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DISPROPORTIONATE ATTENTION ON THE SUPREME COURT (1948-1990)

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DISPROPORTIONATE ATTENTION ON THE SUPREME COURT (1948-1990)

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Report

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Abstract

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Despite its emergence as a key player in igniting policy change, very little work has been done to understand the Supreme Court's agenda in terms of policy content. Scholars have tended to describe the Court mostly in terms of the direction (liberal/conservative) of justices' decisions and the significance of particular cases. As a result, I ask if the Supreme Court allocates a disproportionate share of its docket to particular policy areas and if over attention to issue areas can be explained in terms of ideological shifts on the Court. This paper utilizes a new dataset, which includes a sample of 4591 certiorari denied cases and all 7014 cases granted certiorari from 1948 to 1990. Each case is coded for policy content according to the Policy Agendas Project coding scheme. By comparing the policy content of certiorari granted and certiorari denied cases over time, I show that judicial attention to policy areas waxes and wanes and court eras can be differentiated according to which issues occupied a disproportionate share of the Court's attention. Additionally, I demonstrate that disproportionate attention to a subset of issue areas varies with changes in the ideological makeup of the Court.

Table of Contents

The United States Supreme Court exerts considerable influence in the policy making process. Justices have handed down landmark decisions affecting public policy in a diverse array of issue areas. In his classic work, "Democracy in America," Alexis de Tocqueville observes that "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question" (1945). The Court's agenda composition, or the mix of policy topics taken by the Court, has fluctuated and evolved through time to meet the needs of a changing political and social context. Some of the most influential cases in the latter half of the 20th century are familiar to nearly all students of judicial politics and include decisions like Brown v. Board of Education (1954), Texas v. Johnson (1989) and Miranda v. Arizona (1966). These cases, and other lesser known ones, have helped shape policy within their respective domains and been the subject of numerous studies exploring the determinants of judicial decision making and the legal and political significance of select cases.

Scholarship dealing with these cases has revealed interesting findings concerning judicial behavior and has demonstrated the Court's power to affect policy change, but it has often missed that these individual decisions are part of a wider institutional agenda. During the year in which the Court chose to hear Brown v. Board of Education, the justices decided not to hear many other potentially worthy cases, addressing alternative issue areas. Little is known about the policy content of the cases the justices decline to hear or their meaning for the Court's agenda. This paper attempts to fill a void in our understanding of the Supreme Court's agenda by taking into account the policy content of those cases the Court declines to hear and shows that justices disproportionately attend

to particular policy areas at the expense of others. Disproportionate attention refers to justices taking cases in policy areas out of proportion with the number of cases appealed to them from those policy areas. The Court can take proportionally more cases than what was appealed to them. I term this "over attending." Or the Court can take proportionately fewer cases than what was appealed to them. I term this "under attending." Proportionate attention is characterized by justices accepting cases in proportion to what was appealed to them. In order to observe the degree to which the Court proportionally attends to issues, it was necessary to develop a new measure, which I term, "proportionality of attention." This measure is calculated by including data on cases the Court has chosen not to hear and provides a means to assess the degree to which the Supreme Court has over, under or proportionally attended to particular policy areas.

To calculate this measure, I collected and constructed an original dataset, which includes a sample of every 20th case denied certiorari between 1948 and 1990. Each case has been coded according to the Policy Agendas Project coding scheme and is comparable to the existing Supreme Court Certiorari Granted dataset, which includes all cases decided by the Supreme Court during the same time period. By comparing the content of certiorari denied and certiorari granted cases, I am able to calculate the proportionality of attention score associated with each issue area and examine the apportionment of the Supreme Court's agenda space over time, with reference to both the cases the court decides to decide and those it chooses not to decide.

The availability of this new data has stimulated the following research questions: Does the Court disproportionately allocate attention to certain policy areas? Is disproportionate attention associated with shifts in the ideological makeup of the Court?

I posit first that the Court will over allocate attention to most policy areas, with one exception. The justices will regularly under allocate attention to issues related to court administration and crime because these cases are so numerous and often devoid of an interesting legal question or policy implication[1]. They are therefore unattractive options for an institution already operating under severe agenda constraints. I also expect that the Court's allocation of attention to each policy area will fluctuate over time. Lastly, I expect that changes in the ideological makeup of the Court will result in unique patterns of attention which can be differentiated from the proportionate or stable patterns that would otherwise be observed were the Court's ideological makeup to remain constant. I offer three simple hypotheses which sketch the shape I believe these findings will take.

H1. The Supreme Court over attends to all policy areas except, court administration and crime.

H2. The proportionality of attention associated with each issue area varies over time.

H3. Shifts in judicial ideology vary with shifts in the issues allocated a disproportionate share of the Court's attention.

[1] Many writ of certiorari petitions sent to the Supreme Court in the Court Administration and Crime categories are filed *in forma pauperis*. Most of those petitioners are prisoners appealing their conviction for various crimes. Petitions that appear on the Supreme Court's *in forma pauperis* docket are substantially less likely to be granted review than those on the paid docket (Thompson and Wachtell 2009).

In the following sections I briefly lay out what is known about the process by which the Court decides whether or not to grant certiorari and describe recent scholarship on the Court's agenda. In the last sections, I submit the above hypotheses to empirical testing using an original measure of proportionality of attention and a series of correlations between issue areas and judicial ideology.

