

THE UNITED STATES SUPREME COURT: A CASE STUDY
ON THE RELATION OF PRIOR PUBLIC OPINION TO
COMPLIANCE

AP Research

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INTRODUCTION

The study of the Supreme Court of the United States (SCOTUS) has been both varied as well as extensive, specifically in the areas of public opinion of the Court and compliance to the Court's decisions. The link between judicial decision-making and public opinion is a crucial assumption that will be made in this study. This line of thinking was first advanced by Dahl's 1957 report, in which he states: "To consider the Supreme Court of the United States strictly as a legal institution is to underestimate its significance in the American political system."¹ In this research, I attempt to contribute to the theory that there is a level of public opinion that must be obtained in order for the Court's decision to be complied with by examining one of the Court's most recent, most activist, and most salient cases, *Obergefell v Hodges* (2015),² through a mixed method content analysis of media coverage and comparing these results to the case's high level of compliance.

Hypothesis

I hypothesize that public opinion will have a direct relationship with level of compliance, which will be examined through a case study of *Obergefell v Hodges*. That is, the higher public opinion for a specific topic before the case regarding that topic is decided, the higher the relative compliance level for that same case. I hypothesize this outcome based on preliminary triangulation of public opinion data on gay marriage before the decision date and its correlation with an extremely high level of compliance just after the issuance of the decision on June 26 2015 as compared specifically to the case of *Brown v Board of Education*³ (1954). Desegregation

¹ Robert A. Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker" Journal of Public Law (January 1957).

² *Obergefell v Hodges*, 576 U.S. (2015).

³ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

of schools was looked upon unfavorably by the general public in 1954 and had one of the worst compliance levels in American history after the issuance of its decision by SCOTUS. *Brown v Board of Education* officially desegregated schools in the South, but the actual effects of this case were not so obvious. Klarman (1994) comments on the effectiveness of Brown, or in other words, the states' compliance to the ruling, citing Rosenberg's findings (1991). "In the Deep South, not a single black child attended an integrated public school in 1962-1963...Across the South as a whole, roughly 0.16 percent of school-age blacks were attending school with whites in 1959-1960 and 1.2 percent in 1963."⁴ Klarman goes on to give his "backlash thesis:" the idea that Brown in fact "crystallized southern resistance to racial change."⁵ This crystallization that occurred was well outside of the Court's 9-0 decision and intention. Public opinion of desegregation before the case was extremely low, and in the 1940s, nearly 2/3 of white Americans identified that they were willing to support segregated schools.⁶ In other topics regarding race, nearly 70% of whites disapproved of interracial marriage, which would be ruled constitutional in *Loving v Virginia*.⁷ Brown's pre-decision public opinion and level of compliance after the ruling are variables to be considered when examining why Brown was such an abnormality.

The case of *Obergefell v Hodges*, ruling that same-sex couples could not be denied the right to marry, is another interesting case to consider in terms of the relationship between public

⁴ Michael J. Klarman, "How Brown Changed Race Relations: The Backlash Thesis" The Journal of American History, Vol. 81, no. 1 (June 1994): 84.

⁵ *Ibid.*, at 82.

⁶ "Polling Prejudice," The American Prospect www.prospect.org [Internet Accessed on December 1, 2015].

⁷ *Loving v. Virginia*, 388 U.S. 1 (1967).

⁸ "How Gay Marriage Became a Constitutional Right", The Atlantic www.theatlantic.com [Internet Accessed on December 1, 2015].

opinion and compliance. This case was a split decision by the Court (5-4) but featured much less difficulty in regards to compliance. As of October 2, 2015, less than 4 months after the opinion was given, 99% of the U.S. population lived in a county where same-sex marriage licenses are available.⁹ However, the public opinion of the case may have been an important factor in determining its high level of compliance. As of January 2015, 48% of those surveyed in a Rasmussen poll supported same sex marriage.¹⁰ *Obergefell* provides a strong contrast to Brown, and level of public opinion seems to be a factor in the compliance of the case, and perhaps a greater factor than unanimity.

