‘For Better and For Worse?’: Black Opinion on the U.S. Supreme Court Since Brown

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As the third branch of the federal government, the Supreme Court is frequently characterized as the defender of minority rights over majority power. Yet, this has not always been the case in the arena of racial politics. Indeed, throughout much of its history, the Supreme Court has protected the rights of the White majority against the claims for legal and political equality of Blacks. For example, in the *Civil Rights Cases*[1] of 1883, the Court undercut and effectively reversed the efforts of the Reconstruction Congress to ensure that Blacks would enjoy their full and equal rights as promised them by the Fourteenth Amendment. The ruling provided the legal rationale for the construction of Jim Crow laws requiring the separate treatment of the races in public accommodations (see O'Brien 1995, 1300). Thirteen years later, the Jim Crow polices themselves were stamped with judicial approval in *Plessy v. Ferguson*.[2] There, the Court constitutionally sanctioned the racism behind "separate but equal" and firmly relegated Blacks to the status of second class citizens.

Thus, by the beginning of the twentieth century, the Supreme Court had facilitated the construction of a racial caste system throughout the South with tentacles reaching into the Border States. Midway through that same century, however, that caste system began to be razed, and the Court served as the primary wrecking ball. Accordingly, in the 1944 *Smith v. Allwright*[3] decision, the Court struck down the "White primary" as an unconstitutional mechanism used by southern Democrats to effectively disenfranchise Blacks. Four years later it handed down *Shelley v. Kraemer*,[4] outlawing restrictive racial convenants in housing. In 1966, it affirmed the authority of the federal government to prohibit the use of racially discriminatory registration devices in *South Carolina v. Katzenbach*.[5] And by 1967, Thurgood Marshall, an African American, had joined the bench, spreading a "tidal wave of joy across black and liberal

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[1] 109 U.S. 3 (1883)

[2] 163 U.S. 137 (1896)

[3] 321 U.S. 649 (1944)

[4] 334 U.S. 1 (1948)

[5] 383 U.S. 301 (1965)

America" (Davis and Clark 1994).

But it was the seminal *Brown v. Topeka Board of Education*[6] decision that did more than anything else to simultaneously dismantle American apartheid and engender substantial levels of Black confidence in and support for the Supreme Court. In a surprisingly unanimous ruling, the Supreme Court overturned *Plessy* and held that separate but equal in public education was an unconstitutional violation of Black citizens' Fourteenth Amendment rights. *Brown* was to provide the civil rights community with the legal means to extirpate state enforced segregation, not just in education but in all aspects of public life. As Marshall himself noted, "If we keep up . . . the legal suits, I have no doubt of our eventual victory. We now have the tools with which to destroy all governmentally imposed racial segregation" (quote in Davis and Clark 1994, 180). By the 1960s, armed with the *Brown* precedent, that had largely been accomplished. At this point, the Supreme Court emerged as a steadfast advocate of Black political and legal rights, and the *Brown* ruling had taken on the form of a talisman. As Harlem's *Amsterdam News* described *Brown*, "The Supreme Court decision is the greatest victory for the Negro people since the Emancipation Proclamation" (quoted in Patterson 2001, xiv).

Beginning in the 1970s, however, the Court as steadfast advocate was steadfast no longer. It began articulating policies that cut against the interests of Black Americans. For example, in the 1971 decision *Palmer v. Thompson*,[7] the Court upheld Jackson, Mississippi's determination to close its public pools rather than desegregate them. One year later, in *Moose Lodge, No. 107 v. Irvis*,[8] the Court refused to force a private club to serve Blacks even though it held a state-issued liquor license. And this conservative turn in the Court's pattern of decisions largely holds today. Thus, the Court that unwaveringly affirmed the rights of Blacks to equal protection and justice, today has ruled that there is no affirmative duty to desegregate voluntary

[6] 347 U.S. 483 (1954)

[7] 403 U.S. 217 (1971)

[8] 407 U.S. 163 (1972)

associations;[9] it has affirmed death penalty convictions against claims of racial bias;[10] and it has curtailed expansive affirmative action programs.[11] And finally, literally reversing the decisional and symbolic effects of Thurgood Marshall's appointment, conservative African American Clarence Thomas was appointed to the Bench to fill Marshall's seat. But what effect has the emergence of a new racially conservative Court had upon the attitudes of Black Americans?

