

Courts I

For anyone who sees the Courts as a powerful, independent branch of government, this week's readings were pretty disillusioning. Rosenberg made a convincing case that the Courts are not able to effect broad social change without the consent of broad swaths of the rest of government or the public. Dahl claimed that, in the rare cases where the Courts express an opinion contrary to the ruling majority, the legislature is quick to overturn the judiciary. Whittington theorized that the Courts can be captured by other parts of government to take the heat by making unpopular but politically desirable decisions. Only Casper presented an argument in favor of an independent and influential Court and I, personally, wasn't convinced of his evidence.

In general, I thought the papers we read this week did a fairly poor job of marshalling evidence to support their claims. The articles, in many ways, seemed to treat Supreme Court outcomes as suffering from similar small-N problems as did research on the presidency. Dahl only examined 78 cases; Whittington's argument was based on 5 cases; Casper added 28 cases to Dahl's analysis and suggested extending his arguments further, but offered only a few cases to illustrate this extension. Rosenberg, in the section we read, looked at a handful of civil rights cases (and closely at only one), though he also brought a variety of other evidence to bear on his argument. While I understand in each case why so few cases were examined, I was left feeling like I still couldn't speak to the influence or independence of the Court more generally. The authoritative source, WikiAnswers, suggested that courts hear between 75 and 100 cases a year, meaning they've conservatively heard 15,000 cases – certainly not a small N, and ripe for more quantitative analysis (which is, perhaps, coming next week).

One thing that could have been done, for example, would be to analyze whether the Supreme Court shows deference to the executive branch. Rosenberg (I believe) provided statistics about how often the Court grants certiorari to cases when requested by the executive branch as well as information about how often cases are decided in favor of the government when it is a party or a "friend of the court." In both cases, the statistics seem to show a clear deference to the government, but could be misleading on their face. I don't believe Rosenberg excluded cases like the one inmate who filed more than 700 appeals, most of which were refused, and would serve to skew the numbers. Further, because the government is involved with litigation at this level more frequently, it is likely that the government is simply *better* than other parties at making such arguments, which would also skew the results. I would have liked to see an analysis that tried to account for some of the structural reasons why the government is likely to win (both in terms of getting a case heard and in the decisions).

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