The opinions of both *Obergefell* and *Brown* provide interesting insight on the Court's decisions and share some definite similarities. Justice Kennedy's opinion in *Obergefell* outlines the question in the case: "Whether the Fourteenth Amendment requires a state to license a marriage between two people of the same sex" and "whether the Fourteenth Amendment requires a state to recognize a same sex marriage..."¹¹ Similarly, Justice Warren stated in *Brown*, "the plaintiffs and others similarly situated for whom the actions have been brought are...deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."¹² It is because of these similarities in argumentation compared with the vastly differing compliance levels of these decisions that I have chosen to study *Obergefell v Hodges* in relation to *Brown v Board* and provide new insight in regards to the correlation between public opinion and

⁹ "Local government responses to Obergefell v Hodges", Ballotpedia www.ballotpedia.org [Internet Accessed on December 1, 2015].

¹⁰ "Marriage Update", Rasmussen Reports www.rasmussenreports.com [Internet Accessed on December 1, 2015].

¹¹ *Obergefell v. Hodges*, supra note 46 at 2.

¹² *Brown v. Board of Education*, supra note 40 at 495.

compliance and hypothesize that *Obergefell* was so successfully implemented due largely to prior positive public opinion levels.

REVIEW OF LITERATURE

Public Opinion and the Court

In my research, it is necessary to prove that the Supreme Court and public opinion are intertwined. Research in regards to the relationship between public opinion and the Supreme Court has been particularly thorough, and nearly all studies have found a positive correlation between public opinion and the Supreme Court's decision-making (Dahl 1957, Johnson and Martin 1998, Epstein and Martin 2012, Flemming and Wood 1997, etc.). While these studies have determined a link between these two variables, they vary in regards to the cause of this correlation.

The Supreme Court's legitimacy is unique because unlike the other branches of government, the Supreme Court derives its legitimacy from public opinion and response to their decision-making. The Supreme Court has also been identified as the most vulnerable branch in the United States government because it has "no direct mechanism for enforcing its decision."¹³ Bartels and Johnston argue that "contrary to conventional wisdom, a potent ideological foundation underlies Supreme Court legitimacy vis-à-vis subjective ideological disagreement with the Court's policy making."¹⁴ Even the Justices of the Court understand the significant differences in their legitimacy in comparison to the other branches. Justices O'Connor, Souter,

¹³ Stephen P. Nicholson and Thomas Hansford, "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions." American Journal of Political Science Vol. 58, no. 3 (July 2014): 620-636.

¹⁴ Brandon L. Bartels and Christopher Johnston, "On the Ideological Foundations of Supreme Court Legitimacy in the American Public" American Journal of Political Science Vol. 57 no. 1 (January 2013): 184-199.

and Kennedy discuss in their opinion *Planned Parenthood v Casey*¹⁵ (1992): “The Court’s power lies, rather, in its legitimacy, a product of substance and perception...The Court must take care to speak and act in ways that allow people to accept its decisions...”¹⁶

Nicholson and Hansford argue that since the Courts have become more partisan institutions, the Court is supported as other “partisan actors are.”¹⁷ While this study effectively demonstrates the decreasing level of legitimacy that comes from support of specific decisions, it’s clear from these studies that the perceived legitimacy of the institution of the Supreme Court, specifically in regards to diffuse support, largely relates public opinion.

Dahl¹⁸ first established the correlation between decisions of the Court and policy of the dominant party in politics, launching the idea of public opinion directly affecting the Court’s decisions. He advocated for the idea of positive response theory, in which when the Court takes a position on an issue, overall public support for that position inherently increases. In recent years, this hypothesis has been replaced, favoring the idea of structural response hypothesis, or a mix of both. Johnson and Martin (1998) advocate for a mix, or “conditional response hypothesis.”¹⁹ They claim that the public pays attention to the Court with a high degree of legitimacy, but echo Kosaki and Franklin’s study²⁰ in arguing that these responses aren’t all positive.

¹⁵ *Planned Parenthood v Casey*, 505 U.S. 833 (1992).

¹⁶ *Ibid.*

¹⁷ Nicholson, *supra* note 3

¹⁸ Dahl, *supra* note 1

¹⁹ Timothy R. Johnson and Andrew Martin, “The Public’s Conditional Response to Supreme Court Decisions” *The American Political Science Review* Vol. 92, no. 2 (June 1998): 301.