In this paper, we use published studies and survey data to examine the attitudes of Black Americans toward the Supreme Court. Clearly, the Court has been, and remains, a strong force affecting the political and legal status of Black citizens. Thus, we would expect that Black attitudes toward the Court are at least partly a function of their experiences there. Certainly, scholars have shown that Black attitudes toward the President, who represents one of the three branches of government, wax and wane according to his political platforms and policies (Dawson 1994; Tate 1994). The Supreme Court is also one of the three branches of the federal government, but we suspect that Black attitudes toward it do not neatly coincide with their political fortunes before the Bench. There is movement to be sure, but the amplitude of the changes in Black Americans' attitudes toward the Court is arrested by the tremendous reservoir of goodwill among African Americans the Court created for itself when it broke with the southern states and declared separate but equal unconstitutional in *Brown*. In short, one of *Brown's* legacies is the deep level of institutional support Blacks have for the Court. This institutional support, in turn, works as something of a standing decision; it anchors Black sentiment toward the Court (see Caldeira and Gibson 1992; Gibson and Caldeira 1992; Gibson, Caldeira, and Spence 2003). Consequently, we suspect that as the Court began to move to the political right during the 1970s, Black attitudes became more critical of the High Bench; cloaked in *Brown*, however, the Court still has a legacy of distinction among African Americans vis-à-vis the other two institutions in the American political system.

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[9] *Bazemore v. Friday* 478 U.S. 385 (1986)

[10] *McCleskey v. Kemp* 481 U.S. 279 (1987)

[11] *Gratz. v. Bollinger* 539 U.S. 244 (2003)

Our paper is divided into two parts. In the first section, we discuss Black litigation fortunes before the Supreme Court. We begin by recounting the political and cultural developments in the first half of the twentieth century that helped to create a legal and political context favorable to the pursuit of Black equal rights. We then analyze Black litigation efforts in the Court. Focusing chiefly on civil rights cases, we provide an overview of Black fortunes in the Supreme Court in the Stone, Vinson, and Warren Courts, a time period of remarkable success. This rate of success, however, was not to remain constant. We conclude the first section with a discussion of the reversal of Black Americans' fortunes during the Republican Court era. In the paper's second section, we assess African Americans' attitudes toward the Court. We examine differences in those attitudes across time, races, and institutions. We conclude by taking stock of our findings and discussing the Court's role in legitimizing policies for this politically potent minority group.

The Expansion and Contraction of Black Civil Rights in Supreme Court Rulings

The history of the Supreme Court is one that protected White majority rights over equal rights for Blacks until the mid-twentieth century. At this point, the Court turned, and a number of scholars have attempted to account for this turn. The first half of the twentieth century ushered in a series of political and cultural changes that permitted Blacks to wage a more successful campaign for their rights in the courts (Kelly, Harbison, and Belz 1991; McAdam 1999). First, the collapse of "King Cotton" as the backbone of the South's regional economy — a demise beginning during the years immediately following World War I and culminating with the massive economic dislocation of the Great Depression — led to heavy Black migration to the North, a movement which had potent political consequences. Quite simply, the northern migration was not a general Black exodus; rather, it was effectively a selective movement of Blacks from areas where they were politically disenfranchised to areas where they could exercise their political rights and where their growing numbers and vote purchased them some genuine political clout (McAdam 1999). Accordingly, by the 1930s, Blacks, joining with other groups, were able to successfully block a Supreme Court nominee and then unseat several senators who had supported the confirmation. "These demonstrations of political strength, coupled with the

continuing flow of migrants northward, had, by 1936, firmly established blacks as an electoral force to be reckoned with" (McAdam 1999).

The Depression era also saw a radical realignment in Black political voting patterns. Black voters in the urban North broke their historical alliance with the Republican party—the party of Lincoln—and crossed over to support FDR's New Deal coalition, becoming one of the key components in Roosevelt's landslide victory (Tate 1994; Weiss 1983). This, in turn, paid material dividends, as it "yielded [Blacks] positions in the lower ranks of the federal bureaucracy, access to WPA jobs and welfare roles, and admission to public housing projects" (Kelly, Harbison, and Belz 1991, 582).

