

Media Politicization of the United States Supreme Court

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Abstract

Both media scholars and Justices of the United States Supreme Court have suggested that press coverage of the Court increasingly politicizes the Court as an institution, by characterizing the Court's Justices as ideological actors and by depicting the outputs of the Court as political decisions driven by personal preference rather than apolitical outcomes driven by constitutional doctrine and legal precedent. This study builds upon earlier efforts to investigate the veracity of this assumption, using a corpus linguistics methodology to track the use of several linguistic signals that are widely regarded as politicizing. A case study investigation of the full corpus of New York Times articles from the 1950s through the 2000s suggests an increase in the use of explicitly ideological descriptors of the Justices; an increase in references to the appointing presidents of the Justices; and an increase in the disparity of coverage of 5-4 decisions and unanimous decisions.

Key words

Media; Press; Courts; United States Supreme Court; Coverage; Politics; Corpus Linguistics; New York Times

Resumen

Tanto los académicos dedicados a la comunicación como los magistrados de la Corte Suprema de los Estados Unidos han sugerido que la cobertura de la prensa de la Corte politiza cada vez más la Corte como institución, ya que representa a los magistrados como actores ideológicos, y presenta las decisiones del tribunal como decisiones políticas tomadas por preferencias personales en lugar de resultados apolíticos fruto de una doctrina constitucional y un precedente legal. Este estudio se basa en intentos anteriores de investigar la veracidad de esta hipótesis, utilizando una metodología de corpus lingüístico, para rastrear el uso de diversos signos

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lingüísticos comúnmente considerados politizadores. Una investigación de casos prácticos del corpus completo de los artículos del New York Times desde la década de 1950 hasta la década de 2000 sugiere un aumento en el uso de descriptores de los jueces explícitamente ideológicos; un aumento en las referencias a los nombramientos de los presidentes del Tribunal; y un aumento en la disparidad de la cobertura de 4-5 decisiones y decisiones unánimes.

Palabras clave

Media, Press, Courts, United States Supreme Court, Coverage, Politics, Corpus Linguistics, New York Times

Medios, prensa, tribunales, Corte Suprema de los Estados Unidos, políticos, Corpus lingüísticos, New York Times

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1. Introduction

Media scholars and Justices of the United States Supreme Court have suggested that media coverage of the Court increasingly politicizes the Court as an institution, by characterizing the Court's Justices as ideological actors and the outputs of the Court as political decisions driven by personal preference rather than apolitical outcomes driven by constitutional doctrine and legal precedent. Several studies in the fields of political science and communication have attempted to investigate the veracity of this assumption, often by coding small segments of media coverage of the Court to test for political or apolitical framing by the press. This study uses a corpus linguistics approach to track the use of several linguistic signals that are widely regarded as politicizing. A case study investigation of the full corpus of all *New York Times* articles from the 1950s through the 2000s suggests an increase in (1) the use of explicitly ideological descriptors of the Justices; (2) references to the appointing presidents of the Justices; and (3) disparity of coverage of 5-4 decisions and unanimous decisions.

2. The unique relationship between the press and the U.S. Supreme Court

Among the branches of the United States government, the U.S. Supreme Court is uniquely detached from politics. By constitutional design, its Justices are not elected. They enjoy life tenure that precludes their removal by majority vote, and they exercise the often distinctively countermajoritarian power of judicial review over the actions of the democratically elected and politically accountable executive and legislative branches, enforcing constitutional norms and applying legal precedent in ways that bind the actors of those other branches. At the same time, "ha[ving] no influence over either the sword or the purse" (Hamilton 1898, p. 425), the Court is the "least dangerous branch" (Hamilton 1898, p. 425), uniquely reliant upon its own legitimacy and the preservation of its public support to sustain its distinctive role in the democracy.

Ironically, this branch of government that so heavily relies on public support for its continued existence is also the branch that is least understood by the populace. (Johnson and Socker 2008, p. 23). Polls consistently confirm that the American citizenry lacks both a specific understanding of the Court's cases and a general understanding of the work the Justices do and the procedures by which they do it (McKeever 1997, p. 111, APPC 2007, Jamieson and Hennessy 2007, p. 899-901). The principal mechanism by which the public receives its exceptionally limited information about the U.S. Supreme Court is media coverage. Academic studies, common sense, and the Justices themselves all suggest that the media is a key translator of the Court's work product and a primary source of public information and opinion about the institution. (Jamieson 1998, p. 6, Davis 2011). Justices and scholars alike have noted that "the public's perception of the Court and the justices is based largely upon the media's portrayal" (Slotnick and Segal 1994, Spill and Oxley 2003, p. 24). "The fact that Americans know comparatively little about the Court magnifies the importance of what they learn from the press" (LaRowe 2010, p. 26), and, necessarily, "cue giving on the part of the media when it comes to the Court gains added weight in an environment in which very few, if any, other cue givers dealing with the judiciary exist" (Johnson and Socker 2008). Studies have linked media depictions of the Court to public opinion of the Court, both in specific, situational instances (Caldeira 1986, Nicholson and Howard 2003) and more generally, in overarching perceptions of the institution (Johnson and Socker 2008).

Given both "the importance of public esteem to the Supreme Court's political health" and "the importance of the news media in providing information about the Court" (LaRowe 2010, p. 2), analysis of press coverage of the U.S. Supreme Court has been a topic of scholarly investigation for decades. Early analyses focused primarily on the quantity and quality of this press coverage, often suggesting that both were subpar—that media reporting on the Court and its decisions lacked

completeness, detail, and accuracy (Ericson 1977) and that it was often limited to coverage of certain cases within limited issue areas (Solimine 1980, Bowles and Bromley 1992, O'Callaghan and Dukes 1992, Spill and Oxley 2003). More recently, however, scholarly dialogue has increasingly focused on the relationship between press coverage and public opinion, and especially on the nature of the media's overarching characterization of the Court as an institution. On the understanding that "the frames the media choose to utilize ... might determine the standards by which the public judges the Supreme Court's performance" (Johnson and Socker 2008, p. 2), several scholars have set out to judge whether press coverage conveys the "Court's preferred image as an apolitical institution" (LaRowe 2010, p. 2) or instead depicts the Justices as a set of ultimately political actors. Because the framing of press coverage of the judiciary "shapes the ways in which Americans evaluate the Court" (Johnson and Socker 2008, p. 23), and because stories that include "information about the political nature of the decision—the role that attitudes or ideology play in the final outcome"—"clearly undermine[] public faith" (Spill and Oxley 2003, p. 29), the question of politicization has been a major focus of several empirical analyses of the characterization of the Court.

