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EXPLAINING DIFFUSE SUPPORT FOR THE UNITED STATES SUPREME COURT: AN ASSESSMENT OF FOUR MODELS*

Walter F. Murphy and Joseph Tanenhaus

Introduction

Constitutional courts, such as the Supreme Courts of Canada, India, Ireland, Japan, and the United States, the High Court of Australia, and the Constitutional Court of West Germany, perform several politically relevant roles. Among these are interpreting and applying rules, defining boundaries of political authority, supervising lower courts, legislating, representing, legitimating controversial public policies, stabilizing political institutions, and educating.¹ Students of the judicial process have long assumed that the effectiveness of a constitutional court in playing its several roles depends in good measure on how it is viewed by elite and mass publics. Hence, they have expressed sensitivity to the need for assessing public opinion when analyzing both the options open to a court and the consequences resulting from judicial behavior.²

One indicator of how the public views a court is the generalized affection which Easton has termed diffuse support.³ No governmental institution could long survive if support for it depended entirely on the immediate gratification of demands. There are simply too many competing demands; processes are too slow; resources are too limited. In diffuse support, whatever its wellsprings, lies the reservoir of good will that helps an institution cope with frustrations caused by unsatisfied demands.

To gauge diffuse support in a national population survey in 1966 and in subsequent elite surveys of lawyers, college students, and administrative assistants to United States Senators and Congressmen, we posed a battery of general queries that called upon respondents to assess the Supreme Court's competence, impartiality, avoidance of partisan politics, and trustworthiness as compared to the Congress.⁴ Various research reports, some as yet unpublished, present our analysis of the data developed in these surveys and our evaluation of alternative

* Research on which this paper is based was supported by the National Science Foundation.

1 W. MURPHY & J. TANENHAUS, *THE STUDY OF PUBLIC LAW* 33-44 (1972).

2 See, e.g., *THE IMPACT OF SUPREME COURT DECISIONS* (T. Becker ed. 1969); C. BLACK, JR., *THE PEOPLE AND THE COURT: JUDICIAL REVIEW IN A DEMOCRACY* (1960); E. CORWIN, *JOHN MARSHALL AND THE CONSTITUTION: A CHRONICLE OF THE SUPREME COURT* (1919); R. CUSHMAN, *LEADING CONSTITUTIONAL DECISIONS* (1925); S. GOLDMAN & T. JAENIGE, *THE FEDERAL COURTS AS A POLITICAL SYSTEM* (1971); C. HAINES, *THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT AND POLITICS* (1944); A. MASON, *HARLAN FISKE STONE: PILLAR OF THE LAW* (1956); W. MURPHY, *CONGRESS AND THE COURT* (1962); C. WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* (1922); S. WASBY, *THE IMPACT OF THE UNITED STATES SUPREME COURT: SOME PERSPECTIVES* (1970).

3 D. EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* 159-161 (1965).

4 These and related questions, together with the marginals, appear in *INTER-UNIVERSITY CONSORTIUM FOR POLITICAL RESEARCH, THE SRC 1966 AMERICAN NATIONAL ELECTION STUDY*, 100-129 (2d ed. 1972).

models for explaining variations in diffuse support for the Court. This article summarizes our assessment of four of the more interesting models.⁵

I. Diffuse Support for the Court as a Function of Partisan Allegiance

Robert Dahl has argued that, because American presidents have frequent opportunities to nominate new justices, the United States Supreme Court is likely to be an integral part of the ruling coalition that controls the White House and attempts to run the Congress.⁶ Thus, one explanation of patterns of support for the Court asserts that citizens tend to perceive the Court as Dahl pictures it (albeit without either Dahl's clarity or sophistication), and predicts that when Democrats are in power in Washington, Democrats will be more pro-Court than Republicans; and when Republicans are in power, their adherents will be more supportive of the Court than will Democrats. If this general explanation is true, then the following proposition should have held in 1966: Democrats should have been much more supportive than Republicans.

A. Test

One widely used measure of partisan allegiance is party identification as scaled by the University of Michigan's Survey Research Center (SRC).⁷ When the relationship between a factor scale of diffuse support and party identification was plotted, the results were in the direction predicted. Democrats proportionately outnumbered Republicans at the favorable end of the support continuum, and Republicans proportionately outnumbered Democrats at the critical end. The Pearson product-moment correlation (r) between diffuse support and party identification, however, was only .20.

We also constructed another measure of party allegiance, a factor index with heavy loadings on both SRC's party identification scale and a scale based on respondents' recollections of their presidential vote (or voting preference) in 1964. The linkage between partisanship so defined and support for the Court improved somewhat ($r = .28$), but remained far from impressive.