Black Americans' presence in the North and their new alliance with the Democrats also had policy consequences beneficial to Black interests. In 1924, the southern states' electoral votes accounted for 90 percent of all the votes won by the Democrat presidential ticket. By 1936, that proportion had dropped to a mere 23 percent (McAdam 1999). From this point on, Democrat presidential candidates no longer felt themselves dependent upon the electoral votes of the southern states to win the White House. Instead, their electoral coalition was built primarily in the North, and the support of Black Americans there was crucial. McAdam (1999) notes, for example, that in both 1944 and 1948, had Blacks reversed the votes they gave the two major party candidates, the election outcomes would have changed. Consequently, maintaining the electoral support of the large Black minority in the North was emphasized, even at the cost of disaffecting white voters in the South, a fact "registered dramatically in the 1948 campaign when Truman, running on what for the time was a radical civil rights platform, emerged victorious, despite the active opposition of much of the southern wing of the party" (McAdam 1982, 82).

Events, both domestic and international, growing out of World War II and its aftermath also enhanced the position of Black Americans in politics and society. Labor shortages, brought on by the war effort, opened positions for Blacks in unions and trade associations. Condemnation of Nazi atrocities cast a bright and unflattering light on the unequal and racist treatment of Black Americans in America, so much so that FDR created the Fair Employment Practices Commission and prohibited racial discrimination in the defense industries. Following the war, President Truman created a Committee on Civil Rights and quickly submitted

legislation to Congress proposing to enforce civil rights. The Cold War battle with the Soviet Union for the allegiance of emerging Third World countries made American racism an embarrassing and effective propaganda weapon for the Communists. Likewise, the adoption of the U.N. Charter in 1948, with its declaration of human rights, allowed Black Americans to call attention to their unequal position in American society. Both phenomena brought the issue of Black civil rights into mainstream political debate.

It was new political organizing efforts of Blacks, and chiefly the formation of the NAACP in 1909 that was the most important impetus for the civil rights gains of Black Americans in the mid-to-late twentieth century.[12] Funded by White liberal philanthropists, the NAACP, and its counterpart, the National Urban League, coincided with the rise of a Black professional and white collar class, who these organizations successfully recruited in the fight for Black civil rights. The NAACP was the most pivotal organization, and it launched its systematic plan to lobby the federal judiciary in its pursuit for the legal and political equality of African Americans.

Mark Tushnet (1987) asserts that from the outset, the NAACP took as its *raison d'être* the elimination of the legal subordination imposed upon Blacks by the "separate but equal" rule of *Plessy v. Ferguson.*[13] Because "separate but equal" was constitutionally sanctioned by the Supreme Court, it was natural that the NAACP pursued a legal strategy in order to extirpate it (the other alternative being a constitutional amendment banning separate but equal). Accordingly, shortly after its formation the Association created a legal redress committee, and by 1915 it was active in nearly every case before the Court that involved the issue of Black civil rights (Vose 1967, 39). More importantly, it met with some success there. Thus, for example, in 1910 the Association successfully argued that a peonage law was a violation of the Thirteenth

[12]The significance of the NAACP to the cause of Black civil rights cannot be overstated, and we do not pretend to do justice either to its organizational history or its role in the battle for Black equality here. Excellent and far more thorough treatments of the NAACP in this regard can be found in Vose (1967), Kluger (1975), Tushnet (1987), and Patterson (2001).

[13]163 U.S. 537 (1896)

Amendment's prohibition against involuntary servitude;[14] in 1915 it won a case that struck down a "grandfather law" that disenfranchised Blacks by extending the vote to only those individuals whose ancestors had been eligible to vote in 1866;[15] and in 1917 it managed to have the Court declare a local ordinance that prohibited Blacks from moving into White neighborhoods unconstitutional[16] (see Vose 1967, 40; Kelly, Harbison, and Belz 1991, 581).

Reflecting these and other successes, the Association noted in its 1926 *Annual Report* that activity in the federal courts, "where the atmosphere of sectional prejudice is notably absent," would be the best strategy for the pursuit of Black rights (Tushnet 1987, 1). For one, successes in the judiciary would be more definite than victories elsewhere. After all, legislative successes can quickly turn into costly defeats as policies can be implemented contrary to congressional designs (see Waltenburg 2002). Furthermore, "Legal victories in the cause of civil rights . . . could be 'built upon'" (Tushnet 1987, 1).

To this end, then, the NAACP began to develop plans for a coordinated litigation campaign, and by early 1930, its strategy was finalized. A permanent staff position for litigation was created, and the decision was made to pursue selective litigation such that favorable precedents could be secured and the Black community could be further mobilized (Tushnet 1987, 13-14). As a result, a propitious confluence of events occurred: The Black civil rights leadership was poised to aggressively pursue their interests through litigation at the very moment the Supreme Court became demonstrably more supportive of those goals.