Framing studies have ranged from investigations of all stories written about opinions issued in a single term of the Court (Spill and Oxley 2003) to studies of longer periods of newspaper coverage analyzing articles with headlines about the Court or meeting other selection criteria (LaRowe 2010). The overarching goal, though, has often been the same: to assess whether the Court is described in political terms and whether news coverage focuses on political motivations for and political implications of Court actions. (Johnson and Socker 2008, LaRowe 2010). Social scientists have used a variety of research tools, but often focus on careful coding of various categories of predetermined indicators of politicization. For example, Spill and Oxley investigated whether the media is discussing the institution and its work in broader, repeated narratives that "characterize the Court as non-political by reporting on the justices as mainly interpreters of the Constitution, or ... portray[ing] the Supreme Court as a political institution by citing ideological and personal justifications for judicial decisions" (Spill and Oxley 2003, p. 24). Johnson and Socker argued that the media chooses to portray the Court in "frames" of either conflict or consensus and the Court's decisions in terms of either "law-based action" or "politically-based action" (Johnson and Socker 2008, p. 8-9). Davis likewise noted that coverage highlighting the Justices' personal views over legal precedent or constitutional doctrine presents the Court as a political institution (Davis 1987). He suggested that one consequence of media politicization of the Court is that the Justices may become increasingly as they are depicted, drawn into a greater number of political battles, fragmented further, and engaged in more individualistic or ideological strategies (Davis 1987). Legal scholars, too, have joined the fray, asserting that public confidence in the judicial system is being eroded as the media increasingly "politicize[s] the decisions made by courts, likely driven by its thirst for conflict and its pursuit of newsworthiness" (Luberda 2008, p. 515).

3. A corpus linguistics inquiry

This article approaches the question of media politicization of the United States Supreme Court through a corpus linguistics inquiry. Corpus linguistics is an emerging tool for observing changes in the tendency of a single speaker or collection of speakers to use a specific linguistic signal and for considering the ways in which linguistic patterns differ over time (Biber *et al.* 1998, p. 23-24). Tracking patterns of word usage in a corpus—an electronic body of naturally occurring text—can give overarching trend information about the ways in which the use of words or phrases have become more or less common in a given context. Because corpora are comprehensive collections of millions of words, and because they represent the

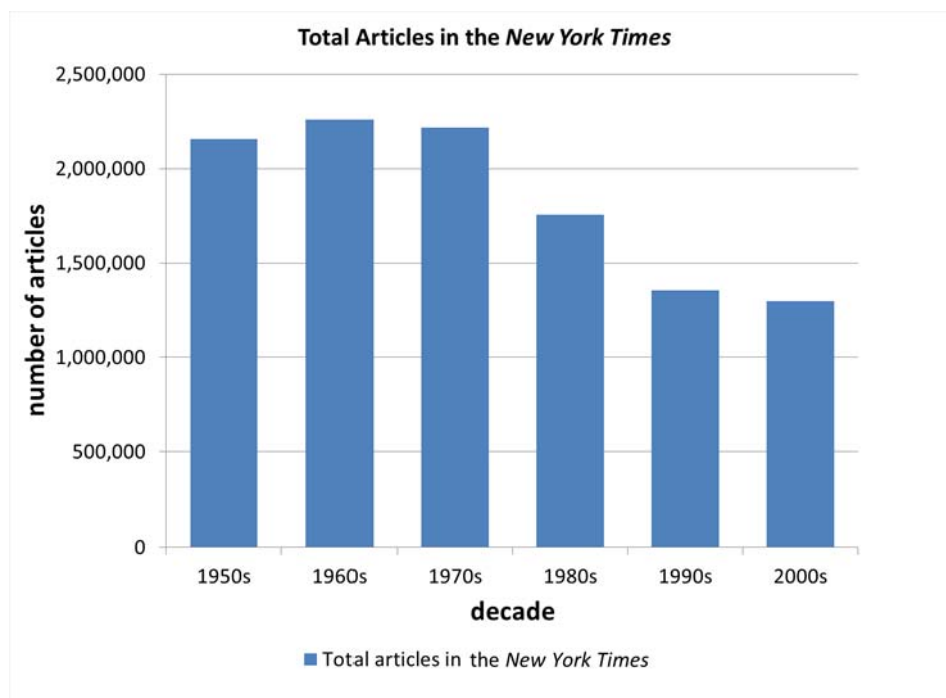
natural occurrence of those words in real-use settings, the analysis of them gives unique insights into questions of linguistic behavior by the studied speakers.

This study uses a corpus of *New York Times* articles to investigate trends in the use of terms and phrases that are widely recognized linguistic indicators of politicization of the U.S. Supreme Court. The corpus is the *New York Times Archive*, which is comprised of every article in every issue of the *New York Times* from 1851 to 2009. Because the primary interest in U.S. Supreme Court coverage has been an assessment of modern media trends, the corpus was limited to focus on the decades from the 1950s through the 2000s. The *New York Times Archive* was selected as the corpus (1) because it constitutes a robust, pre-existing, naturally occurring collection of linguistic choices by the press; (2) because newspaper coverage of the Court is generally regarded as setting trends for other media treatment of the Court; and (3) because the *New York Times*, in particular, has long been recognized by scholars as the elite newspaper of record for coverage of the U.S. Supreme Court (Ericson 1977). Studies indicate that, among the available media giving coverage to the Supreme Court, coverage of the Court by newspapers is “more common,” “more substantive,” better absorbed by its consumers, and most likely to provide the cues as to framing and approach for other forms of media in their coverage (Davis 1994, LaRowe 2010). Among newspapers, the *New York Times* has been the focus of many earlier framing studies taking more temporally or topic-focused approaches (Spill and Oxley 2003, LaRowe 2010), and has been recognized as standing out “in terms of both breadth and scope of coverage” (Spill and Oxley 2003, p. 25).

As represented in Figure 1, the corpus contains more than 1 million articles per decade for the time period from 1950 to 2009. Although the total number of articles published by the *New York Times* per decade decreased substantially from the beginning of the studied period to the end of it—down to just over a million total articles in the 2000s from a high of 2.25 million total articles in the 1960s—the collection nevertheless remains significant by corpus linguistics standards for assessing language use within the corpus.