GRANTS AND DENIALS OF CERTIORARI

The majority of cases appealed to the Supreme Court reach the docket through petitions for writs of certiorari (Provine 1980). A grant of certiorari means that at least four of the justices have determined that the circumstances described in the petition are sufficient to warrant review by the Court. A decision is issued either through oral argument or non-oral review. If a case is not granted a writ of certiorari, the decision of the lower court stands and it is assigned a status of certiorari denied, although such a denial "imports no expression of opinion upon the merits of the case." Missouri v. Jenkins (1995). Similar to how bill introductions represent the potential legislative agenda, cases petitioning for a writ of certiorari represent the potential judicial agenda. They are the cases the justices choose from when deciding how to allocate their scare resources of time and attention. Recent research has devoted little systematic attention to the transformation of the Court's agenda or the determinants of its scope and pace (Pacelle 1991). Furthermore, studies exploring the agenda have generally done so only with reference to cases the Court has decided. Cases whose appeals were denied have normally been omitted from such analyses (Casper and Posner 1976, Caldeira 1981, Likens 1979, Pacelle 1991). This approach neglects a fundamental portion of the agenda, without which we cannot build a complete picture of the Supreme Court's issue priorities. The Court's agenda is finite and built upon tradeoffs. Real choices must be made whereby important items are denied access in deference to other cases (Pacelle 1991). In order to engage in a comprehensive study of the Court's policy agenda over time, information regarding both certiorari granted and certiorari denied cases is necessary. It is

otherwise impossible to describe the tradeoffs inherent in the decision to hear some cases and not others.

DETERMINANTS OF CASE SELECTION

Exploring and identifying the criteria justices use to determine whether or not a case should be denied access to the Court's agenda is not a new enterprise. Of the hundreds of thousands of cases decided in our judicial system each year, a select few are heard and decided upon by the United States Supreme Court. Currently between 8,000 and 9,000 cases are appealed to the Supreme Court annually. Of these, between 80 and 150 are granted writs of certiorari, and heard in oral argument[2]. Out of all three branches, the institutional design of the Supreme Court imposes the strictest limitations and constraints on what issues are able to gain access to its agenda (Jones, et al. 2009). Part of this strictness stems from logical necessity; the Court only has nine justices and would be unable to hear and give their full consideration to each of the 8000-9000 cases appealed each year. There must be limitations and constraints in place to ensure that the Supreme Court allocates their attention to the most appropriate and most deserving cases. On the Supreme Court, the formal level of consensus required in conference to agree to hear a case is four votes. There are other rules that constrain which cases are granted review by the Supreme Court and consequently which issue areas are on the Court's agenda. Some of these rules are formal, straightforward and easily accessible, like the four votes rule. Others seem to be intentionally vague. Rule 19 is non-binding on justices and incidentally the only published general statement of review criteria (Provine 1980). Rule 19 lists the

[2] This study focuses on cases granted or denied certiorari, since this is the primary mechanism through which the bulk of cases arrive at the Court. Cases can also arrive at the Court via certification (very rare) or appeal as a matter of right (more common, yet far less common than writs of certiorari).

following as "the character of reason which will be considered" in granting or denying certiorari:

> (a) Where a state court has decided a federal question of substance not therefore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision (Supreme Court of the United States, Revised Rules, 1967).

In part due to the vagueness of Rule 19, scholars have argued for a variety of other factors that they propose influence an individual decision to grant certiorari. Most have focused on factors that are endogenous to the Supreme Court or the judicial branch and are at least in some abstract sense, quantifiable. They have speculated that the determinants of the decision to grant certiorari include: the need to resolve conflict among the lower courts (Provine 1980, Ulmer 1984, Perry 1991), the strategic considerations of justices (Schubert 1959, Brenner 1979, Boucher and Segal 1995, Segal

& Spaeth 1993), sufficient percolation through lower courts (Perry 1991), the ideological predisposition of justices towards particular cases (Segal & Spaeth 1993), justices' values and attitudes (Perry 1991), or an indication of a decision on the merits (Ulmer 1972, Brenner & Krol 1989). The available literature suggests that it is slightly rarer for scholars to view the Court's agenda in light of exogenous influences, although some work has been done, including analyzing the court's decision to grant certiorari in light of the capacity of the Court to make a significant policy impact (Songer 1979, Krol & Brenner 1990, Black & Owens 2009), the role of amicus curare briefs (Caldeira and Wright 1988), or examining the role the United States government plays in the likelihood of a case being granted certiorari (Ulmer 1972). Perry reminds us that ultimately a case is certworthy because four justices say it is certworthy (1991). A case's certworthiness may be considered with reference to one or many of the above factors, but ultimately we rely on the justices' discretion to determine if a case has sufficient merit to be decided by the Supreme Court. This concept of case merit is slippery and for the most part unquantifiable, even by the justices themselves (Perry 1991). Although we will never be able to fully quantify and describe the characteristics that make a case certworthy, and therefore never perfectly predict which cases will be granted certiorari, we are still able to examine the Court's agenda as the aggregate output of these processes.