In 1937 a sea change occurred in the U.S. Supreme Court's decisional behavior.[17] Prior to that year, it had been a staunch defender of conservative economic and property rights,

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[14] *Bailey v. Alabama* 219 U.S. 219 (1918)

[15] *Guinn v. U.S.* 238 U.S. 537 (1915)

[16] *Buchanon v. Warly* 245 U.S. 60 (1917)

[17] The so-called "switch-in-time" is well documented elsewhere (see, for example, Pritchett 1948; Cushman 1994; Schwartz 1993; McCloskey 1994; Leuchtenburg 1995). Whether because the Court was cowed by FDR's threat to pack it (unlikely, see Cushman 1994; Leuchtenburg 1995) or because of a change in the legal strength of the government's arguments or a change in the legal ideology of the entire legal community, the Court's transformation was complete by 1941. By then, FDR had appointed eight of the nine justices.

safeguarding them from legislation permitting trade unionism, regulating the economy, and protecting civil liberties. Following 1937, economic rights no longer occupied a preferred position. Instead, the Court took it upon itself to become the guardian of individual rights against legislative encroachments. In particular, the Court became especially leery of governmental invasions of the rights of discrete and insular minorities (see Schwartz 1993, 260-61). As Justice Black noted, ironically in the racially conservative *Korematsu v. U.S.*,[18] "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny" (323 U.S. 214).

That requirement for "rigid scrutiny" produced what Schwartz (1993, 261) contends are the most important decisions protecting individual rights during the 1940s and 1950s — those involving racial discrimination. At the same time, it must be noted that in no small part the Court owes these progressive decisions to Black Americans; they presented the Court with the opportunity to render them. Black Americans aggressively pursued their interests in the Supreme Court during this period, waging a protracted litigation campaign of successive lawsuits based on individual rights guaranteed by the U.S. Constitution. The campaign had multiple targets: racist obstacles to the right to vote, state supported segregation in housing patterns, lynching and Jim Crow laws, and segregation in education (Tushnet 1987, 135). This extended crusade eventually resulted in successive orders by the Supreme Court. In 1944 the Court struck down Texas's "white primary"[19] as a violation of the Fifteenth Amendment. It ruled that although political parties are private organizations, they are entrusted with such a crucial public and governmental function that denying Blacks the opportunity to participate in their selection procedure effectively denies them their right to vote. Four years later came the restrictive covenant cases,[20] ending judicial support for privately drawn contracts barring Blacks

[18] 323 U.S. 214 (1944).

[19] *Smith v. Allwright* 321 U.S. 649 (1944)

[20] *Shelly v. Kraemer, McGhee v. Sipes* 334 U.S. 1 (1948); *Hurd v. Hodge, Urciolo v. Hodge* 334 U.S. 24 (1948). The former two cases dealt with restrictive covenants at the state level; the latter two, restrictive covenants in the District of Columbia.

from owning or occupying private property and knocking down a legal impediment to integrated neighborhoods. And in 1950, the Court took the first steps in undermining the "separate but equal" precept for segregated educational institutions, suggesting that the intangible aspects of education (at least higher education) prevented separate from being equal.[21]

Although these decisions "removed the legal prop from some of the most important manifestations of racial discrimination in [America]" (Schwartz 1993, 261), they did not directly address the "separate but equal doctrine." The slow march toward that end was not to begin until the NAACP successfully argued *Brown v. Topeka Board of Education* in 1954.[22] There, a unanimous Court accepted the NAACP's sociological argument[23] and ruled that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal" (347 U.S. 483, 495).

In reaching this conclusion, Chief Justice Warren, for the Court, accepted the NAACP's argument whole cloth: namely, that state mandated separation according to race confers a badge of inferiority on the minority group as to their status in the broader community. Consequently, the minority group is deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. Now, Schwartz (1993) points out that there is little practical difference between the adverse effects of segregation in educational systems and segregation elsewhere. This point

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[21] *Sweatt v. Painter* 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents* 339 U.S. 637 (1950)

[22] *Brown v. Topeka Board of Education* 347 U.S. 483 (1954). Indeed, "slow march" is something of an understatement. The Court itself was split over the constitutionality of segregation when *Brown* first appeared on its docket in 1951. And in the hope of attaining unanimity — and its expected ameliorative effect on widespread southern and white resistance — the vote was held over until 1954. The resulting unanimous opinion was purchased at the price of compromise among the justices and with the expectation of appreciable public resistance. In the face of these political considerations, the Court's opinion was intentionally quite narrow. The question of effectuating the policy articulated in *Brown*, for example, was held over for one year (see O'Brien 1995, 1317-20, 1328-29, 1340-42; Patterson 2001, chpt. 3). Even then the Court articulated a desegregation policy of "all deliberate speed" (*Brown v. Topeka Board of Education, II*, 349 U.S. 294 [1955]) that resulted in glacial-like progress for over a decade (see below).