It seemed plausible to suppose that part of the reason why neither party identification nor partisanship could account for more support lies in the complicated nature of the party system itself. As it turned out, white Southerners who called themselves Democrats evidenced much less support than did non-Southern Democrats and somewhat less support than did Republicans outside the South. Dropping white Southerners from the sample increased slightly the ability of partisanship to account for support; but even when analysis was confined to non-southerners with a demonstrable awareness of at least one decision area in which

5 For an analysis of eight models, including three of those summarized here, see W. MURPHY, J. TANENHAUS, & D. KASTNER, *PUBLIC EVALUATIONS OF CONSTITUTIONAL COURTS: ALTERNATIVE EXPLANATIONS* (1974). This monograph also provides additional information about the manner in which we operationalized the variables referred to in this article.

6 Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker*, 6 J. PUB. L. 279 (1957).

7 A. CAMPBELL, P. CONVERSE, W. MILLER, & D. STOKES, *THE AMERICAN VOTER* 121-128 (1960).

the Court had been active, the correlation between diffuse support and partisanship did not exceed .35.

B. Conclusion

Although support for the Court did vary to some extent with party allegiance, party allegiance cannot, standing alone, take us more than a small step toward understanding the bases of diffuse support.

II. Diffuse Support for the Court as a Function of Knowledge About It

Defenders of the Court, and sometimes the justices themselves, have often caustically noted the uninformed character of much of the criticism (and critics) of the Court. The implication of such laments is that if people would only take time and effort to understand the way the Court operates, they would be far less critical. In sum, the argument is that to know the Court is to respect it, if not to love it. If differences in degree of knowledge can account for variations in support, then the following proposition should have held: Respondents who were better informed about the Court should also have been more supportive than respondents who were less well informed.

A. Test

To measure knowledge about the Court we constructed a factor scale whose heaviest loadings resulted from responses to a battery of open-ended queries about four subjects. These were information about (1) the Court's functions, (2) the names of sitting members, (3) decision areas in which the Court had been active in recent years, and (4) efforts to alter the Court or its membership. The correlation between that index and diffuse support for the sample as a whole was not only low, but actually inverse: $r = -.13$. For selected groups, on the other hand, the relationship between diffuse support and knowledge was quite another matter. For southern whites $r = .33$, and for blacks $r = .49$. Moreover, Pearson's r did not adequately describe the relationship between Court knowledge and support for either group. Take, for example, the 96 blacks for whom we could compute diffuse support scores. When their scale scores for support were plotted against knowledge, the relationship proved to be curvilinear. Support for the Court expressed by those blacks who had a very meager knowledge of it, although largely positive, varied over a fairly wide range. Only a modest knowledge of the Court, however, was necessary to make the black man its staunch supporter. Not only did increments in Court knowledge result in sharp increments in diffuse support, but Court knowledge also quickly attained a level at which diffuse support, as measured by our crude scale, is maximal. The relationship may be described as

$$\text{Diffuse support} = 2.41 - .24 \text{ Court Knowledge} + 3.77 \log_{10} \text{ Court Knowledge}$$

and accounts for more than twice as much variance (51%) as linear regression.

The pattern for southern whites was also curvilinear but more complex. As in the case of blacks, southern whites with little knowledge of the Court were generally supportive of it. As the level of knowledge increased, the support level for some southern whites also increased; but for the large majority as knowledge increased, diffuse support sharply declined.

B. Conclusion

The results of these tests did not support the hypothesized proposition; *i.e.*, respondents who were better informed about the Court should also have been more supportive than respondents who were less well informed. Close analysis of the black and southern white respondents suggested that knowledge might provide a more powerful explanation for variations in diffuse support if (a) the evaluative (intensity) dimensions of the respondents' Court knowledge could also be taken into account, and (b) a more sensitive measure of diffuse support could be constructed.⁸

III. Diffuse Support for the Court as a Function of How the Court Is Evaluated as a Policy-maker

Another explanation for variations in support holds that evaluations of the Court are largely functions of preferences among public policies. Those people who agree with the implications of the Court's jurisprudence for practical policies will esteem the Court more highly than those who are neutral toward such policies and much more highly than those who are opposed to the political implications of the Court's work. Without question, the decisions of the Court for at least a decade prior to the survey in 1966 had been quite liberal. Thus if the characterization of support as essentially instrumental and pragmatic is valid, then:

1. Respondents who approved the particular decisions of the Court should have been more supportive than those who were neutral and much more supportive than those who were opposed to the rulings.
2. Of the respondents able to evaluate particular Court policies, those whose basic political outlook was more congruent with the liberal trend of decisions of the Court should have been much more supportive than those whose outlook was opposed to that trend.