This corpus of all articles published by the *New York Times* for the six studied decades was then searched for references to either the “U.S. Supreme Court” or the “United States Supreme Court.” This produced a narrowed corpus of unique articles making at least one reference to the Court. The numerical trends in this narrowed corpus mimic the overall trends of number of articles in the larger corpus, with the number of unique articles making at least one reference to the Court decreasing as the total number of articles in the Archive decreases. Figure 2 illustrates that the 2000s are once again the decade with the fewest number of pertinent articles. Because even this decade contains nearly 25,000 articles referencing the U.S. Supreme Court at least once, the corpus provides an adequate sample size for a corpus linguistics analysis.

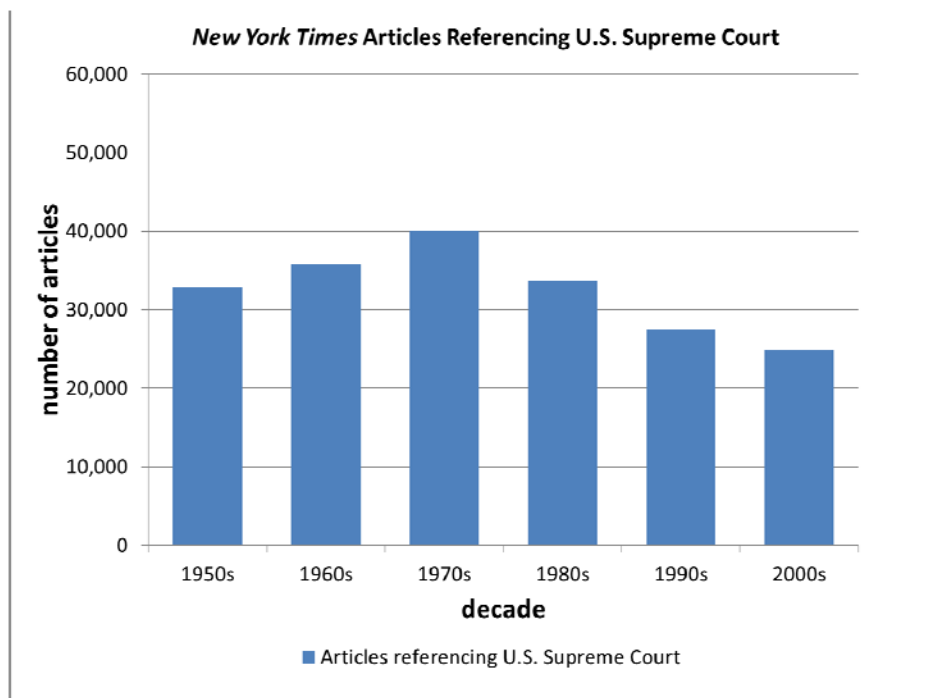
Figure 1



For the remainder of the study, this narrowed corpus of total articles mentioning the U.S. Supreme Court (the “U.S. Supreme Court Articles Corpus”) constitutes the linguistic collection for all remaining inquiries. Data on linguistic trends discussed in the remainder of the article offer information based on the total number of articles mentioning the U.S. Supreme Court that contain the specified linguistic signal.

The U.S. Supreme Court Articles Corpus was investigated for trends in three sets of linguistic signals commonly associated with political characterization of the Court. These signals all were determined to constitute political characterizations in previous research. First, references to overtly political adjectives as descriptors for Justices—“conservative Justice” or “liberal Justice”—were tallied, to determine if the newspaper is explicitly identifying the members of the Court by common ideological labels with more or less frequency than in the past. (Spill and Oxley 2003, Johnson and Socker 2008, LaRowe 2010,). Second, references to the appointing president of a Justice—which serve as reminders to the reader of the political forces that brought a Justice onto the Court and carry the potential suggestion that the Justice is, or ought to be, doing the ideological bidding of that president and his political party—were tracked for the six-decade period to determine the frequency of use of these signals over time. (Greenhouse 1996, Jamieson 1998). Finally, the U.S. Supreme Court Articles Corpus was examined for linguistic signals of division and unanimity, by tracking references to “unanimous” or “9-0” decisions and references to “5-4” or “5 to 4” decisions, and by comparing the pattern of those references to patterns in the actual percentage of opinions issued by the Court in those same time periods that were decided unanimously or by a 5-4 vote. (Johnson and Socker 2008, LaRowe 2010). To the extent that over-reporting of divisive opinions and underreporting of unanimous ones is a signal of politicization, the corpus inquiry tracks this linguistic signal from the 1950s to present.

Figure 2



A corpus linguistics study of this nature has limitations. The results are only indicative of the linguistic patterns of the *New York Times*, and any trends observed in this study do not necessarily reflect the trends of any other media entities. Because the investigation is of the full *New York Times* corpus, it cannot, as some studies have done, hone in on news stories focused on the Court or using a headline that mentions the Court, as compared to those in which the reference to the Court might be more incidental (LaRoche 2010). It does not distinguish between coverage of confirmation hearings, the certiorari process, oral argument, or the Court outside its decision-making role and does not distinguish editorials or news analyses from straight news articles. Because the study inquires about the existence of quite specific descriptors—focused on the perceived ideological positions of the Justices, the presidents who appoint the Justices, and the way a decision can be split—it is unlikely that the signals arise from truly peripheral coverage of the Court, but the risk of false positives does exist. Similarly, the tracking of exact linguistic signals, using a methodology that simply records the frequency of terms, sacrifices the flexibility and detail of story-specific or sentence-specific coding, and precludes examinations of nuanced content like descriptions of politically motivated justifications that are not readily captured in phrases uniformly recognized as political (Spill and Oxley 2003). The approach is not designed to be comparative, and thus does not, for example, test the frequency of words or terms associated with apolitical or legal characterizations of the Court or the ratios of political to apolitical characterizations, but instead focuses solely on trends in linguistic signals commonly associated with political characterization.