[23] By the time *Brown* was briefed, the NAACP's argument that separate institutions based upon race necessarily confer a psychological badge of inferiority on members of the minority race was highly polished. The Association first used the "sociological argument" in an *amicus* brief in 1946. In 1950 it reappeared alongside straightforward inequality arguments in *Sweat* and *McLaurin*, and the Court appeared increasingly receptive as both opinions cited the effect of intangible aspects handicapping the minority litigant (see Tushnet 1987, chpt.7).

was lost neither on the civil rights community nor the federal judiciary, and in short order, *Brown* became the springboard from which the civil rights community launched attacks on state laws using racial classifications to segregate state owned or operated facilities of all kinds.

The post-*Brown* dance of litigation to tear down state designed segregation became well choreographed. Typically it would begin with a civil rights litigant challenging some instance of segregation, and a federal district court would then rule that *Brown* invalidated it. If the lower court decision was appealed to the Supreme Court, that body would summarily affirm the decision. Occasionally, a lower court might uphold an instance of segregation. And in these cases, upon appeal, the Supreme Court would remand the decision to the lower court for further proceedings not inconsistent with *Brown* (see Kelly, Harbison, and Belz 1991, 591). The movement of cases through this adjudicative two-step witnessed the abolition of segregated municipal beaches and golf courses, city bus lines, and courthouses and courtrooms.[24] Indeed, armed with the *Brown* precedent, by the end of the 1960s, *state contrived* apartheid was all but eliminated.

Brown, however, did not speak to another pernicious aspect of American apartheid — private discrimination. *Brown* rested upon the Fourteenth Amendment's prohibition of *states* denying persons within their jurisdiction of their equal protection of the laws. Consequently, it could not be used to regulate the private dealings of citizens with one another. For that matter, there was no automatic constitutional provision to remove the private vestiges of Black Americans' second class citizenship,[25] and they were regularly denied such amenities as seats in restaurants and hotel accommodations simply because of their color. The federal judiciary could only go so far with *Brown*.

In 1964 the U.S. Congress passed the *Civil Rights Act*, section II of which guaranteed all races full and equal access to any accommodation or institution that affected any aspect of interstate commerce. It did not take long for Congress's use of its commerce power in this way

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[24] *Holmes v. City of Atlanta* 350 U.S. 879 (1955), *Gayle v. Browder* 352 U.S. 903 (1956), *Evers v. Dwyer* 358 U.S. 202 (1958), *Johnson v. Virginia* 373 U.S. 61 (1963)

[25] In the *Civil Rights Cases* (109 U.S. 3 [1883]), the Court declared that the Fourteenth Amendment empowered Congress only to bar racial discrimination that resulted from state action. That precedent still stands.

to be challenged. Nor did it take long for the Supreme Court to find for Congress. Within a year of the law's enactment, it decided *Heart of Atlanta v. U.S.* and *Katzenbach v. McClung*,[26] declaring "that Congress could pass the law under its commerce power and a law under that power was not subject to the 'state action' limitation" (Schwartz 1993, 278). By the decade's close, segregated public accommodations at all levels were nearly routed out.

Towards the end of the 1960s, with the successes built upon *Brown* and the *1964 Civil Rights Act*, the civil rights community shifted its focus. Its historical objective — the elimination of racial classification and discrimination in public institutions — had largely been met. Consequently, "black leaders began to redefine equal rights with reference to the distribution of social and economic benefits in society" (Kelly, Harbison, and Belz 1991, 603). They called for positive state action to undo generations of discriminatory practices, and they asserted the success of these programs must be gauged with a quantifiable metric of Black participation in social, economic, and political endeavors (see Kelly, Harbison, and Belz 1991, 603-4). In short, Black leaders changed their objectives from the destruction of racist public institutions to the creation of affirmative action policies. And here again the federal judiciary was instrumental in the process.