A. Test

The instrument we used to measure evaluations of recent actions of the Court was a policy scale constructed by summing answers to open-ended queries about recent Court decisions that respondents had liked or disliked. Slightly

⁸ For a preliminary report on the use of psychophysical scaling techniques in building a more sensitive measure of diffuse support, see J. Tanenhaus, W. Murphy, B. Tursky, & M. Lodge, *Diffuse Support for Constitutional Courts: A Methodological Analysis* (mimeo 1973).

less than half of the participants in the 1966 survey (46%) pointed to a policy area in which the Court had been active; we could compute both Court policy and diffuse support scores for only 590 respondents.

1. Diffuse support and evaluations of recent actions of the Court.

The correlation between diffuse and Court policy scores for the 590 respondents was .53, a sizable relationship for a pair of survey research variables. For specialized groups the correlation can be even larger. Using identical scaling procedures with an elite sample of 181 administrative assistants to U.S. Senators and Congressmen, we obtained a correlation of .74. These correlations might seem to confirm the hypothesized relationship rather neatly; but correlations can sometimes obscure as much as they reveal. That is what happened here. Those who stood higher on the specific scale did, to be sure, tend to have higher diffuse scores than did respondents who scored lower on the Court policy scale. Nevertheless, a substantial minority of those who were negative on the scale of Court policy still registered positive scores on the diffuse scale. Indeed, only a little more than half of those who voiced negative policy scores were also unsupportive on the diffuse scale. The hypothesized explanation for variations in diffuse support did not anticipate this phenomenon.

2. Diffuse support and general political outlook.

In measuring general political outlook we used a "liberalism/conservatism" index. For the 590 respondents who knew at least something about the Court's recent decisions, the association between diffuse support and liberalism/conservatism was strong and positive $r = .55$. For the special elite sample of administrative assistants, Pearson's r soared to .80. When the explanatory power of the liberalism/conservatism and Court policy scales were combined, they yielded multiple correlations of .62 for the 590 survey respondents and .84 for the special elite sample.

B. Conclusion

The third of the hypothesized explanations (*i.e.*, diffuse support for the Court as a function of how the Court is evaluated as a policy-maker) has much to commend it; nevertheless, it cannot serve as a satisfactory general explanation for variations in diffuse support. The model cannot explain the striking phenomenon already noted that a substantial minority of those who were negative on the scale of Court policy registered positive scores on the diffuse scale. Another, and perhaps more glaring, deficiency of the model is its inability to tell us anything about the level of diffuse support of the 54 per cent of the population unfamiliar with the Court's policy outputs.

IV. Diffuse Support for the Court as a Function of Attitude Toward the Court: A Learning Theory Model

Although variously defined, the term "attitude" generally designates a construct with two principal components—the cognitive (beliefs about an object) and the evaluative (intensity of feeling about the beliefs that make up the cognitive component).⁹ An attitude is relatively stable and tends to shape an individual's behavioral responses, both verbal and nonverbal, to external stimuli. According to our learning theory model, diffuse support for the Court, as verbalized response, is a function of attitudes that were conditioned early in life and perhaps modified by later learning.¹⁰ Research in political socialization has revealed that by the time children reach 8 or 9 years of age they tend to perceive political institutions in a manner that is highly favorable though cognitively rather vague.¹¹ Data on the child's attitude toward the Supreme Court in particular show that he holds the Court in very high esteem.¹² Subsequent learning can alter attitudes toward the Court. Learning about Supreme Court activity in an area about which a person felt very strongly, civil rights or schoolhouse religion, for example, would be expected to affect his attitude toward the Court.

If the learning-theory explanation for diffuse support is sound, then the following propositions should hold:

1. If a person's attitude toward the Court had not changed since childhood, his responses to diffuse support items in 1966 should have been favorable to the Court.
2. The more favorable a respondent's attitude toward the Court (as modified by subsequent learning) was, the higher his diffuse support score should have been.

A. Test

A rigorous test of these propositions requires longitudinal data.¹³ Unfortunately, they do not yet exist, and we must do what we can with data from a single point in time.

1. Diffuse support when attitudes had not changed since childhood.

The learning theory model goes a fair way toward accounting for the responses of a large subset of people (25 per cent of the national sample) for whom alternative models do not begin to cope. This group consists of people who could discriminate the Supreme Court from other governmental institutions but could

9 See McGuire, *The Nature of Attitudes and Attitude Change*, in 3 *THE HANDBOOK OF SOCIAL PSYCHOLOGY* 142-157 (G. Lindzey & E. Aronson ed. 1969); *ATTITUDE MEASUREMENT* (G. Summers ed. 1970); M. Smith, *Attitude Change*, in 1 *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 458 (1968).