The corpus linguistics approach also offers significant benefits that other methodologies cannot achieve, creating a unique mechanism for breadth of analysis and objective investigation of natural uses of linguistic signals. It allows for an expansive examination of the characterizations of the Court and the Justices who populate it over a larger time period than is feasibly studied in coding-based studies. The current analysis investigates very large quantities of linguistic data, with nearly 200,000 total articles surveyed. The approach allows for full reporting of every use of the specified linguistic signals within a timeframe of great importance for the relationship between the Court and the media. This length of temporal analysis minimizes the effect of aberrations in data that might exist during a given

makeup of the Court, a particular reporter's time covering the Court, unique eras of transitions or nominations, or specific periods of Court leadership or decisionmaking. The studied period stretches from the Vinson Court to the Roberts Court. During this time, the Court had a total of 33 different Justices appointed by 12 different presidents, five of whom were Democratic presidents and seven of whom were Republican presidents. The Court existed in 26 different configurations of nine Justices. The Justices who populated the Court during these six decades included 17 Republican nominees and 16 Democratic nominees and were led by five separate Chief Justices. Thus, the corpus approach gives a unique, bird's-eye view of linguistic trends that span different populations and different time periods. Significantly, corpus investigations of linguistic signals also eliminate potential subjectivity in coding, as the approach requires no researcher determinations of whether a specific article or sentence carries political or apolitical connotations or whether certain language characterizes the Court as a legal or political institution, beyond the initial determination of the linguistic signal to be examined. Although some false positives are possible, the three signals selected here are the linguistic signals most uniformly recognized as being politicizing in all of their uses. An examination of trends in the use of this precise terminology over time thus investigates the question of politicization without the need for any individualized judgments by coders.

4. Analysis

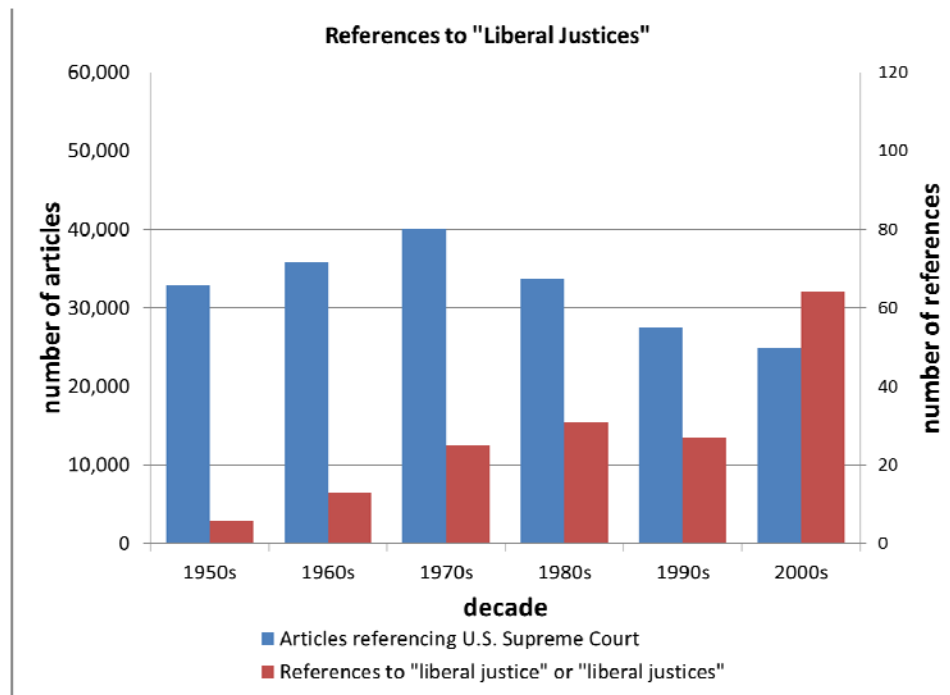
4.1. References to Justices' ideology

As an initial matter, perhaps the most obvious linguistic mechanism by which the U.S. Supreme Court might be politicized in press coverage is a direct reference to the ideology of a Justice or group of Justices, using partisan terms ordinarily reserved for descriptions of political dialogue. Such linguistic signals depict the Court as a collection of individuals rather than as an institution and, more particularly, convey a picture of splintered political or ideological factions (LaRowe 2010). Some have speculated that political labels are "popular tools for journalists because they exhume the justice's political ties from the nomination and confirmation processes, events now almost by definition newsworthy in the wake of the Justice Thomas and Robert Bork nominations" (Jamieson 1998, p. 16). Unsurprisingly, studies of media framing of the Court have universally agreed that references to Justices as "liberal" or "conservative" constitute a political, rather than a legal or Constitutional, framing of the Court. (Johnson and Socker 2008, LaRowe 2010). When the Court's behavior is "discussed in terms of the ideologies of the actors involved and the relationship between outcomes and partisan players who have a stake in said outcomes" (Johnson and Socker 2008, p. 8), scholars have found the characterization to be a politicized one. In framing studies with a coding methodology, references to Justices' ideology are uniformly coded as "political coverage" of the Court (Spill and Oxley 2003, p. 25). The suggestion has been that these politicizing references run the risk of damaging public support for the Court and its work, as they can "perpetuate[] a view of the judiciary as haphazardly reaching its conclusions and simply relying on personal ideologies." (Luberda 2008, p. 521).

As illustrated in Figure 3, an examination of the *New York Times* U.S. Supreme Court Articles Corpus suggests that the use of these linguistic signals has increased since the 1950s. In the decade from 1950 through 1959, articles discussing the U.S. Supreme Court used the phrase "liberal Justice" or "liberal Justices" only six times. By the decade from 2000 through 2009, articles discussing the U.S. Supreme Court used those phrases 64 times. The use of the linguistic signal "liberal" in connection with the words "Justice" or "Justices" in these articles referencing the Court doubled from the 1950s to the 1960s, nearly doubled from the 1960s to the 1970s, plateaued for the 1980s and 1990s and then more than

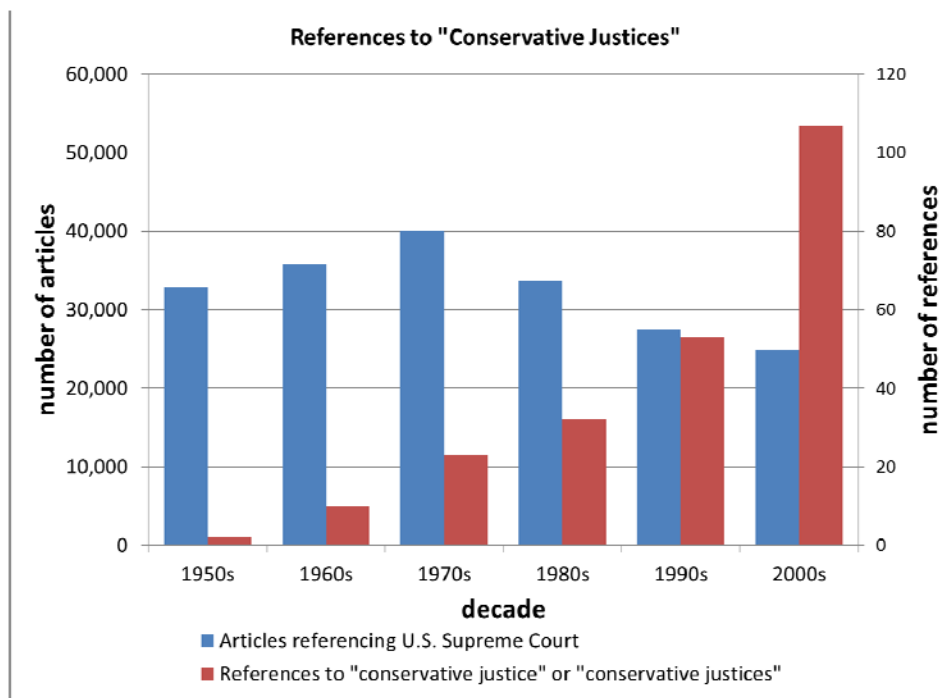
doubled between the 1990s and the 2000s. It is notable that from the 1970s to present, although both the total number of articles appearing in the *New York Times* and the total number of those articles mentioning the U.S. Supreme Court have declined with each decade, the total number of references to liberal Justices has increased each decade.