²⁰ Charles H. Franklin and Liane C. Kosaki, “Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion” *The American Political Science Review*, Vol. 83, No. 3 (September 1989).

Barnum studied a public opinion graph of five issues: birth control, interracial marriage, abortion, women's roles, and desegregated schools. Barnum found that Supreme Court decisions on these issues were favored by either an increasing minority or a majority of Americans. Therefore, he argued that the "countermajoritarian" reputation of the post-New Deal Court "may be exaggerated."²¹ Mishler and Sheehan discuss the countermajoritarian argument against the institution. Their findings indicate that "for most of the period since 1956, a reciprocal relationship seems to have existed between the ideology of the public mood in the United States and the broad ideological tenor of Supreme Court decisions."²²

Furthermore, Casillas, Enns, and Wohlfarth find that public mood directly constrains justices' behavior, part of the strategic behavior strategy. They argue that the "decisions ignoring the prevailing tides of public mood risk alienating the mass public..., compromising the Court's institutional legitimacy."²³ According to McGuire and Stimson's study (2004), "the impact of public mood is far greater than previously documented."²⁴

Giles, Blackstone, and Vining Jr (2008) disagree with the strategic behavior hypothesis, saying that while, yes, the Court is affected by the public, "...the direct linkage between public opinion and the voting behavior of justices found in previous studies and reconfirmed here does

²¹ David G. Barnum, "The Supreme Court and Public Opinion: Judicial Decision Making in the Post-New Deal Period" The Journal of Politics Vol. 47, no. 2 (June 1985): 662.

²² William Mishler and Reginald Sheehan, "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions" The American Political Science Review Vol. 87, no. 1 (March 1993): 96

²³ Christopher J Casillas, Peter Enns, and Patrick Wohlfarth, "How Public Opinion Constrains the U.S. Supreme Court" American Journal of Political Science Vol. 55, no. 1 (January 2011): 76.

²⁴ Kevin T. McGuire and James Stimson, "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences" The Journal of Politics, Vol. 66, no. 4 (November 2004): 1019

not arise from the justices' strategic concerns over maintaining legitimacy and compliance in the public.”²⁵ Epstein and Martin (2012) cite Flemming and Wood's 1997 study, agreeing that public mood does, as Flemming and Wood argue, “exert a small effect on most Justices in the majority of legal areas under analysis.”²⁶ These studies seem to favor diffuse support over specific support, stating that general support for the legitimacy of the Court outweighs the negative policy opinions that the public may have.

While all of these studies identify different reasons why and to what extent the Court and public opinion are intertwined, it is clear that there is a correlation between public opinion and the Court, a key assumption of my study that has been extensively covered.

Compliance and Examining Specific Cases

Compliance of Supreme Court decisions on a local and state level relates directly to public opinion and legitimacy of the Court. Gibson (1991) argues that compliance is most likely when citizens accorded high levels of diffuse support for the Supreme Court, and cited one of his own previous studies in which he concluded that there is “some evidence that the legitimacy of the Court affects compliance with unpopular decisions.”²⁷ Compliance can refer to lower courts’ response to a Supreme Court decision or directly to implementation of these orders in local and state governments, the latter of which I will be examining. Songer and Sheehan (1990) discuss

²⁵ Michael W Giles, Bethany Blackstone, and Richard Vining Jr, “The Supreme Court in American Democracy: Unraveling the Linkage between Public Opinion and Judicial Decision Making” The Journal of Politics Vol. 70, no. 2 (April 2008): 303

²⁶ Lee Epstein and Andrew Martin, “Does Public Opinion Influence the Supreme Court? Possibly Yes (But We’re Not Sure Why)” University of Pennsylvania Journal of Constitutional Law, Vol. 13, no. 263 (2010): 266.