THE COURT'S AGENDA AS AN ENTITY

The previous section should make clear that the majority of scholarly research on the Court's agenda is dominated by studies that focus on determinates of individual judicial decision making. Pacelle notes that these micro level analyses, while important, have inherent limitations. Such studies, for instance, reveal little about the trends of agenda change because they do not deal with the agenda in terms of the aggregate distribution of issues on the Court's docket. Such a focus obscures interrelationships and tradeoffs between issues and ignores the finite nature of the Court's annual agenda (1991). A small group of scholars have adopted a macro level view of the Supreme Court's agenda and attempted to examine and explain the agenda as an entity unto itself, rather than simply the final stage of micro level processes. Gerhard Casper and Richard Posner ascribe changes in the Court's agenda to shifts in underlying societal and economic conditions and to Supreme Court decisions which created new rights and therefore fertile ground for new litigation (1976). Gregory Caldeira confined his analysis to a single policy area (criminal law) and found that agenda change is predominantly the result of the ideological composition of the court, in combination with some external determinates (1981). Thomas Likens traces variation in agenda trends across six policy areas and finds that although external forces have some effect, internal determinates, like judicial ideology predominantly determine the agenda (1979). More recently, Richard Pacelle produced an extensive study of trends in the allocation of agenda space over 14 policy categories between 1933 and 1987. He argues that agenda change occurs at a very slow pace because each Court is constrained in its ability to go outside of the agenda

policies and doctrine of its predecessors. The agenda is built upon preceding cases and policy communities must be prepared by the justices before they begin to abdicate a policy area. This results in familiar issues dominating the judicial agenda because startup costs for new policy areas are exponentially higher (1991).

Each of the above studies make some mention of certiorari denied cases in the agenda setting process and there is an implied understanding that by choosing some cases, the justices are forgoing an opportunity to address others. Pacelle specifically mentions the tradeoffs between cases chosen for the agenda and important cases which are denied access. However, these tradeoffs are never explicitly explored in his analysis because he is only able to include certiorari granted cases (1991). My original sample of 4591 cases in the Supreme Court Certiorari Denied dataset, in conjunction with the 7014 cases of the Certiorari Granted dataset make it possible to explicitly examine the nature of the tradeoffs between those cases which make the agenda and those which do not.

MEASURING THE JUDICIAL AGENDA

The vast majority of empirical studies of the Supreme Court have used coding systems that break down issue areas by the legal question and the policy question addressed in the cases (Pacelle 1991, Segal and Spaeth 1993). There is some conceptual pollution inherent in these measures since they tend to confuse policy area and legal question. This study takes an alternative approach. In the Supreme Court datasets used in this analysis, cases are coded only according to the substantive policy area addressed in the case and therefore do not confuse legal reasoning with policy issue. Data on certiorari denied cases is from the original Supreme Court Certiorari Denied Dataset. A sample of every 20th case denied certiorari was drawn from the United States Reports, along with corresponding lower docket summaries from LexisNexis. Based on content in the first one or two paragraphs of the opinion, cases were coded into one of the 19 major topics and 225 subtopics of the Policy Agendas Project coding scheme[3]. Data on certiorari granted cases is from the Supreme Court Certiorari Granted dataset and are coded according to the same Policy Agendas Project scheme used to code the sample of certiorari denied cases.

In order to measure areas of disproportionate attention and track the Court's agenda over time, it was necessary to construct a simple measure to indicate periods

[3] The Policy Agendas Project uses a consistent policy content coding scheme. This coding system allows policy processes to be compared to one another as well as across time. The Policy Agendas Project's major and minor topic codes identify the main or general topic area (e.g., 2 = Law, Crime and Family Issues) and then the minor or specific subtopic area (e.g., 201 = Ethnic, Minority and Racial Group Discrimination) considered in each case. The Policy Agendas Project data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, with the support of National Science Foundation grant number SBR 9320922, and were distributed through the Department of Government at the University of Texas at Austin and/or the Department of Political Science at Penn State University. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here.

during which the Court is over attending or under attending to specific policy areas. Although the Certiorari Granted dataset contains the full universe of cases heard by the Court between 1948 and 1990; the Certiorari Denied dataset contains only a sample of cases seeking a writ of certiorari during the same period. It is therefore, impossible to directly compare counts of the two datasets. Instead, proportions must be used to compare changes in the agenda composition of each. To measure the degree to which the court on average over attends or under attends to specific policy areas, the difference between the proportion of certiorari granted and the proportion of certiorari denied cases for each of the 19 major topic areas was calculated for the time period between 1948 and 1990. The result is a simple measure of the degree to which the court over attends, under attends, or proportionately attends to each major topic area. This is the proportionality of attention score. A proportionate allocation of attention is represented by a difference of zero between the two proportions. Over attending is represented by positive values. Under attending is represented by negative values.

The following analysis proceeds on three levels: average proportionality of attention in 19 major topic areas, trends over time in five select policy areas and apportionment of agenda space over time in seven macro-categories.

PROPORTIONALITY OF ATTENTION

Figure I. shows the average proportionality of attention score associated with each of the 19 major topic areas from 1948-1990. Proceeding from top to bottom, four issue areas received a disproportionately small share of judicial attention and therefore have proportionality of attention scores that fall below zero. Law, Crime and Family, Macroeconomics, Health and Housing issues are all policy areas that on average, occupy a lower percentage of the judicial docket than would be expected given the average proportion these cases represent amongst petitions for writs of certiorari. The Court is under attending to these policy areas. In the case of Law, Crime and Family issues this not unexpected and falls in line with expectations outlined in H1. This category is dominated by murder and theft appeals cases, in forma pauperis petitions, and court administration issues. Four or more justices are likely to grant a writ of certiorari only in cases where there is a lingering concern related to due process, which has the potential for wider application or where other characteristics of a case make it an appropriate delivery system for the clarification of other portions of the U.S. code. Since there is little variation in the characteristics of these cases, the Court does not need to decide many of them to send the messages they are interested in. To a far lesser degree, the Court also under attends to the three other policy areas which have proportionality scores below zero. Under attention to these three policy areas does not conform to expectations laid out in H1and may be explained by non-case specific characteristics of the Court, such as changes in the ideological makeup of the Court or exogenous societal or environmental conditions.

