

Anett Varga: Media Representation of the U.S. Supreme Court— Polarized Coverage of Politically Salient Decisions¹

Executive summary

- The American public relies on the media to receive information about Supreme Court decisions. The reports of highly salient Supreme Court decisions are often politically polarized and distorted because of the nature of modern media. The relevance of this issue is heightened by the Supreme Court's recently commenced session, which will argue politically divisive issues concerning LGBTQ+ rights, gun laws, and abortion.
- Journalists and reporters are pressed for time to produce content immediately. This need for immediacy can lead to misinterpretation and misreporting of important cases.
- Oversimplification of the decisions can also lead to confusion. This plays into the Internet phenomenon called the "echo-chamber effect." Hashtagging the news about the decisions enables the creation of echo-chambers because they act as a filter with which people can select content in line with their political beliefs.
- The language of misleading reports about Supreme Court decisions often frames the decision in a way that fits the given media outlet's preexisting agenda. Writing the news to fit certain frames, such as the "game frame," can change the way people think about and understand certain issues.
- In the current media environment, it seems unlikely journalists would prioritize careful reporting over newsworthiness and immediate reporting. The disagreement between reporters and the Supreme Court concerning how to best cover the decisions seems to remain unresolved.

Introduction

The highest court of the United States was accused of having political biases in November 2018 by President Donald Trump. In response to this accusation, Chief Justice John Roberts defended the institution and claimed that judges on the Supreme Court are independent and they are working to the best of their abilities to bring about impartial decisions under the Constitution.² As the Supreme Court started its new term on 7th October, the Chief Justice reiterated his claim from 2018 and added that most people misunderstand the court when they look for politically biased decisions.³

The political split between Republicans and Democrats has been deepening and the decisions which control Americans' lives also appear to be influenced by ideological biases in the current political situation. However, speculating about the justices' political biases is less expedient in this matter than searching for the possible root of the problem; the politically polarized coverage of salient Supreme Court decisions. While the Supreme Court generally avoids the press and keeps their decision-making process undisclosed,⁴ journalists and reporters become the channel through which decisions are filtered.⁵

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² [Roberts, Trump spar in extraordinary scrap over judges](#). [online] 22 12 2018. source: *Associated Press* [30 10 2019]

³ [U.S. Supreme Court not politicized, says Chief Justice Roberts](#). [online] 25 09 2019. source: *Associated Press* [30 10 2019]

⁴ DAVIS, Richard: The Symbiotic Relationship Between the U.S. Supreme Court and the Press. *Covering the United States Supreme Court in the Digital Age*. Cambridge University Press, 2014, New York, p. 1.

⁵ LINOS, Katerina and TWIST, Kimberly. (2016). [The Supreme Court, the Media, and Public Opinion: Comparing Experimental and Observational Methods](#). *The Journal of Legal Studies*. 45. p. 225. [online] [30 10 2019]

The decisions that are most likely to be covered are highly salient issues that affect the lives of every American. In spite of the Supreme Court being the source of the decisions, the American public relies on the media to receive information about the decisions.⁶ Therefore, for both the American public and the Supreme Court, media outlets act as a mediator. In order to receive a better understanding of why the Supreme Court is accused of having political biases, the mediating actor's practices in coverage of Supreme Court decisions must be called into question. This paper argues that the reporting of highly salient Supreme Court decisions is often politically polarized and distorted because of the nature of modern media. The relevance of this issue is heightened by the Supreme Court's recently commenced session, which will argue politically divisive issues concerning LGBTQ+ rights, gun laws, and abortion.⁷