The earliest remedial governmental plans for integration occurred in the field of education, in no small part because of the adamant resistance the southern states threw up against *Brown*. To avoid "mixing of the races," the South closed public school systems, passed voluntary attendance laws, and allowed "freedom of choice" plans, which would permit pupils to select their own schools. As a result, even 10 years after the *Brown* ruling, 98 percent of Black students remained in all Black schools (Orfield and Lee 2004). With virtually no progress toward integration, then, the civil rights movement pressed the federal government to institute plans that would effect the full implications of *Brown*.

This pressure resulted in the Department of Health, Education, and Welfare (HEW) instituting "desegregation guidelines" in 1966 that listed various means to achieve integrated schools (e.g., school closings, voluntary transfers of students to schools where they would be a

[26]379 U.S 241 (1964); 379 U.S 294 (1964)

racial minority, and busing — see Kelly, Harbison, and Belz 1991, 605). Moreover, as the HEW was taking its stand, the Supreme Court began to hand down rulings that ultimately "decided that desegregation must be thorough, comprehensive, immediate, and, that . . . courts could transfer students to other neighborhoods [i.e., busing] to end school segregation" (Orfield and Lee 2004, 18).[27]

A similar story unfolds concerning affirmative action policies in the economic sphere. It begins with rules articulated by federal bureaucratic agencies (here the Equal Employment Opportunity Commission and the Department of Labor's Office of Contract Compliance) followed by Supreme Court decisions supporting those rules. The 1964 *Civil Rights Act* created the Equal Employment Opportunity Commission. It required firms doing business with the federal government to eliminate past discriminatory practices, and it investigates individual complaints. The Labor Department's Office of Contract Compliance, meanwhile, adopted rules that required private employers contracting with the federal government to take remedial action — namely the hiring of minorities at statistical levels commensurate to their proportion in the population.

When the employment rules were challenged, the Court came down in their favor. In fact, it extended them. Notable here was the Court's 1971 decision, *Griggs v. Duke Power Company*,[28] in which Chief Justice Burger, for a unanimous Court, articulated the "disparate impact theory." This notion held that even race neutral employment conditions were unconstitutional if they served to impose an unequal barrier to the employment of minorities. As Burger put it, "good intent or the absence of discriminatory intent does not redeem employment procedures . . . that operate as 'built-in headwinds' for minority groups" (401 U.S. 424, 432). In the 1964 *Civil Rights Act*, Congress had defined racial discrimination as the intentional unequal treatment of individuals on the basis of race. In *Griggs*, the Court went a step further: Racial discrimination could take place, and consequently must be corrected, even in the absence of

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[27] *Green v. New Kent County* (391 U.S. 430 [1968]), *Alexander v. Holmes* (396 U.S. 19 [1969]), and *Swann v. Charlotte-Mecklenburg School System* (402 U.S. 1 [1971])

[28] 401 U.S. 424 (1971)

intent (see Kelly, Harbison, and Belz 1991, 609).

The 1970s marked the high-water point for the cause of Black Americans' political and legal equality before the Supreme Court. Early in that decade the Court first endorsed,[29] and then all but required wherever necessary,[30] the hugely unpopular device of busing (see Epstein et al. 1994. Table 8.11). In 1979 it found that intentional discrimination, as opposed to state ordered racial separation, was cause enough to require that whole school systems undergo ameliorative integration plans.[31] That same year it also found discriminatory intent in the allocation of teachers.[32] As noted above, the 1971 *Griggs* [33] decision saw the Court open wide the door to minority challenges of race-neutral employment criteria. In its 1978 *Bakke* [34] decision, the Court formally approved the use of racial classifications to pursue result-oriented affirmative action in higher education. It did so by recognizing that racial classifications may be constitutionally valid if used for a benign purpose. "[T]he state has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origins" (438 U.S. 265, 320). In 1979 it extended this finding of constitutionality to private programs designed to remedy past racial discrimination in the workplace.[35] And finally in 1980, the Court sanctioned the use of a racial-quota system in the

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[29] *Swann v. Charlotte-Mecklenburg School System* (402 U.S. 1 [1971])

[30] *Keyes v. School District No. 1, Denver, Colorado* (413 U.S. 189 [1973]). Here the Court required the Denver school board to prove that it had not intentionally kept Black children out of White schools. Since it could not, the city was constitutionally obligated to desegregate the entire system. In effect, the Court ordered Denver to institute city-wide busing, the first time such an order was imposed on a city outside the South.