The remaining 14 policy areas conform to expectations laid out in the first hypothesis. They are all over attended to by the Court in varying degrees. Civil rights cases received the largest disproportionate share of the docket over the course of this study, followed by labor, domestic commerce and government operations cases. Proponents of the view that the Supreme Court functions as primary protector and securer of individual rights and liberties will be heartened to see that civil rights cases are more likely to be over attended to during the period of this study than cases in any other major policy area. Like other policy areas with proportionality scores greater than zero, the Court grants more writs of certiorari to civil rights cases than would be expected given the percentage of the certiorari denied agenda they represent. Over attention to these issue areas is in part, a necessary reaction to the Court taking far fewer cases in law, crime and family issues than would be expected if this issue area was allocated proportional representation on the agenda. The next section moves away from a static examination of average attention toward a dynamic inspection of attention changes across the five policy areas with the two lowest and three highest proportionality of attention scores.

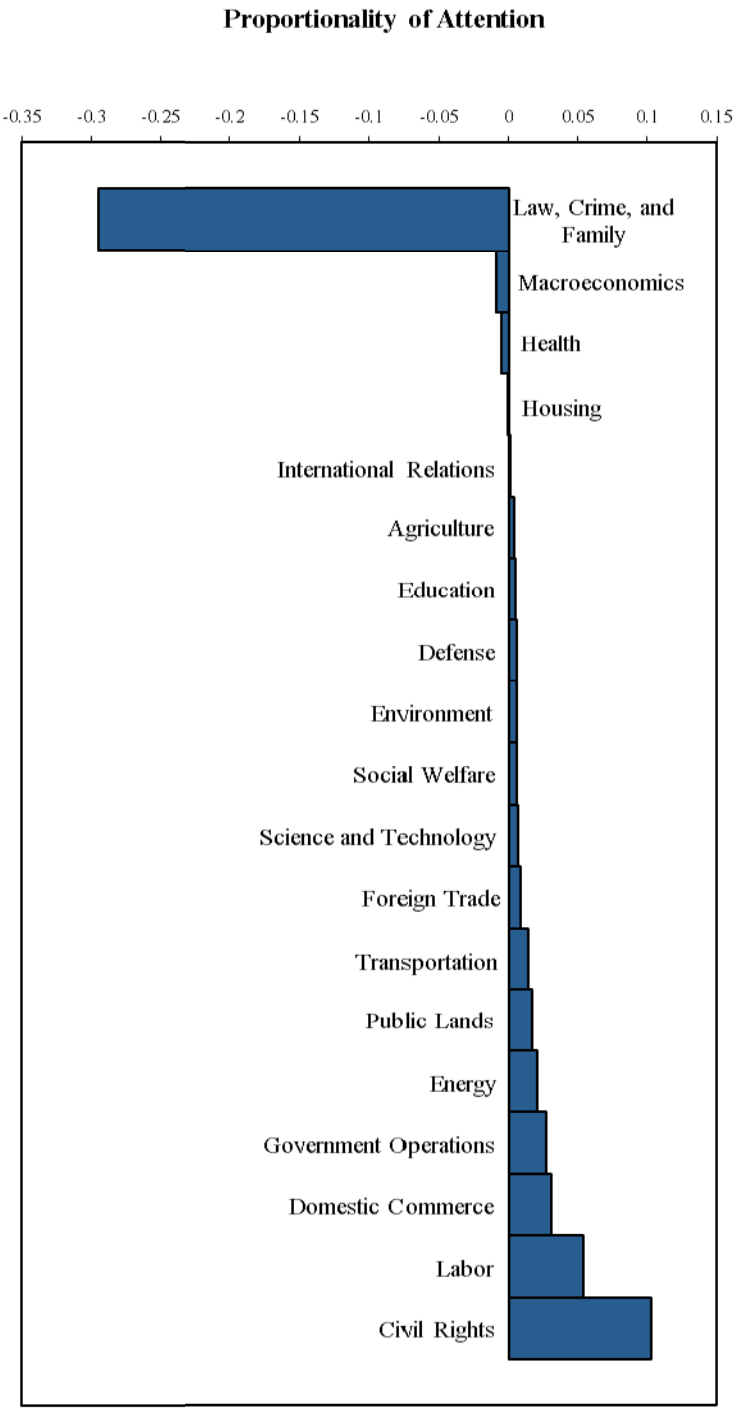
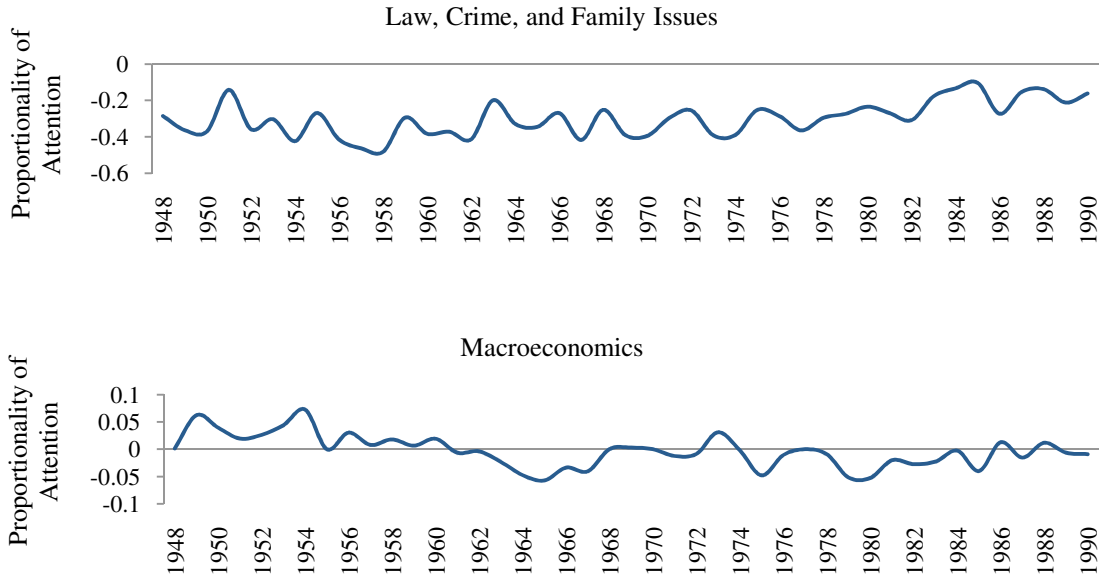