Figure 3



The frequency of the linguistic signal "conservative Justice" or "conservative Justices" has an even more consistently upward trend from 1950 to present. As illustrated in Figure 4, *New York Times* articles mentioning the U.S. Supreme Court used the phrase "conservative Justice" or "conservative Justices" only two times in the entire decade from 1950 through 1959. The references have steadily increased each subsequent decade, with the linguistic signal used 107 total times in the decade from 2000 through 2009. Although corpus linguistics inquiries only indicate linguistic trends and do not present conclusions as to the cause of the trends, it may be notable that the even more marked increase in the use of the conservative linguistic signals over the liberal linguistic signals may be a reaction by the particular news entity to the addition of Reagan- and Bush-era Supreme Court Justices in the 1980s. The trend may also be a result of the conservative ideological label more fully entering the wider lexicon in the decades between 1950 and 2009. Again, the total number of articles appearing in the *New York Times* and the total number of those articles mentioning the U.S. Supreme Court have declined with each decade since the 1970s, while the total number of references to conservative Justices has increased with each decade.

Figure 4



The frequencies of both the liberal and the conservative linguistic signals made their largest leaps in the 2000s. It might be speculated that the Court's decision in *Bush v. Gore*, the most ideologically characterized decision of the modern era, influenced these numbers and enhanced the tendency of the linguistic signals to be used in cases following that case. Additional inquiry on these questions might be warranted.

All told, although the corpus linguistics approach offers no clear insight into cause, what can be said is that a reader of the *New York Times* over the course of the last six decades would be increasingly more likely to see a Justice spoken of with a conservative or liberal ideological descriptor. If, as previous social science studies have suggested, the use of such linguistic signals politicizes the institution, this may constitute one data point in a linguistic trend toward politicization.

4.2. References to Justices' appointing presidents

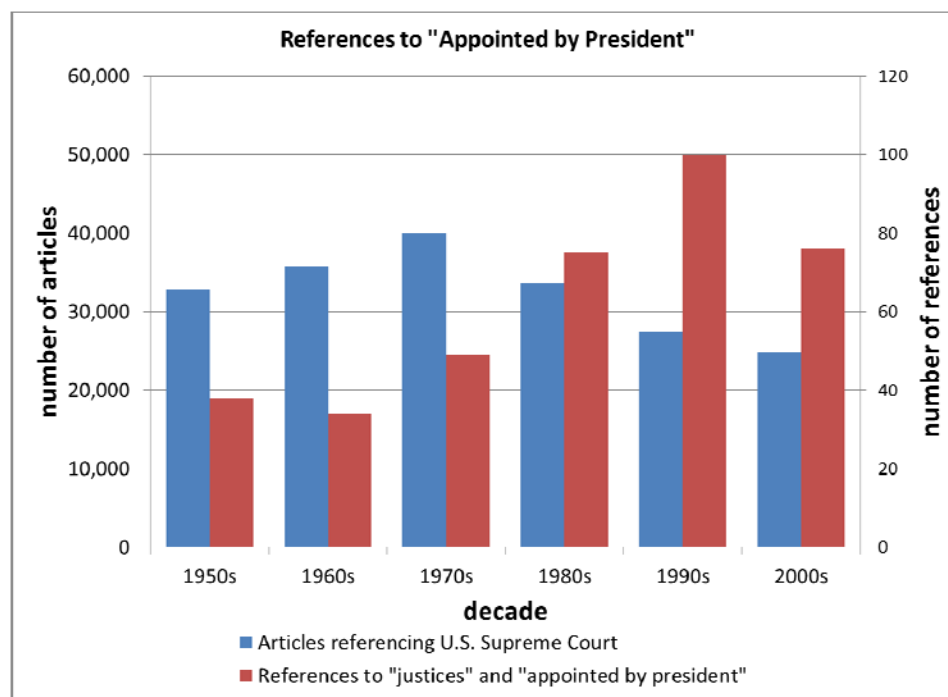
A second linguistic signal with the potential to politicize the Court is a reference to the appointing president of a Supreme Court Justice. In a lecture given in the mid-1990s, *New York Times* Supreme Court correspondent Linda Greenhouse revealed that the newspaper actually debated the implementation of an official policy mandating identification of the appointing president of any mentioned member of the federal judiciary (Greenhouse 1996). She and others objected on the grounds of politicization—that such a rule would place the newspaper in the position of “insinuating that all federal judges are simply carrying out the agendas of their political sponsors; in other words, that they are acting as politicians and not as judges” (Greenhouse 1996, p. 1557). It appears that the official policy was not implemented, but the *Times* and other newspapers continue the practice in at least some instances and face criticisms for “making the unstated or explicit assumption that some of the Justices are just politicians in robes” (Greenhouse 1996, p. 1557). Some have noted that “while inherently speculative, suggestions that a particular justice is carrying out a mandate of his appointer enhances an article's newsworthiness” (Jamieson 1998, p. 16), at least insofar as it attracts readers with ongoing interest in the political battles that lead to the appointment. When social scientists have coded coverage of the Court to determine the existence of political

or apolitical frames, a reference to the president who appointed the particular Justice is considered a political framing.