[31] *Columbus Board of Education v. Penick* (443 U.S. 449 [1979]). "While the Columbus School System's dual black-white character was not mandated by state law as of 1954, the record certainly shows intentional segregation by the Columbus Board." And, therefore, "The Board's continuing 'affirmative duty to disestablish the dual system' is . . . beyond question" (443 U.S. 449, 456, 460).

[32] *Board of Education of City School v. Harris* (444 U.S. 130 [1979])

[33] 401 U.S. 424

[34] *University of California Regents v. Bakke* (438 U.S. 265 [1978])

[35] *United Steelworkers v. Weber* (443 U.S. 193 [1979])

assignment of federal construction contracts.[36]

According to Kelly, Harbison, and Belz, "The affirmative action decisions of the late 1970s can hardly be regarded as the work of a conservative Court" (1991, 668). Yet, throughout this same decade, there were developments below the surface of the published decisions themselves that were cause for alarm among the civil rights community.[37] As the 1970s gave way to the 1980s, those developments grew teeth.

To begin, there was a wholesale and ideologically monotonic change in the Court's composition. Richard Nixon's ascent to the Presidency and concomitant appointment of Warren Burger to Chief Justice in 1969 signaled the beginning of an unbroken string of ten Republican appointments to the Supreme Court. By the time President Clinton named Ruth Bader Ginsburg an Associate Justice in 1993, every Democrat appointee to the High Bench who had ushered in the civil rights revolution in the 1950s and 1960s had been replaced. Consequently, the conservatism that appeared absent in the decisions of the late 1970s was in fact building like a thunder head throughout the decade. It would pour by the end of the next decade.

Voting data, as depicted in Figure 1, show this development quite nicely. Accordingly, in the 1950s, the Court decided 80 percent of its desegregation and discrimination cases in a liberal direction. In the 1960s, its support for the liberal claimant in these and affirmative action cases increased to 91 percent. Then change was ushered in beginning with a succession of Republican nominations and confirmations. Already by the mid-1970s, four Republican justices had mounted the Bench,[38] and the Court's tendency to arrive at a liberal decision had dropped to

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[36]*Fullilove v. Klutznick* (448 U.S. 448 [1980]). Congress established a 10 percent target for the participation of minority business enterprises.

[37]We are by no means claiming that the 1970s presented the civil rights community and Black interests with unsullied success in Court. Indeed, two cases decided in the first half of that decade severely checked the integrationist movement. In *San Antonio Independent School District v. Rodriquez* (411 U.S. 1 [1973]), the Court refused to find a constitutional obligation for equality in school financing plans. One year later, in *Milliken v. Bradley* (418 U.S. 717 [1974]), the Court refused to order a metropolitan area (Detroit) to merge its urban and suburban school systems to enable interdistrict busing in order to achieve a better racial balance in the districts' schools. *Milliken* was the first key Supreme Court decision to back away from *Brown* (see Patterson 2001, 177-81).

[38]Warren Burger in 1969, Harry Blackmun (1970), Lewis Powell and William Rehnquist (1971), and John Paul Stevens (1975).

67 percent; by the end of the decade, it had fallen to just over 50 percent. Perhaps more ominous still was the increasing incidence of conservative votes being cast in these cases. In the 1950s and 1960s, the causes of desegregation, affirmative action, and anti-discrimination won easily in the Court. On average, just over one conservative vote per decision was recorded. By the 1980s, the frequency of conservative votes per decision had tripled; the interests of Black Americans in the Court were on thin ice (see Figure 1).

Second, the nation entered an extended period of economic dislocation at the conclusion of the 1970s. Between 1977 and 1981, the "misery index," a measure of stagnating economic performance,[39] averaged 16.6 — an unprecedented level. From 1960 to 1976, it averaged only 11; from 1982 to the present, 11.1 — both periods' measure significantly less than the level at the end of the 1970s.[40] As a consequence of the economy's dismal performance, public support for remedial policies aimed at correcting past racial discriminations dropped (see Steeh and Krysan 1996, Figure 3). After all, it is one thing for racial majorities to support affirmative action programs when jobs are plentiful; it is another thing altogether to support them when jobs are scarce and the perception takes root that a job opportunity is jeopardized by a program benefitting a racial minority. This sentiment was perceived and echoed by the Reagan administration as it pursued an anti-quota Title VII enforcement policy. And after a lag into the late-1980s, during which three Reagan appointees joined the Bench and William Rehnquist was elevated to Chief Justice, the Court was ready to follow suit.[41]