Proportionality of Attention
-0.35
-0.3
-0.25
-0.2
-0.15
-0.1
-0.05
0
0.05
0.1
0.15
Law, Crime, and Family
Macroeconomics
Health
Housing
International Relations
Agriculture
Education
Defense
Environment
Social Welfare
Science and Technology
Foreign Trade
Transportation
Public Lands
Energy
Government Operations
Domestic Commerce
Labor
Civil Rights

Figure I. Supreme Court Attention to Policy 1948-1990. The difference between the proportion of certiorari granted and the proportion of certiorari denied cases for each of the 19 major topic areas was calculated for the time period between 1948 and 1990. The result is a measure of the degree to which the court, on average, over attends, under attends, or proportionately attends to each major topic area during the 43-year span of this study. Proportionate attention is represented by a difference of zero between the two proportions. Over attending is represented by positive values. Under attending is represented by negative values.

DISPROPORTIONATE ATTENTION ACROSS FIVE ISSUE AREAS

The static average levels of proportionality in the previous figure may lead some to assume that the there is little variation across time with regard to issues occupying a disproportionate share of the Court's agenda or that particular policy areas only are only ever over or under attended to. Figure II. shows that this is mostly not the case. Times series plots trace the proportionality of attention scores associated with five policy areas from 1948 to 1990. There is significant variation in the proportionality of attention score associated with each of the policy areas[4], lending support to H2, which posits that proportionately scores will exhibit variation across time.



[4] Although they are not included in this paper, similar time series graphs were created for the remaining 14 policy areas. All issue areas displayed significant variability in their proportionality of attention scores over time.