Trends regarding the use of the linguistic signal “appointed by president” in stories in the U.S. Supreme Court Articles Corpus that mention the word “Justice” are illustrated in Figure 5. It should be noted that reference to appointing presidents that occur in ways other than the phrase “appointed by President ____” are not explored here. A Justice could, for example, be referred to in an article as a “Reagan appointee,” which would not be captured in the linguistic signal count. Because the word “appointee” in a newspaper article mentioning the Supreme Court could refer to a wide variety of private and governmental appointments beyond the presidential appointment of a Justice, it was excluded from the corpus-level inquiry. Although the larger trend of all ways of making reference to the president whose nomination placed a given Justice on the bench is not fully captured in the single linguistic tool searched, the data demonstrates the frequency with which this particular, common reference to the appointing president has been used in the decades between 1950 and 2009. Likewise, for purposes of removing false positives, the U.S. Supreme Court Articles Corpus was limited for this search to articles that also contained at least one reference to “Justice.” Although the term “Justice” has many meanings, for purposes of testing the use of the linguistic signal “appointed by President ____” as a politicizing signal, its existence in an article serves to limit the body of investigated material to those articles at least potentially referring to a Justice of the Supreme Court, removing articles that refer to the Court but make no mention of its Justices, which necessarily must be referring to some other individual’s appointment when they use the phrase “appointed by president.”

In the decade from 1950 through 1959, the *New York Times* used the linguistic signal “appointed by president” 38 times in articles referencing the U.S. Supreme Court and “Justice.” By the decade from 2000 through 2009, that number was at 76, having peaked at 100 in the 1990s.

Figure 5



The politics of the process by which presidents nominated and the Senate confirmed new Justices for seats on the Court changed radically during the studied time period (Davis 2005), and the increased use of this particular politicized

linguistic signal may well be explained at least in part by those trends, in ways that fall outside the scope of the present inquiry but are worthy of further investigation. Likewise, neither the Court nor the presidents whose appointments sat on the Court were stagnant over the six decades studied, and a nuanced political science inquiry might reveal that variations in the references to appointing presidents were rooted in these changes in the Court's composition. For example, in 1950, when this study's corpus begins, the Court was populated with nine Justices appointed by Democratic presidents—five Franklin D. Roosevelt appointees and four Harry S Truman appointees. This composition might be seen as rendering a reference to the appointing president less worthy of mention. Over the course of the 1950s and 60s, the Court's Democrat-to-Republican-appointee ratio became 8-1, 7-2, 6-3, and then 5-4. In the 1970s, the pendulum swung the other direction, with the Court more heavily weighted with Republicans, 4-5 and 3-6 before settling at ratios of 2-7 and 1-8 for all of the 1980s and 1990s and most of the 2000s, until President Barak Obama's appointments late in that decade. Added to this factual mix is the appointment of several Justices over the sixty-year period whose votes in cases perceived as ideologically divisive on the Court did not align with the ideological preferences of their appointing presidents. For example, Justice William Brennan, appointed in 1956 by Republican President Dwight D. Eisenhower, was long a liberal lion on the Court. Justice John Paul Stevens, appointed in 1975 by Republican President Gerald Ford and Justice David H. Souter, appointed in 1990 by Republican President George H.W. Bush, both consistently voted with the Court's Democratic appointees in key divided cases during their tenures as Justices. Such patterns might have led a media outlet like the *New York Times* to make greater mention of these Justices' appointing presidents. Notably, however, any of these explanations rises and falls on the assumption that a Justice's vote is ordinarily dictated by the preferences of the president who appointed the Justice. Referencing the appointing president to illustrate that the Justice's vote is surprising itself sends the arguably politicized signal that partisan allegiance is owed.

4.3. *References to divided and unanimous opinions*

Recent studies have noted, unsurprisingly, that the news media gives greater coverage to conflicted rulings from the U.S. Supreme Court (Johnson and Socker 2008). As others have noted, given "the role of the Court in handling issues on which public opinion is highly polarized" (Davis 1987), basic newsworthiness criteria make it understandable that divided opinions would be featured in newspaper articles and other media coverage (Slotnick 1991) and that outcomes that seem dramatic or surprising would likewise attract greater media attention (Haltom 1998, p. 73-77). Ideological clashes, sometimes represented in deeply divided cases, "may represent the most attractive angle for the print journalist's stories" about the Court (Jamieson 1998, p. 16). But this apparent tendency is not without effects. To the extent that the "most consequential decisions tend[] to be the closely divided ones" (Greenhouse 1996, p. 1551), the result may be that press coverage conveys the image of "an institution locked in mortal combat, where sheer numbers rather than force of argument or legal reasoning determined the result" (Greenhouse 1996, p. 1552). As former *New York Times* Supreme Court reporter Linda Greenhouse once noted, journalists can find it "dramatically inviting to portray the Court as the venue for an ongoing Manichean battle," even though "the reality . . . is quite different" (Greenhouse 1996, p. 1551). There may be negative "consequences to public understanding about the Court [from] an unrelenting diet of conflict when the reality is often otherwise" (Greenhouse 1996, p. 1552).

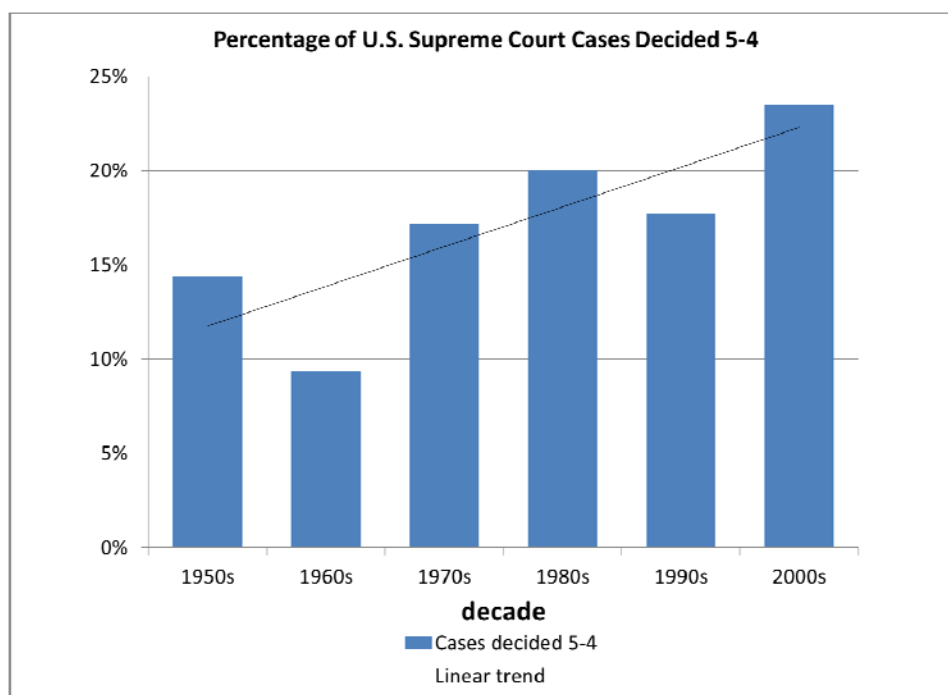
These consequences have been the focus of numerous studies of media framing of the U.S. Supreme Court, with scholars considering whether the Court is being depicted as "an abstract Constitutional institution [or] a collection of political actors" (LaRowe 2010, p. 13) and exploring the ways in which coverage of the judiciary in terms of consensus or in terms of conflict might shape public sentiment