The nature of the current media coverage

Before media representation of the Supreme Court is analyzed, it is important to introduce the circumstances within which modern media operate. Firstly, in the age of 24-hour news broadcasting and the interconnectedness of different media platforms, news has to be processed instantaneously in order to provide news channels, websites, and social media with information and updates as many times as possible. In contrast to this, electronic devices are not allowed in courtrooms and journalists can only produce hand-written notes. Although the Supreme Court releases the transcript of the hearings the same day as the hearings are held, it can still be a lengthy process for journalists to produce their material for immediate distribution. This need for immediacy can lead to misinterpretation and misreporting of important cases and, subsequently, their decisions.⁸

Secondly, in order to produce information fast, besides misinterpretation, oversimplification in the form of shortening can also lead to confusion. The media outlet that most relies on brief stories is the Internet, especially news websites and social media platforms, where the news and people are sorted into categories based on their political views by algorithms. For example, on social media websites, the so-called "echo-chamber" effect is a dangerous phenomenon as it fuels extremism and the spread of misinformation.⁹ Sunstein defines echo-chambers as "self-segregation into groups of likeminded people."¹⁰ In this case, if someone believes that the Supreme Court serves only political purposes and only wants to read about this to support this view, then this content will be catered by social media platforms without the user ever facing competing ideas. Echo chambers and their polarizing and isolating effects are alarming compared to general-interest media platforms, such as the television or newspaper, via which encountering an opposing opinion is more likely.¹¹

A notable practice for creating echo-chambers is the usage of hashtags, within posts and on news websites, to signal the user's support for certain convictions. Hashtags facilitate echo-chambers because they act as a filter with which people can select news that are in line with their political beliefs. Even the

⁶ HITT, Matthew and SEARLES, Kathleen. (2018). [Media Coverage and Public Approval of the U.S. Supreme Court](#). *Political Communication*. p. 1. [online] [30 10 2019]

⁷ [U.S. Supreme Court to tackle gay rights, guns, abortion and Trump](#) [online] 3 10 2019 [31 10 2019]

⁸ LITHWICK, Dahlia: The Supreme Court and New Media. *Coverning the United States Supreme Court in the Digital Age*. Cambridge University Press, 2014, New York, p. 192.

⁹ SUNSTEIN, Cass R. #Republic. Princeton University Press, 2017, New Jersey, ch. 1.

¹⁰ Ibid

¹¹ STRICKLER, James Vincent: The Supreme Court and New Media Technologies. *Coverning the United States Supreme Court in the Digital Age*. Cambridge University Press, 2014, New York, p. 86.

usage of one word or an abbreviation can reveal which political party the user prefers when it comes to salient issues. For example, when news or posts mention the Affordable Care Act, Democrats prefer to use #ACA, while Republicans opt for using #Obamacare.¹² As Sunstein exemplifies, the importance of these tags for users is to transform an issue to fit a certain frame: “They choose a particular frame: #AllLivesMatter, #TheSystemIsRigged, or #CorruptHillary. They hope that it will attract widespread interest, helping to construct both emotions and beliefs.”¹³ This tendency also holds true for news reporting as stories sell better when they are sensationalized. Hashtagging the news online and getting them into echo-chambers will ensure greater exposure and traffic for websites.

Politically salient issues and their media representation

Highly salient issues before the Supreme Court are the ones that generally divide the public along party lines. In 2017, a Gallop poll measured partisan attitudes on issues that are usually included in Republican and Democrat party platforms. According to the survey, the largest and still increasing gaps between Democratic and Republican views include, but are not limited to, the following issues: power of the federal government, foreign trade, immigration, gun laws, global warming, health care, taxes, and abortion.¹⁴ Concerning these cases, Supreme Court judges are expected to vote according to their assumed political biases and these are also the cases that are most likely to get media attention.