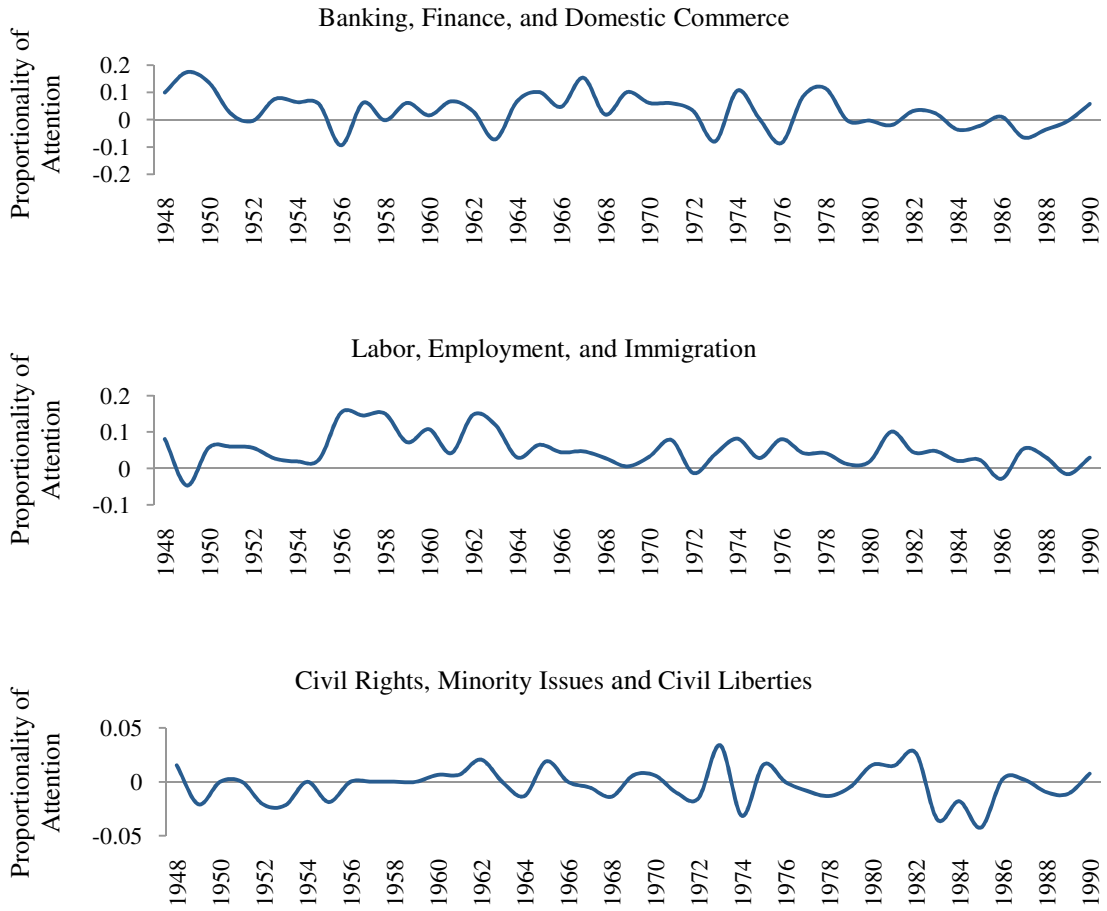


Figure II. Supreme Court Proportionality of Attention, Five Issues 1948-1990. The difference between the proportion of certiorari granted and the proportion of certiorari denied cases for five major topic areas was calculated for each year from 1948 to 1990. The result is a measure of the degree to which the court over attends, under attends, or proportionately attends to each of the five topic areas over 43 years. Proportionate attention is represented by a difference of zero between the two proportions. Over attending is represented by positive values. Under attending is represented by negative values. Note that the vertical axis scale differs for each topic area.

In the first example, all the variation for law, crime and family occurs below the zero mark, indicating that over the course of this study the Court has never over attended to this issue area despite the fact that it has varied considerably in the degree to which it under attends to it. The Court has likewise varied in its proportionality of attention to

macroeconomics cases. Unlike the pervious example, macroeconomics has gone through periods of both over and under attention. From the late 1940s to the early 1960s, the Court almost always over attended to issues of macroeconomics. From the early 1960s to the late 1980s, this pattern is reversed and the Court predominantly under attended to macroeconomics issues. Business and civil rights cases demonstrate a more sporadic attention pattern and are routinely over attended to in one year and under attended to in the next. Labor comes closest to mimicking the pattern of proportionality of attention displayed by law and crime. It is characterized predominately by periods of over attention, but unlike law and crime, it does cross zero and for a few short periods is characterized by under attention.

The time series plots presented in Figure II are useful for identifying variations in proportionate attention within policy areas, but cannot tell us anything about the tradeoffs that are made between issues when the Court over or under attends to a particular policy areas. The following section aggregates policy areas and adopts a slightly different set of measures to demonstrate the tradeoffs that necessary occur between policies in a finite agenda space.

APPORTIONMENT OF AGENDA SPACE OVER TIME

Figures III. and IV. present the court's certiorari granted and certiorari denied agendas according to macro-categories. I have simplified by aggregating the Policy Agendas Project content codes into the following set of seven macro-categories: *civil rights*; *environment, energy and transportation*; *business*; *human services*; *defense and foreign affairs*; *macroeconomics and government operations*, and *law and crime*. (See Appendix for details.) The proportionality of attention score is not used here since each agenda is examined on its own. The Certiorari Denied agenda space for each macro-category is measured as the number of certiorari denied cases in that category, calculated as a percentage of the total number of certiorari denied cases in the sample for each year. The Certiorari Granted agenda space for each macro-category is similarly measured as the number of certiorari granted cases in that category, calculated as a percentage of the total number of certiorari granted cases for each year. Significant differences between the two judicial agendas emerge.