²⁷ James L. Gibson, “Institutional Legitimacy, Procedural Justice, and Compliance with Supreme Court Decisions: A Question of Causality” Law & Society Review, Vol. 25, no. 3 (1991): 631.

the Supreme Court's effect on the US Courts of Appeals through the cases *Miranda v Arizona*²⁸ and *New York Times Co. v Sullivan*.²⁹ The courts demonstrated "nearly universal compliance with both decisions".³⁰

However, the level of compliance on a local constitutional level has been shown to be much less strict. Miller (2013) discusses the idea of "new judicial federalism," or the idea that states have established new constitutional rights in key issues, like capital punishment, abortion, free speech, and same sex marriage and states that state supreme courts have broadened some rights beyond where SCOTUS is "willing to go."³¹ However, Miller claims that "people have, in fact, frequently voted to limit, or withdraw, state constitutional rights that exceed federal minimums."³² Some of the democratic responses to this judicial activism in the states include use of legislative constitutional amendments and constitutional conventions. For example, in 1984, Colorado approved an amendment restricting public funding for abortions and in 2004, voters approved an amendment authorizing parental notice requirements, obviously demonstrating their desire to limit the implications in *Roe v Wade*.³³³⁴

Way (1968) provides evidence in conjunction with Miller, stating that "a high proportion of the public schools that included prayers and bible reading in the school day maintained those

²⁸ *Miranda v. Arizona*, 384 U.S. 436 (1966).

²⁹ *New York Times Co. v. Sullivan*, 364 U.S. 254 (1964).

³⁰ Donald R. Songer and Reginald Sheehan, "Supreme Court Impact on Compliance and Outcomes: Miranda and New York Times in the United States Courts of Appeals" *The Western Political Quarterly*, Vol. 43, no. 2 (June 1990): 313

³¹ Kenneth P. Miller, "DEFINING RIGHTS IN THE STATES: JUDICIAL ACTIVISM AND POPULAR RESPONSE" *Albany Law Review*, Vol. 76, no. 4 (2013).

³² *Ibid.*, at 2079.

³³ *Ibid.* at 2071, 2085, 2086.

³⁴ *Roe v. Wade*, 410 U.S. 113 (1973).

practices after the Court prohibited them in 1962 and 1963.”³⁵ Marshall’s extensive study (1989) examines four models that explain why some decisions “prevail, but others do not.”³⁶ Specifically, I will focus on his third model, the Public Opinion Model, which claims that public opinion plays a role in the level of compliance of the Court’s decisions.³⁷ Marshall’s model containing four predictors (unanimity, liberal ideology, agreement with the public, and low public attentiveness) achieved statistical significance and was generally successful in predicting whether a ruling was or was not successful.³⁸ These studies in compliance help define a correlational relationship between public opinion and level of compliance on a state and local level, a relationship furthered in my research.

METHODOLOGY

Synopsis of Study

In this study, I performed a content analysis of articles from top news sites using a purposive sampling method in order to determine word sentiment.

To determine sentiment, the University of Pittsburgh’s MPQA Subjectivity Lexicon, used in Wilson, Wiebe, and Hoffmann’s 2005 paper, was utilized. Wilson, Wiebe, and Hoffman define sentiment analysis as “the task of identifying positive and negative opinions, emotions, and evaluations.”³⁹ They also state that sentiment analysis work is done at the document level and that one of the most typical approaches to sentiment analysis starts by utilizing a lexicon of

³⁵ Frank H. Way, "Survey Research on Judicial Decisions: Prayer and Bible Reading," Western Political Quarterly 21 (1968): 198-99.

³⁶ Thomas R. Marshall, “Policymaking and the Modern Court: When Do Supreme Court Rulings Prevail?” The Western Political Quarterly Vol. 42, no. 4 (December 1989): 494.

³⁷ *Ibid.*, at 496.

³⁸ *Ibid.*, at 502.

³⁹ Wilson, Theresa, Janyce Wiebe, and Paul Hoffman, “Recognizing Contextual Polarity in Phrase-Level Sentiment Analysis,” (2005): 1.

words, coded as having a positive, negative, or neutral *prior polarity*.⁴⁰ This study uses the prior polarity method of sentiment analysis, as identified by the MPQA 8,000-word Subjectivity Lexicon. Wilson, Wiebe, and Hoffman, also tag the words as having either a *strong subjectivity* or a *weak subjectivity*, the former being defined as “Words that are subjective in most contexts,” and the latter being “those that may only have certain subjective usages.”⁴¹ Both the prior polarity rating as well as the subjectivity rating were recorded in this study.