about the role of the Court (Johnson and Socker 2008). At least some have specifically noted distinctions in coverage of 5-4 decisions over 9-0 decisions and the ways that this “dichotomy of coverage exists above and beyond whatever actual conflict might exist on the Court in terms of votes cast on cases decided” (Johnson and Socker 2008, p. 8).

If the over-reporting of disagreement or the under-reporting of consensus leads to politicization of the Court in the eyes of the reading public, then terms or phrases that undeniably signal deep disagreement or complete consensus might be additional linguistic signals to be tracked for politicization trends. This linguistic data, standing alone, is somewhat unhelpful in discerning whether media characterizations of disagreement or consensus reflect reality. But when paired with actual trends on division and consensus in the Court’s opinions, it can offer insights into the depiction of the Court being offered to the readership.

Figures 6 through 9 set forth trends in the percentages of both 5-4 and 9-0 decisions from the U.S. Supreme Court over the studied time period, and compare those trends in the Court’s actual behavior with trends in *New York Times* reporting of 5-4 and 9-0 decisions. Figure 6 illustrates statistics on the percentage of cases decided by the Court by a vote of 5-4 from the 1950s to the 2000s, using data from *The Supreme Court Compendium* (Epstein *et al.* 2012). As the Figure reveals, although the trend is not steadily upward from decade to decade, the percentage of decisions decided by the Court on a 5-4 margin has in fact increased over time and the linear trend line is upward. While both the 50s and 60s contained less than 15 percent 5-4 decisions, nearly a quarter of the Court’s decisions in the 2000s were decided by a 5-4 vote.

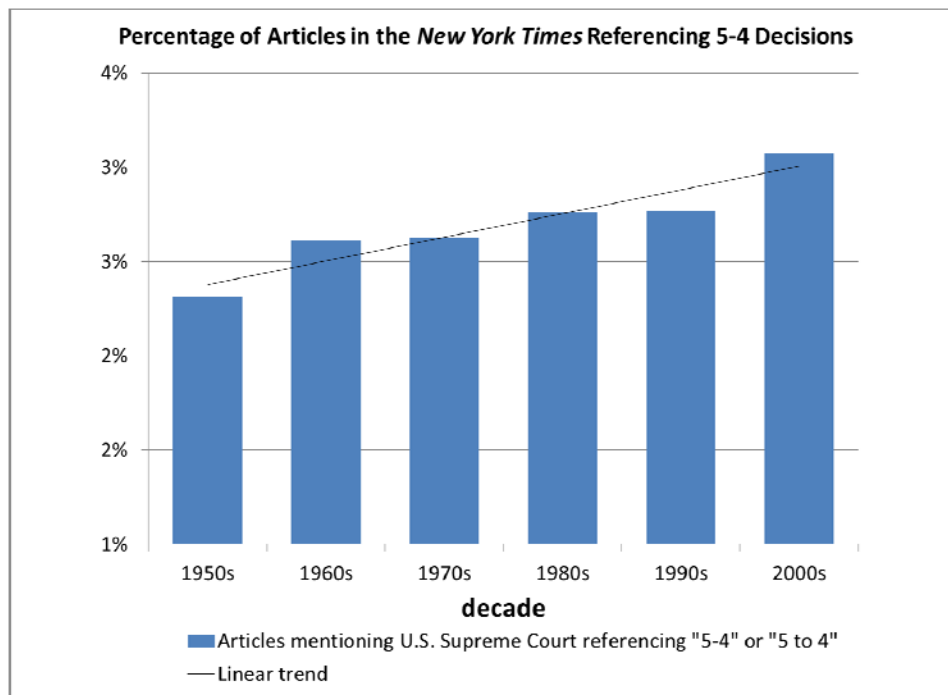
Figure 6



The U.S. Supreme Court Articles Corpus was searched for references to either “5-4” or “5 to 4” within those same decades. The actual percentages of stories in the corpus using those linguistic signals was, as expected, quite small. This is a consequence of the necessarily large corpus, which includes all coverage of the Court, only some small percentage of which is coverage of actual cases and only some smaller subset of which are articles specifying a vote by the Justices. Although corpus-level investigation does not allow for that degree of precision of

inquiry, and the percentages of real-world use in the total corpus are small, the trends illustrated by them may still be telling, as they offer information on how often the newspaper, in its coverage, is making reference to divided votes, how that frequency is increasing or decreasing, and how the trend line compares to the trends in actual decisional behavior by the Court. Figure 7 shows a slight increase in the percentage of articles mentioning 5-4 decisions over the course of the studied decades. Because the actual number of 5-4 decisions did increase over time, the linguistic trend and the decisional behavior trend follow similar patterns. It would appear that, on the issue of 5-4 decisions, the *New York Times'* reporting tracks actual trends from the Court.

Figure 7



The same does not appear to be true of coverage of unanimous decisions. As illustrated in Figure 8, the percentage of cases decided by the U.S. Supreme Court by a vote of 9-0 follows an upward linear trend. While 33 percent of cases decided by the Court in the 1950s were decided unanimously, both the 1990s and the 2000s saw more than 40 percent unanimity from the Court.

Trends in the *New York Times* coverage of 9-0 decisions do not parallel the trends in decisional behavior by the Court. When the U.S. Supreme Court Articles Corpus is searched for the terms "9-0," "9 to 0," or "unanimous," the use of this linguistic signal is not proportional to the actual occurrence of unanimous decisions. Although, for the reasons discussed above, the percentages of the large overall corpus are again small, Figure 9 demonstrates that the trend line for use of the linguistic signal is decidedly downward, with the percentage of articles in the 2000s mentioning 9-0 decisions nearly half the percentage in the 1950s that did so. In other words, even though the actual percentage of unanimous decisions was higher in the 2000s than it was in either the 1950s or the 1960s, a *New York Times* article from the 1950s or 1960s was twice as likely to mention a unanimous decision as an article from the 2000s.

