The Supreme Court’s Countermajoritarianism? What Impact Does Public Opinion Have on the Supreme Court Decisions?

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What is a Countermajoritarian Institution?

- A Countermajoritarian Institution is an organization that goes against the majority.
- An idea that an institution is the protector of rights of minorities, whether that be race, religion, gender, or thought, against the tyranny of majorities.
- Not only about protecting the minority, but doing what is unpopular.
So What?

- Uniqueness- Supreme Court is an unelected body of policymakers therefore, “undemocratic” and possess significant political power in our society.

- The assumption of the Court is that it acts as an independent power, one that protects us in pursuit of what is right and just.

- A brakeman is used as an analogy for the Supreme Court, unable to bring public opinion on issues to change but possess the ability to halt a train of thought that the Court deems “unconstitutional”.
Why Does Anyone Care: The Impact on Society.

Supreme Court Cases demonstrate that the Court affects us in the most important and intimate parts of our lives.

- **Griswold v. Connecticut (1965)** - Without being explicitly stated in the Constitution, gave the general right to privacy.
- **NFIB v. Sebelius (2012)** - Millions of Americans now have access to health insurance.
- **Miller v. Alabama (2012)** - No longer permitted juveniles from receiving life without parole.
- **District of Columbia v. Heller (2008)** - Guaranteed the right to possess a firearm.

We remember the Court for altering U.S. history, but what role did we the people have in influencing these decisions?
What Has Been Done?

- Legal Scholars for decades have debated the Court’s role.
  
  - Questioned if the Court could be influenced.
  
  - To what degree can the American public affect Court decisions.

- William Mishler and Reginald Sheehan published their study in 1993.
  
  - Concluded Court was listening.
  
  - Was not a countermajoritarian institution.
  
  - Found the possibility of a lag existing.
  
  - Found the Court moving countermajoritarian at conclusion.
The Questions since 1993

- To re-consider the hypothesis that linkage between public opinion and the Supreme Court remains existent, current data must be used.
- Do ideology shifts within the Court influence their case decisions and is the lag Mishler and Sheehan found still prevalent?
- Is the Court growing more countermajoritarian as Mishler and Sheehan had found in the last portion of their study?
- Thus the question must be evaluated, has the court, since 1993, spun on Mishler and Sheehan’s findings?
Sources

- Spaeth Supreme Court Database.
- Stimson’s “Public Policy Mood”.
- Segal Cover Score.

Methods

- Composed a composite measure of the Supreme Court ideological tenor of each decision each year.
- Summarized Stimson’s “Public Policy Mood” for every year.
- A sum of each justice’s “Segal Cover Score” sitting on the Court each year was collected.
- Created multiple indexes that analyzed and compared Supreme Court decisions and public mood.
Resulting Graphs

Mishler and Sheehan 1993

My updated graph
Listening to Public Opinion?

- Despite some correlation, the Court’s decisions experience very little matching of the public’s liberalism.
- This is especially evident in the years following 2011.
- The question of if the Supreme Court is listening directly to the public opinion and correlating itself with the public’s liberalism is found untrue.
- The Idea of a Countermajoritarian Court grows stronger.
Graphs Continued

Mishler and Sheehan 1993

My updated graph
Court Ideology a Cause?

- Despite upward shifts in ideological liberal membership, Court maintains its inconsistent decisions.
- Any positive correlations are with a perceived lag.
- Most profound in years after 2010.
Resulting Lag Indexes

Supreme Court Decisions Impacted by Lag in Public Mood

Supreme Court Decisions Impacted by Lag in Court Ideology
Lag Results

- The public mood lag does not cross, therefore insignificant.
- No matter the direction of the lag, public mood does not impact the Supreme Court.
- The ideology lag eclipses the confidence threshold and is significant.
- Concluding that the Court is influenced by ideology, taking about 3 years to reach the Court.
My Findings

- The Supreme Court has flipped on Mishler and Sheehan’s 1993 conclusion.
- Mishler and Sheehan’s conclusion of the Court growing more countermajoritarian was demonstrated.
- The public is moving more conservative while the Court is moving more liberal.
- The Supreme Court is accomplishing what it was intended to be, independent of and not swayed by public opinion.