The articles for analysis were gathered from the top fifteen online news sites identified by the Pew Research Center’s News Media Indicators Database, determined by total number of unique visitors to each site and average minutes per visit by each visitor.⁴² Thus, the sites chosen to analyze were, in order of online traffic: 1) Yahoo-ABC News 2) CNN Network 3) NBC News Digital 4) HUFFINGTONPOST.COM 5) CBS News 6) USA Today 7) BUZZFEED.COM 8) The New York Times 9) Fox News 10) WASHINGTONPOST.COM 11) BUSINESSINSIDER.COM 12) ELITEDAILY.COM. This list is only comprised of 12 news sites, but two of the sites (Daily Mail and BBC) are not American-affiliated and were therefore discarded, due to the strictly *domestic* implications of SCOTUS decisions. The last unused site, BLEACHERREPORT.COM, was also discarded, but due to lack of coverage of gay marriage.

In order to obtain articles from these sites, a general search for “gay marriage” was run on the sites’ individual search engines. The articles examined had to have mentioned “gay marriage” in their text or title. Next, the results were filtered by time and type of source. For time, only articles published or last revised from May 26, 2015 to June 25, 2015 (one month

⁴⁰ Ibid., at 1.

⁴¹ Ibid., at 3.

⁴² “Digital: Top 50 Online News Entities (2015),” Pew Research Center www.journalism.org [Internet Accessed on March 29, 2015].

before the Court’s decision was announced). This limit was subjectively set in order to equalize the time frame: a failure of the initial triangulation of public opinion polls. Additionally, the type of source was restricted to text articles; other types of media, such as videos and photo galleries, were omitted in order to equalize the type of content analyzed.

After filtering these articles, I was left with 250 pieces of content. However, purposive sampling became necessary to further determine which articles were *directly* related to “gay marriage,” not articles that only mentioned it. After completion of this purposive sampling, 114 remained for sentiment analysis. These 114 articles’ titles and first paragraphs were analyzed by checking each word with the MPQA Subjectivity Lexicon to determine overall prior polarity score and overall subjectivity score for each article. Words that carried positive prior polarity were coded (+), those that carried negative prior polarity were marked (-), and those that carried neutral prior polarity were marked with (0). Words with strong subjectivity were similarly coded with (+) and words with weak subjectivity were marked with (-).

Defense of Methods

First, it is necessary to identify *why* this research focuses on the *Obergefell* case, which is largely due to its saliency and level of activism shown in the Court’s decision.

Judicial activism and saliency of any one case relate to both overall public opinion of the case and level of compliance to the case. Johnson and Martin find that “the Supreme Court can and does influence public attitudes toward highly salient cases.”⁴³ Specifically, their data finds that the public responds to the Court’s decision more so the first time that an issue is discussed, but less if the Court rules on an issue again.⁴⁴ Hoekstra (2000) builds on this argument, stating

⁴³ Johnson, *supra* note 8 at 306.

⁴⁴ *Ibid.*, at 306.

that “when the issue is perceived as important and is covered by the media, the public exhibits rather surprisingly high levels of awareness.”⁴⁵ Stoutenborough, Haider-Markel, and Allen concur in their study on public opinion specifically relating to gay civil rights cases. “We argue that the ability of Court decisions to influence public opinion is a function of the salience of the issue, the political context, and case specific factors at the aggregate level”.⁴⁶ They specifically comment on the decisions in *Lawrence v Texas*⁴⁷ and *Romer v Evans*⁴⁸, two cases that are often labeled as activist and liberal, as well as widely covered by the media. These cases, they point out, have affected public opinion significantly more than others involving same sex relations.⁴⁹ Therefore, in determining compliance to Court orders on a local level, it seems necessary to choose cases to analyze that are widely covered and represent extremely “activist” decisions. Cross and Lindquist (2006) developed a method for judging judicial activism at the Supreme Court level: 1) If the decision strikes down federal legislation, 2) if the decision strikes down state and local laws, 3) if the decision reverses executive agency decisions, 4) if the decision overrules prior precedent, and 5) if the decision expanded jurisdiction of Courts.⁵⁰ These parameters were key in choosing *Obergefell v Hodges*, because it is understood that the more salient and activist a case, the more public opinion and compliance levels will respond.

