time-series analysis, the multiple regression equation takes on the form

$$ Y_t = b_0 + b_1 X_{1t} + b_2 X_{2t} + b_3 X_{3t} + e_t $$

where $Y_t = N$ time-series observations on the dependent variable; $X_{1t}$ = a dummy variable counter for time from 1 to $N$; $X_{2t}$ = a dichotomous dummy variable scored 0 for observations before the event and 1 for observations after; $X_{3t}$ = a dummy variable counter of time scored 0 for observations before the event and 1, 2, 3, . . . for observations after the event (see Lewis-Beck 1986, 215).

5. More specifically, I used the AUTOREG procedure in SAS. It first estimates the model with ordinary least squares and then obtains estimates of the autoregressive parameters. Accordingly, the program transforms the original data by the appropriate autoregressive model. Finally, after making adjustments, SAS reestimates the ordinary least-squares regression. If all goes well, the procedure should eliminate the problems caused by autocorrelation. (See SAS Institute [1982, 187–202].) For this equation, I encountered no significant autoregressive parameters [AR(1) = .17; AR(2) = .00]. Thus, the results reported in Table 1 are the product of ordinary least squares.

6. In the first half of the series, the Gallup Poll asked, "Are you in favor of President Roosevelt's proposal regarding the Supreme Court?" Respondents could answer yes, no, or no opinion. Later, for inexplicable reasons, Gallup shifted the wording slightly to "Should Congress pass the president's Supreme Court plan?" Changes in wording are always cause for worry, but my analysis indicates that this particular alteration made little difference. First of all, relationships between support for Court packing and various independent variables such as partisanship, attitude toward FDR, and demographics did not change. Second, in the context of the fully specified model, a dummy variable for question wording does not reach statistical significance. Third, the substance of the question did not change, even though the wording did. Before and after the change, respondents had to make a decision on FDR's proposed law; Court packing constituted the stimulus in both versions.

References


FDR's Court-Packing Plan


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