10 See the contributions by Doob, Fishbein, Lott, and Rhine in *READINGS IN ATTITUDE THEORY AND MEASUREMENT* (M. Fishbein ed. 1967).

11 D. EASTON & J. DENNIS, *CHILDREN IN THE POLITICAL SYSTEM* (1969); R. HESS & J. TORNEY, *THE DEVELOPMENT OF POLITICAL ATTITUDES IN CHILDREN* (1967); *LEARNING ABOUT POLITICS. A READER IN POLITICAL SOCIALIZATION* (R. Sigel ed. 1970).

12 EASTON & DENNIS, *supra* note 11, at 243-286.

13 We hope to develop such data in 1975 by reinterviewing respondents to the 1966 survey.

not point to anything that the Court had done in recent years. If we may assume, therefore, that the early attitudes of these respondents had not been modified, it should follow that their responses to diffuse items should have been favorable to the Court. That this was in fact the case is most effectively illustrated by their answers to the following pair of queries: (a) How well does the Court do its job? (b) Do you think that in its decisions the Supreme Court favors any particular group or groups in this country? Answers critical of the Court comprised only 8.6 per cent of the responses to the first question, and 11.3 per cent of the responses to the second.

2. The association between diffuse support and attitude as modified by subsequent learning.

To measure attitude toward the Court, as modified by subsequent learning, we resorted once again to the battery of open-ended questions about recent Court decisions. By treating each reference to a Court action as a cognitive element and whether a respondent liked or disliked each action he mentioned as an indicator of intensity, we built a summated scale to serve as a surrogate for attitude.¹⁴ This measure is extremely inelegant because (a) no weight is given to early learning, (b) major cognitive elements may be missing for some respondents, (c) the intensity of each cognitive element is but crudely represented, and (d) only 46 per cent of the respondents to the national sample mentioned even a single action of the Court.

Despite these inadequacies, when all respondents in the national survey for whom both diffuse support and attitude scores could be computed are included ($N = 590$), the correlation between the two variables is .53. Presumably the strength of the association would increase if the intensity of one or more cognitive elements could be measured more sensitively. We can test this expectation for those respondents ($N = 295$) who included decisions regarding civil rights among the Court decisions mentioned because we also have factor scores for them based on their answers to a battery of four questions about their feelings toward civil rights. When intensity as measured by this more sensitive scale is taken into account, the correlation between diffuse support and attitude rises to .66.

Moreover, since the surrogate for attitude, as modified by subsequent learning, made no provision for the residue of early learning, the favorability of attitude toward the Court has been underestimated, perhaps seriously. This would not, of course, lead one to anticipate dissonance between diffuse and attitude scores when the latter were positive; *i.e.*, whenever the score on the attitude scale was favorable, the score on the diffuse support scale should also have been favorable. On the other hand, one should expect to find many respondents with slightly to moderately negative scores on our crude measure of attitude whose diffuse support scores reflected confidence in the Court. The data in Table 1 reveal how strikingly these expectations are confirmed.

¹⁴ As operationalized for present purposes, the surrogate for attitude and the Court policy scale are identical.

TABLE 1
 CROSSTABULATION OF ATTITUDE AND DIFFUSE SUPPORT SCORES:
 SRC'S 1966 POST-ELECTION SURVEY
 (in percentages)

Diffuse Scale (Likert Type)	Attitude Scale (Summated)						
	+++ (7)	++ (6)	+ (5)	neutral (4)	- (3)	-- (2)	--- (1)
Strongly Positive (4.1 - 5.0)	75%	59%	63%	35%	25%	10%	10%
Positive (3.1 - 4.0)	25	38	21	31	21	14	8
Neutral (3.0)	—	3	6	5	10	5	5
Negative (2.9 - 2.0)	—	—	6	15	16	20	13
Strongly Negative (1.9 - 1.0)	—	—	4	14	29	51	64
	100% (N=4)	100% (N=29)	100% (N=90)	100% (N=65)	100% (N=242)	100% (N=121)	100% (N=39)

With very few exceptions, people who commented favorably on the Court's policy outputs (those with attitude scores of 5, 6, and 7) also responded favorably to generalized queries about the Court. The converse was not true. Of those respondents with moderately negative attitude scores (score category 3), slightly more had positive than negative scores for diffuse support. Moreover, even a quarter of those with moderately negative attitude scores (score category 6), and more than one-sixth of those with very negative attitude scores (score category 1), fell on the positive side of the diffuse scale. All in all, less than half of those with negative scores for attitude also had diffuse scores critical of the Court.

B. Conclusion

The learning theory model is potentially the most rewarding of the four explanations for diffuse support here considered. More rigorous testing with longitudinal data is essential, however, before the learning theory model can be accepted as a valid explanation for variations in diffuse support.