This research uses a mixed-method approach to gather and analyze data. Three major classes of qualitative research will be utilized: phenomenological study, case study, and content

⁴⁵ Valerie J. Hoekstra, “The Supreme Court and Local Public Opinion,” The American Political Science Review, Vol. 94, no. 1 (March 2000): 97

⁴⁶ James W. Stoutenborough, Donald Haider-Markel, and Mahalley Allen,” Political Research Quarterly, Vol. 59, no. 3 (September 2006):419

⁴⁷ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁴⁸ *Romer v. Evans*, 517 U.S. 620 (1996).

⁴⁹ *Ibid.*, at 430.

⁵⁰ Frank B. Cross and Stefanie Lindquist, “The Scientific Study of Judicial Activism” Minnesota Law Review.

analysis to create another class of research: grounded theory. The phenomenon in question is the case of *Obergefell v Hedges* and its level of compliance compared to that of *Brown v Board*. Because I am examining one court case, the case study method is particularly useful: specifically, the hypothesis-generating case study, or “heuristic” case study, as classified by Kaarbo and Beasley as “using cases to develop theory.”⁵¹ The majority of my study relies on methods of content analysis, specifically using purposive, or non-probability sampling to perform sentiment analysis on articles published about gay marriage/*Obergefell v Hedges*. These three types of qualitative study are mixed in this research to create one grounded theory: prior public opinion relates to level of compliance a ruling receives.

A crucial assumption made in my research is the idea that public opinion and the media are intertwined as well, which will be proven in this section. As part of my research methods, I examine popular news outlets and their coverage of same sex marriage and *Obergefell v Hedges* published before the decision was announced on June 26, 2015. However, the assumption that the media reflects and shapes public opinion is supported by extensive research on this relationship.

For example, Happer and Philo concluded in their study on the role of media in shaping public belief “that the media play a facilitating role – in the easing through of policy action by repetition and reinforcement of media messages.”⁵² In addition, they find that on a collective level, media can be essential in shaping public opinion, but can also “limit and shape the behaviors of individuals which are central to wider social change.”⁵³ They also discuss the

⁵¹ Kaarbo, Juliet and Ryan K. Beasley, “A Practical Guide to the Comparative Case Study Method in Political Psychology” *Political Psychology* Vol 20, No. 2 (June 1999): 374.

⁵² Catherine Happer and Greg Philo, “The Role of the Media in the Construction of Public Belief and Social Change” *Journal of Social and Political Philosophy* Vol. 1 No. 1 (2013): 333.

⁵³ *Ibid.*

importance of “repeated exposure to media messages”: “we found a relationship between the prior exposure to information, often related to strength of attitude, on the subject and the degree to which the information impacted on beliefs and opinions.”⁵⁴

From a psychological standpoint, Anastasio, Rose, and Chapman, investigate as to whether or not the media can create public opinion. They make a distinction between homogeneous and heterogeneous opinions.⁵⁵ In their experiment, they replicate a trial of a Greek organization student that was “accused of vandalizing school property.”⁵⁶ They found that “homogeneity of opinion significantly influenced opinions of the defendant’s guilt and the degree of punishment recommended.”⁵⁷ However, the effect “completely disappeared” when heterogeneous, or mixed opinions were shown.⁵⁸ They concluded that the media can bias people’s perceptions, but the extent to which this bias proliferates is largely due to the level of homogeneity of the opinions presented.

Hubbard, DeFleur, and DeFleur conclude in “Mass Media Influences on Public Conceptions of Social Problems” that while their study found a “low relationship between emphasis in the media and public beliefs...”, they also concede to the information dependency perspective and the idea that when the media sets agendas, this presumably leads to “shared

⁵⁴ *Ibid.* 332.

⁵⁵ Phyllis A. Anastasio, Karen C. Rose, and Judith Chapman, “Can the Media Create Public Opinion? A Social-Identity Approach” *Current Directions in Psychological Science*, Vol. 8, No. 5 (October 1999): 154.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, at 155.