Figure 8

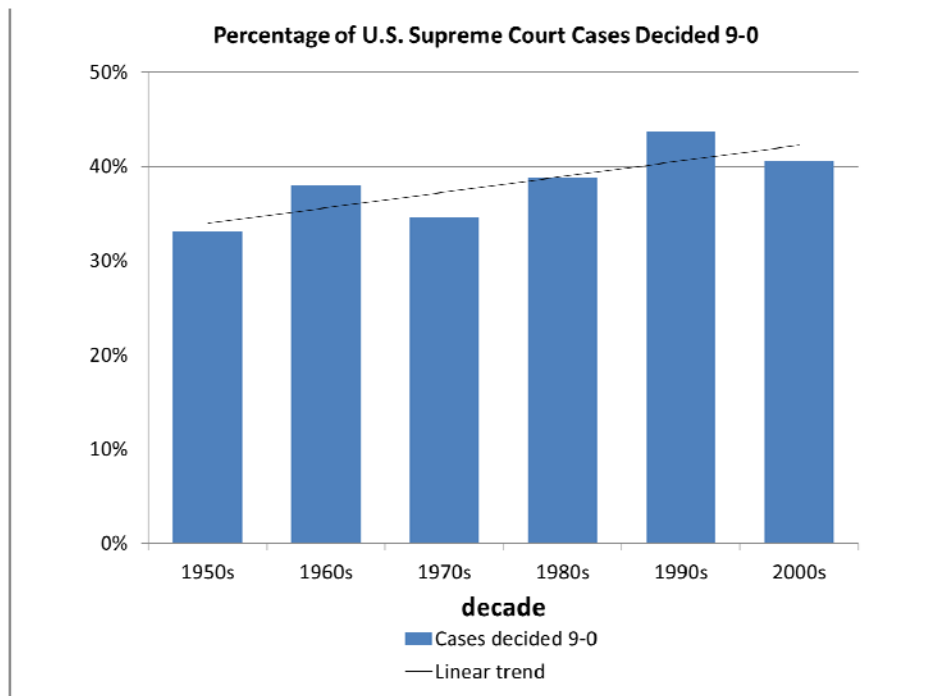
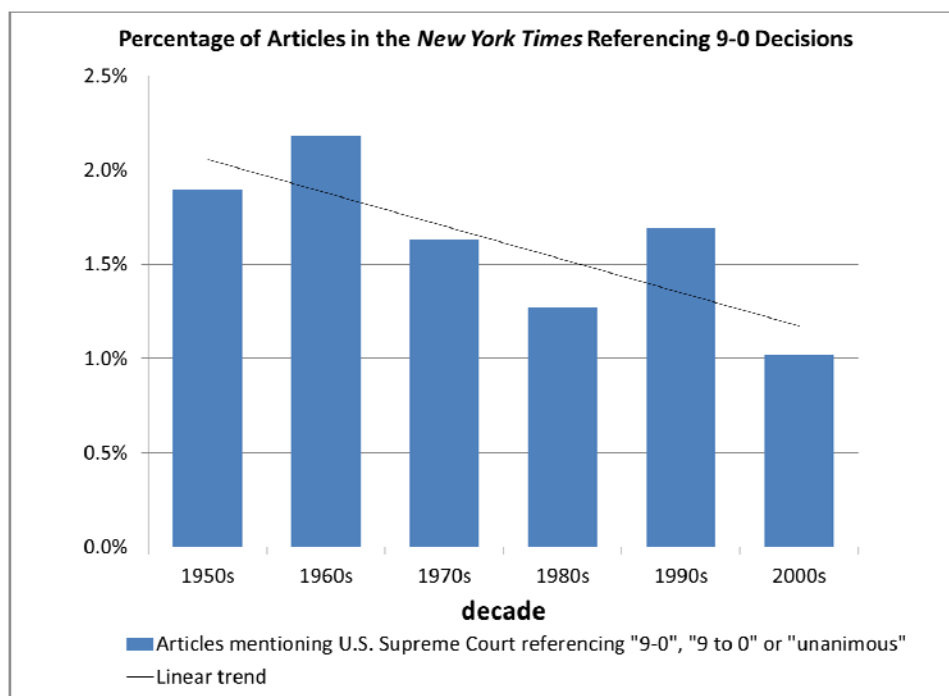


Figure 9



In sum, the corpus linguistics inquiry into the most common terms of disagreement and consensus, when mapped alongside actual decisional behavior by the U.S. Supreme Court, suggests that the *New York Times* is increasing its use of the 5-4 linguistic signals as the set of actual 5-4 decisions increases, but is decreasing its use of the 9-0 linguistic signals as the set of actual 9-0 decisions increases. While the percentage of unanimous U.S. Supreme Court decisions has increased over the past 60 years, a subscriber to the *New York Times* has been reading less and less about them.

5. Conclusion

A corpus linguistics study of newspaper articles referencing the U.S. Supreme Court in the *New York Times* Archive from the decades between 1950 and 2009 shows increases in the use of three separate linguistic signals that have been associated with politicization of the institution. The data shows more frequent use of explicitly ideological descriptors of the Justices, with both the term “liberal Justice” and the term “conservative Justice” rising in frequency from the 1950s to present and the term “conservative Justice” making a particularly notable rise. References to the appointing presidents of the Justices, through the phrase “appointed by President _____” in articles also mentioning a “Justice,” similarly have increased since the 1950s, despite a decrease in the overall number of articles in the corpus. Finally, a disparity between linguistic signals indicating 5-4 decisions and linguistic signals indicating unanimous decisions suggests that while the Court’s actual decision-making patterns have upward trends for both cases that are deeply divided and cases that are unanimous, the newspaper’s coverage of unanimous cases has decreased as the occurrence of those cases has increased.

A corpus linguistics inquiry is designed only to observe real-use trends in the frequency of linguistic signals and not to offer insights into why those trends exist. Ongoing questions about the reasons the *New York Times* has chosen the linguistic signals it has chosen—and the ways in which those signals *create* public perceptions or merely *reflect* public attitude and the reality of an increasingly political Court—remain for investigation. The linguistic trend patterns described here contribute to the ongoing conversation about politicization of the U.S. Supreme Court by offering a breadth of data spanning the six complete decades of modern media coverage, by confirming upward trends over that time period in three notable areas, and by highlighting important questions for ongoing inquiry.

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