In order to gain a better insight into the ideologically divisive issues, analyzing the decision on the Patient Protection and Affordable Care Act (ACA) in the case of *National Federation of Independent Business v. Sebelius, Secretary of Health and Human Services* provides an example of how media coverage works concerning a politically salient issue. The ACA was signed into law in 2010, with the aim of creating a system in which the cost and the availability of health insurance make it possible for an increased number of American people to be covered. However, the act was challenged in the Supreme Court because it prescribes an “individual mandate” which requires all individuals to be covered even if they do not wish to join the health care system. In case of noncompliance, the individual is taxed under the ACA which is paid to the Internal Revenue Service, except if an individual opts for purchasing private insurance.¹⁵ It is important to note that when this case was argued in 2012, the Supreme Court comprised four liberals, Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan, and five conservatives, Judges Antonin Scalia, Anthony Kennedy, Clarence Thomas, Samuel Alito and Chief Justice Roberts.¹⁶ Therefore, based on the presumed ideological divide, it was expected that the ACA might not survive the Supreme Court.

The reporting of this case caused a “genuine drama”¹⁷ because initially, both CNN and Fox News reported the decision incorrectly. The court decided that the ACA was constitutional, however, both networks initially reported that it was unconstitutional. Moreover, CNN’s incorrect reporting was immediately available on all their platforms: news channel, website, and social media, which accelerated

¹² Ibid

¹³ Ibid

¹⁴ [Partisan Differences Growing on a Number of Issues](#). [online] 03 08 2017. source: *Gallup* [30 10 2019]

¹⁵ [Supreme Court of the United States](#)

¹⁶ [Supreme Court upholds Obama's healthcare law](#). [online] 29 06 2019. source: *Reuters* [30 10 2019]

¹⁷ [We're getting wildly differing assessments](#). [online] 07 07 2012. source: *SCOTUSblog* [30 10 2019]

the spread of misinformation.¹⁸ Concerning the mistaken reporting of the decision, there is a dichotomy between journalists and the Court when it comes to addressing the issue. On the one hand, according to Thomas Goldstein, attorney, and co-founder of SCOTUSblog, the media should not handle Supreme Court decisions as “breathless ‘breaking news’ events,”¹⁹ instead they should proceed with caution. On the other hand, representing the journalists’ side, Dahlia Lithwick claims that the issue of misreporting stems from the Supreme Court’s unwillingness to cooperate with reporters and to accept the usage of electronic devices in courtrooms. In addition, she denies that the media attempt to “sensationalize” the reporting of the decisions and that spending time analyzing the decisions is not possible under the pressure of immediate reporting.²⁰

Taking into account the claims of both sides, there is a clear gridlock between reporters and the Supreme Court. However, considering the initial reporting of CNN and their headline: “Mandate struck down—At stake: your health, your money”²¹ the coverage of the ACA decision was certainly sensationalized in this case. Proceeding cautiously with the reporting of Supreme Court decisions would be a sensible solution although it seems unlikely journalists would prioritize careful reporting to newsworthiness and immediate reporting.

The language employed the news dealing with Supreme Court decisions

Framing Supreme Court decisions to fit certain agendas and to spiral into echo-chambers can be facilitated by making the story newsworthy, emotion-driven, and hashtag-friendly. Therefore, framing is an important practice of political communication and persuasion. According to Zoltán Kövecses, frames are important when it comes to processing information: “Frames have a variety of important uses, especially in the areas of language understanding, categorization, and the conceptualization of the word. In particular, as regards language understanding, frames help account for how we understand individual words. . . and problems with analyticity.”²² Therefore, writing the news to fit certain frames can change the way people think about and understand certain issues. In this case, the media as a mediator can distort Supreme Court decisions and make them play into their own preexisting agendas.

According to a study focusing on the Supreme Court’s media coverage and public opinion, the most often employed frame when reporting on salient decisions is the “game frame.”²³ This means that when news reports are covering a Supreme Court decision, they tell the story through words that evoke playing a game. These words include, but not limited to, “attack battle, fight, winning, big win, victory. . .” etc., which makes the court appear to be unprofessional and “unprincipled.”²⁴ When the game frame is applied in the coverage of the decisions, the Supreme Court appears to be a mere playing field of Democrats and Republicans. A study by Matthew P. Hitt measured the tendency to apply the game frame in television coverage of the Supreme Court between 1999 and 2010 and concluded that it was increasing.²⁵

¹⁸ STRICKLER, James Vincent Ibid. p. 80.