⁵⁸ *Ibid.*

beliefs about the relative incidence.”⁵⁹ They present other theories, including the idea that in the “emergent stage” of an issue, the media may play a significant role.⁶⁰

Collectively, research regarding public opinion and mass media has demonstrated at least a correlational, or linked relationship between the two, and therefore, mass media reports can be seen as a relevant data collection method in my research.

Additionally, content analysis was necessary in this research to gather a more accurate sense of public sentiment surrounding the topic of same-sex marriage. In my preliminary research, public opinion data was triangulated from polling organizations regarding gay marriage. However, these results could not be compared due to the lack of standardization in the questions asked to survey participants and most importantly, due to the discrepancies in the timeline leading up to the case. While all organizations proved relatively similar results, these results could not be accurately compared due to their differing times of issuance of their respective studies. For example, Gallup conducted a survey from May 6-10 of 2015 and found that 60% of Americans support same-sex marriage.⁶¹ Similarly, in a survey published on July 29, Pew Research found 55% of Americans support same-sex marriage.⁶² While both of these surveys indicate positive opinions toward gay marriage, the surveys were conducted at different times with different questioning, weakening their comparative validity. Thus, content analysis controlled by the researcher through purposive sampling was necessary.

⁵⁹ Jeffery C. Hubbard, Melvin L. DeFleur, and Lois DeFleur, “Mass Media Influences on Public Conceptions of Social Problems” Social Problems, Vol 23, no. 1 (October 1975): 30.

⁶⁰ *Ibid.*, at 31.

⁶¹ McCarthy, Justin, “Record-High 60% of Americans Support Same-Sex Marriage”, Gallup www.gallup.com [Internet Accessed on March 29, 2015].

⁶² “Changing Attitudes on Gay Marriage,” Pew Research Center www.pewforum.org [Internet Accessed on March 29, 2015].

This content analysis contains a high level of sampling validity, as described by Krippendorff.⁶³ In terms of sampling validity, this study examines a “statistically representative” collection of content, as the articles are not only from a wide variety of individual sources, but have also been filtered through use of purposive sampling – ensuring that the data set is relevant and can be analyzed in relation to the central phenomenon.

Purposive sampling provided greater liberty in this study, as I was able to filter results to obtain more relevant samples. Snedecor elaborates on the benefits of purposive sampling, claiming that it is often used “where randomization is not feasible.”⁶⁴ He cites Neyman, who states, “there is no room for probabilities, for standard errors, etc., where there is no random variation or random sampling.”⁶⁵ While purposive sampling exhibits inherent subjectivity by a researcher who selects his samples, I found this method of sampling particularly useful, particularly in isolating the phenomenon I was analyzing.

RESULTS

After coding all articles, the positive and negative values of prior polarity and subjectivity were summed and calculated. In total, 263 words were tagged (+), 191 words were tagged (-), and 118 words were tagged (0). Adding the positive and negative polarity scores produces a total polarity score of +72. Moving to subjectivity, 319 words were tagged (-) and 258 words were tagged (+), giving a total subjectivity score of -61. The results show more words associated with positive prior polarity used in articles discussing gay marriage before the decision date. The

⁶³ Krippendorff, Klaus, “Validity in Content Analysis” (1980): 73.

⁶⁴ Snedecor, George W., “Design of Sampling Experiments in the Social Sciences,” Journal of Farm Economics, Vol. 21, No. 4 (Nov., 1939): 850.

⁶⁵ Ibid, at 850.

results also show more words that may only have certain subjective uses, or weak subjectivity, used in articles discussing gay marriage before the decision date.

DISCUSSION

Review of Findings

These findings indicate positive support for the hypothesis: positive coverage of gay marriage in the news media may have contributed to Obergefell v Hodges' high level of compliance. At the very least, it is *suggested* by these findings that Obergefell v Hodges is not an example of a SCOTUS case with negative media coverage/public opinion whose decision was still held to strict compliance. This case study is only one piece of evidence to support the claim that cases *always* must have positive prior public opinion to be held to strict compliance. In addition, while the overall polarity score was positive, the overall subjectivity score was *negative*, indicating that while positive words may have been associated with gay marriage, these words and the authors' opinions of gay marriage may not necessarily be strong or definitive. This study carries with it a high level of external validity in terms of its *methodology*: this study can be replicated with other cases to support the hypothesis. However, while this is a case study, it is difficult to make generalizations about these findings and apply these specific results to other cases.