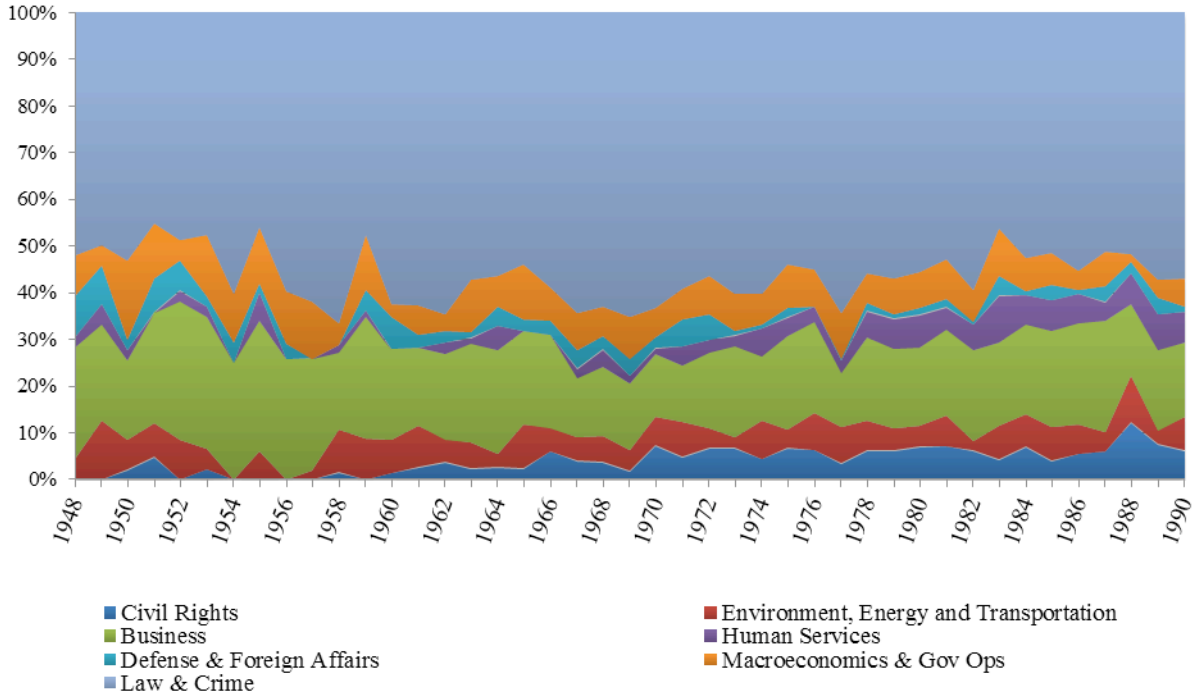


Figure III. Supreme Court Certiorari Denied Agenda Space by Seven Macro-Categories 1948-1990. Issue areas on the certiorari denied agenda were measured as proportions (the number of certiorari denied cases in each macro-policy area over the total number of certiorari denied cases for each year).

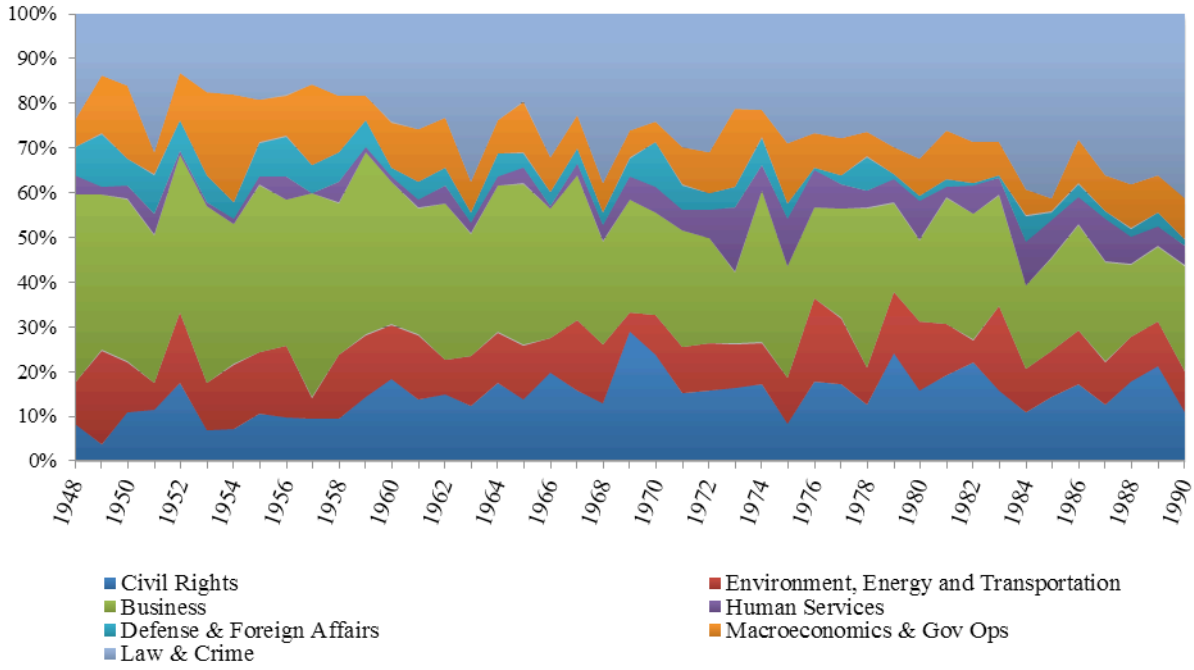


Figure IV. Supreme Court Certiorari Granted Agenda Space by Seven Macro-Categories 1948-1990. Issue areas on the certiorari granted agenda were measured as proportions (the number of certiorari granted cases in each macro-policy area over the total number of certiorari granted cases for each year).

Throughout the period covered, law and crime issues predictably occupy the largest share of the certiorari denied agenda; between 40% and 50% of the cases denied a writ of certiorari. There has been some fluctuation at the margins, but generally speaking the other major-categories have occupied around the same proportion of the certiorari denied agenda from 1948 to 1990, with notable exceptions for civil rights and human services cases, which over 43 years have steadily increased their share of the certiorari denied agenda. These increases in agenda share coincide with the passage of Johnson's Great Society programs and increased attention to racial equality issues during the American Civil Rights era. There is also a small dip in the percentage of the certiorari denied agenda devoted to business cases during the mid to late 1960s and early 1970s, which coincides with the aforementioned expansion in law and crime appeals.

When the Certiorari Granted agenda is examined in conjunction with the Certiorari Denied agenda, a more interesting story emerges. Over the course of the 43 years included in this study, law and crime cases have come to occupy a greater share of the Certiorari Granted agenda than would be expected, based on there not being a sizable increase in the number of law and crime certiorari petitions on the Certiorari Denied agenda. Nearly 40% of the Court's docket was consumed by cases in this policy area in the late 1980s, whereas in the late 1940s, these cases generally consumed only about 12% to 22% of the available space on the docket. During the same period there are increases in

the percentage of the agenda space allocated to civil rights and human services cases. This comports with observed increases in the number of certiorari petitions in these areas, which I posit are in part due to the enactment of Great Society legislation and attention to minority issues during the Civil Rights era.