¹⁹ [We’re getting wildly differing assessments](#). Ibid

²⁰ LITHWICK, Dahlia: *The Supreme Court and New Media. Governing the United States Supreme Court in the Digital Age*. Cambridge University Press, 2014, New York, p. 193-194.

²¹ [Healthcare ruling: CNN and Fox News report wrong decision](#). [online] 28 06 2019. source: *The Guardian* [30 10 2019]

²² KÖVECSES, Zoltán: *Language, Mind and Culture*. Oxford University Press, 2006. p 78.

²³ HITT, Ibid. p. 2.

²⁴ Ibid. p. 4.

²⁵ Ibid p. 27.

A more recent instance from 2018 was the case of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, which concerned a baker, Jack Philips, who refused to bake a wedding cake for a gay couple. Philips claimed that under the First Amendment he was free to refuse service, which the Supreme Court did not find unconstitutional. Fox News reported on the news with the headline “significant victory for freedom,”²⁶ while CNN started their report by stating that the couple “lost a major Supreme Court battle. . .”²⁷ Both networks reported on the issue either as a win or a loss, depending on the political agenda of the network, which again frames the decision as a game which plays into emotions. The game is either won or lost by the plaintiff or the defendant, therefore, their persons and stories are highlighted in this type of coverage. In contrast to this, legal reasoning was left out of both reports. Furthermore, the hashtags that were applied to this case were #gaycake on the Democratic side and #JusticeForJack on the Republican side. Both hashtags mostly lead to opinions and articles which were polarized on the issue of LGBTQ+ rights and foregrounded the plaintiff’s person and beliefs.²⁸

In addition to undermining the practices of the judges, the game frame also implies that there are only two options when it comes to Supreme Court decisions: winning and losing. The foregrounding of plaintiffs or defendants draws the attention away from the substance of legal reasoning. In this sense, political framing in news, especially the usage of the game frame, oversimplifies and shortens the mediation of decisions to fit the agenda and style of media platforms.

Conclusion

The polarized coverage of salient Supreme Court decisions prioritizes and plays into the practices of news production, which favors immediacy, simplified language, high exposure, and playing into emotions. If these practices are applied to Supreme Court decisions, the coverage will distort or leave out the legal substance and frames it to fit the given media outlet’s preexisting agenda. This type of coverage is favored by echo-chambers, within which people can choose to filter the content they consume through keywords, which are phrases that clearly reflect party preferences, marked by hashtags.

In his new book, *A Republic, If You Can Keep It*, Neil Gorsuch concisely summarizes the dichotomy between the Supreme Court’s coverage and the Justices: “To be sure, some people these days like to magnify the work of the Court in dramatic ways... When many write or speak of the Court’s decisions, they tend to focus on disagreements. I guess conflict generates clicks and clicks generate money. But that can paint a misleading picture.”²⁹ The disagreement between reporters and the Supreme Court concerning how to best cover the decisions seems to remain unresolved. Based on the analysis presented by this paper, the tendency of politically polarized media coverage of salient Supreme Court decisions is expected to continue.

²⁶ [Supreme Court's same-sex wedding cake decision—a significant victory for freedom](#). [online] 04 06 2018. source: *Fox News* [31 10 2019]

²⁷ [Same-sex couple in SCOTUS cake case describes 'shock and disappointment' at ruling](#) [online] 05. 06. 2018. source: *CNN* [31 10 2019]

²⁸ Twitter: [#gaycake](#), [#JusticeForJack](#)

²⁹ [Are Supreme Court Justices Just Politicians in Robes? Justice Gorsuch Responds](#). [online] 07 10 2019. source: *The Daily Citizen* [01 11 2019]



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