Limitations

There are some limitations to report in this study: first with the researcher, second with the sample, and third with the resources used. Because finding the content to analyze and the analysis itself was entirely researcher driven, human error must be accounted for. It is possible that in the general search, an article was missed or not added to the content pool. Second, the sample (content analyzed) may have flaws: media bias should always be taken into account, and

evidence of that bias may be proven to exist within this study. Articles from HUFFINGTONPOST.COM had a significantly higher level of prior positive polarity words than other sites. Not one article from HUFFINGTONPOST.COM had an overall negative prior polarity score, indicating that all the articles were positive toward gay marriage. While media bias is a limitation to report, I have chosen to largely discount this flaw because the sites chosen were chosen entirely by level of traffic, meaning that if the site has an abnormally positive view, it is *expected* that this will affect the public – as mentioned previously in this paper. Lastly, the resources used to conduct this experiment may have been sources of limitation. While the Subjectivity Lexicon used to identify words in regards to polarity and subjectivity contained 8,000 coded words, this obviously does not encompass the entire English language. Therefore, some words in articles were left without coding and were therefore not factored into the overall coded word count. However, these words may have had a substantial impact on the reader, but may not have been included in this study.

Delimitations

There were two key delimitations in this study worthy of mention: limited use of content and limited coding of content. First, as previously mentioned, only articles were used in this study. Videos, news broadcasts, and photo galleries are just a few examples of media that was not coded. This delimitation exists due to difficulty with transcription of media into text in order to analyze words. All other forms of media not already in text would have had to be transcribed if used, and unfortunately, time restrictions and work load prevented analysis of all forms of media. Second, as mentioned previously, only the article's title and first paragraph were coded. The amount of coded content had to be decreased from my original intentions due to time and

workload constraints. As an individual researcher on a time schedule, coding over 100 whole documents proved to be infeasible.

Significance

Examining the relationship between public opinion regarding the subject of a case before the case is decided and the level of compliance that the case receives after its decision has significance in the field of study of the Court, specifically in offering a new relationship for other scholars to build upon and possibly influencing which cases the Court chooses to hear. First, there is a gap in the current field of study regarding the relationship between public opinion before a case is decided and the compliance level that the case will receive. While the link between public opinion and the Court's decision-making has been covered, there has been little to no study on the relationship between public opinion before the case is argued and compliance of that decision. My study attempts to be the first to close this gap in the research, and at the very least *examine* the relationship on a quantitative level. Second, on a more macroscopic level, the Supreme Court and other high courts can essentially choose which cases they want to hear during a session, giving the Justices essentially free reign over the policy they choose to discuss, bring to the national spotlight, and in turn, what identity they want to create for themselves. If a link is definitively proven between public opinion before a case is decided and level of compliance that the case holds, it is possible that the Court may choose cases that they believe will be least troublesome to implement or least difficult for the public to accept as supreme, based on the political climate of the time.

Call for Further Research

I will now make some suggestions for other researchers who attempt to build on this work or improve it. While prior polarity was helpful in determining the *traditional* polarity of a

word and the traditional connotation carried by that word, a more thorough, but also more complex form of content analysis would be analyzation of contextual polarity, described by Wilson, Wiebe, and Hoffman as sentiment that cannot be analyzed by isolating words, but must be determined by examining entire phrases.⁶⁶ A word that is generally positive on its own, like “good” may become negative when placed after a negating adjective. Thus, phrase-level sentiment analysis and analysis of contextual polarity using the strategy found in Wilson, Wiebe, and Hoffman’s work, not simply prior polarity, is the logical next step for researchers. In addition, different forms of media should also be analyzed. I have found the case-study method to be helpful in this analysis, and more case studies should be conducted to increase amount of specific evidence supporting the theory that prior public opinion not only affects the Court’s decisions, but also the level of compliance those decisions receive.

⁶⁶ Wilson, supra note at 67.

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