The clear victim here is business. The Certiorari Granted agenda space allocated to business cases has been steadily shrinking, at least in part due to law and crime, human services and civil rights cases crowding a finite agenda space. This finding speaks to the tradeoffs that have been implied in extant literature, but never explicitly explored until now. In over attending to these other issue areas, the Court must under attend to at least one issue area to compensate for increases in the former.

JUDICIAL IDEOLOGY AND DISPROPORTIONATE ATTENTION

A variety of methods have been employed in preceding sections to show the average degree of proportionality in the Supreme Court's agenda and variation in allocation of attention to policy areas over time. Along the way, a few exogenous societal and environmental conditions have emerged as factors affecting changes in the proportionality of and share of agenda space afforded to particular issue areas. The Great Society Programs and activity during the Civil Rights era can both be blamed for influencing the spread of issues on the agenda. But who are the other culprits? Based on previous research into the nature of ideology in judicial decision making, it is reasonable to expect that judicial ideology will be correlated with shifts in under or over attention to issues (Likens 1979, Caldeira 1981, Segal and Spaeth 1993).

Table I. presents Pearson correlation coefficients[5] between Supreme Court ideology scores and proportionality of attention measures for each of the 19 major policy areas. Court ideology scores were compiled using the Martin Quinn Scores and are based on the ideological position of the median justice as calculated by the direction of decision in previously decided cases. Positive values indicate a more conservative court while negative values indicate a more liberal court.

Findings indicate that more conservative Courts coincide with periods of over attention to two issue areas, Macroeconomics and Law and Crime issues. Conversely, more liberal Courts coincide with periods of over attention to three issue areas, Civil

[5] In Table I. Pearson correlations are used to discover the relationship between the variables in question. Correlations are useful for discerning if a meaningful relationship exists between two variables, but tell us nothing about the direction of the relationship in question.

Rights, Labor and Energy issues. Results for the remaining correlations are non-significant.

Table I. Correlation between Proportionality of Attention and Judicial Ideology (n=43)

Policy Area	Correlation Coefficient
1 Macroeconomics	0.433**
2 Civil Rights, Minority Issues and Civil Liberties	-0.246*
3 Health	-0.246
4 Agriculture	-0.003
5 Labor, Employment and Immigration	-0.264*
6 Education	0.319
7 Environment	-0.046
8 Energy	-0.290*
10 Transportation	0.048
12 Law, Crime and Family Issues	0.242*
13 Social Welfare	0.191
14 Community Development and Housing Issues	-0.161
15 Banking, Finance and Domestic Commerce	-0.112
16 Defense	0.145
17 Space, Science, Technology, and Communications	0.130
18 Foreign Trade	-0.125
19 International Affairs and Foreign Aid	-0.014
20 Government Operations	-0.123
21 Public Lands and Water Management	0.039

(**) indicates statistical significance at .05 level or above.
(*) indicates statistical significance at the .10 level or above.
The unit of analysis is the annual judicial ideology-policy area dyad. N=43 for each policy area.

Note: Supreme Court ideology scores were compiled using the Martin Quinn Scores and are based on the ideological position of the median justice as calculated by the direction of decision in previously decided cases. Positive values indicate a more conservative court while negative values indicate a more liberal court.

What this table lacks in effects for the rest of the policy areas, it makes up for in significant and interesting findings for a relationship between a subset of policy areas and

judicial ideology. If justices are indeed sensitive to the policy areas addressed in cases they choose to take, this may move us toward explaining the observed variation in attention to particular policy areas over time. Although not tested here, unspecified societal and environmental factors related to specific issues, such as the crime rate or inflation, may also be factors that influence fluctuations in attention.

CONCLUDING REMARKS

This paper reveals the nature of changes in the judicial agenda and does so in an innovative way by taking into account certiorari denied cases. Evidence presented in the previous sections has demonstrated that the Supreme Court regularly disproportionately attends to particular policy areas. The proportionality of attention scores associated with each policy area vary over time and are in some cases associated with shifts in the ideological makeup of the Supreme Court. By over allocating attention to some policy areas, the Court necessitates that it under allocate attention to other policy areas in order to conform to the constraints of a finite agenda space.

Like most research, the results presented here have provided some answers, but even more questions. More precise work needs to be done to determine how judicial ideology influences changes in the concentration of issues on the Court's agenda and how societal and environmental factors likewise, affect the balance of issues on the docket.

Appendix

MACRO-CATAGORIES

1) Civil Rights (Policy Agendas Topic 2)
2) Environment, Energy and Transportation (Policy Agendas Topics 7, 8, 10, 21)
    - Environment
    - Energy
    - Transportation
    - Public Lands & Water Management
3) Business (Policy Agendas Topics 5, 15, 17)
    - Labor, Employment and Immigration
    - Banking, Finance and Domestic Commerce
    - Space, Science, Technology, and Communications
4) Human Services (Policy Agendas Topics 3, 4, 6, 13, 14)
    - Health
    - Agriculture
    - Education
    - Social Welfare
    - Community Development and Housing Issues
5) Defense & Foreign Affairs (Policy Agendas Topics 16, 18, 19)
    - Defense
    - Foreign Trade
    - International Affairs and Foreign Aid
6) Macroeconomics & Gov Ops (Policy Agendas Topics 1, 20)
7) Law & Crime (Policy Agendas Topic 12)

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