Thus, by the late 1980s, there was at best tepid public support among whites and appreciably lower support among African Americans (see Steeh and Krysan 1996) for affirmative action polices, an executive branch with little interest in enforcing or expanding the economic or political rights of Black Americans, and a Supreme Court at arguably its most conservative incarnation since the Taft era of the 1920s. In short, all the pieces for a perfect

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[39]The "misery index" is the annual sum of the nation's rates of unemployment and inflation.

[40]$t = -2.25$ (1960 - 1976); $t = -4.49$ (1982 - present)

[41]Sandra Day O'Connor (1981), Antonin Scalia (1986), Anthony Kennedy (1988); Rehnquist to Chief Justice (1986).

storm were in place. In 1989 the storm broke.

In that year alone, the Rehnquist Court handed down three decisions that left the defenders of Black civil rights bloodied and alarmed. In *Wards Cove Packing Company v. Atonio,*[42] it struck down the disparate impact theory of *Griggs,* thereby both making it much more difficult for minority litigants to prove employment discrimination and undercutting the constitutional foundation for race-conscious employment programs. In *City of Richmond v. J.A. Croson,*[43] the Court stated that it would employ its demanding "strict scrutiny" standard when gauging the constitutionality of state and local affirmative action programs. Under this standard, only the most narrowly tailored affirmative action programs would survive constitutional challenge. Finally, in *Martin v. Wilkes*[44] the Court ruled that white employees who had not been parties to the original affirmative action program could challenge that program years after it had gone into effect. Thus, in *Wards Cove* and *Martin* the Court made it easier for majority white employees to attack affirmative action programs, while in *Wards Cove* and *Croson* it made it more difficult for private employers, in the former, and state and localities, in the latter, to defend them. Only federal affirmative action programs appeared to be secure. In 1995 the Rehnquist Court set them at risk as well.

Adarand v. Pena[45] concerned the validity of the use of minority preferences in federal construction programs. A five justice majority ruled that the use of all race-based preferences must be examined under strict scrutiny standards. "[W]e hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny" (515 U.S. 500, 225).

By 1995, then, the Rehnquist Court held affirmative action programs *at all levels* to exquisitely demanding standards. To be sure, *Adarand,* did not sound the death knell for

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[42]490 U.S. 642 (1989)

[43]488 U.S. 469 (1989)

[44]490 U.S. 755 (1989)

[45]515 U.S. 200 (1995)

affirmative action policy. Indeed, Justice O'Connor, the opinion's author, took pains to assert that the Court's application of the strict scrutiny standard would not automatically prove fatal to all affirmative action policies. *Adarand*, though, was the final bolt in a mechanism that made affirmative action programs far easier to attack and far more difficult to sustain. Therefore, *Adarand* imposed a substantial barrier to the creation and expansion of affirmative action programs at all levels.

This final point is well illustrated by the disparate fates of the two University of Michigan admissions programs, the law school program, which was found constitutional,[46] and the undergraduate program, which was not.[47] The Court found that the law school program passed constitutional muster because race was considered as only one of several criteria effecting a diverse student body, an end in which the state institution had a compelling interest. This was not the case for the undergraduate program. It operated in such a way that race was determinative in the admissions process. Since race worked to result in nearly automatic admission rather than simply yield the assertedly compelling interest of educational diversity, the program was not narrowly tailored and therefore was voided under the Court's strict scrutiny standard of review.

In defense of its undergraduate program, the University contended that the crush of applications for its undergraduate class made the narrow, individualized law school process untenable, and only through quantification such as that at issue could racial diversity be guaranteed. The Court, however, would have none of it. "Respondents contend that 'the volume of applications and the presentation of applicant information make it impractical for [LSA] to use the . . . admissions system' upheld by the Court today in *Grutter*. . . . But the fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system. . . . Nothing in Justice Powell's opinion in *Bakke* signaled that a university may employ whatever means it desires to achieve the stated goal of diversity without regard to the limits imposed by

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[46] *Grutter v. Bollinger* 539 U.S. 306 (2003)

[47] *Gratz v. Bollinger* 539 U.S. 244 (2003)

our strict scrutiny analysis" (539 U.S. 244, 269-70). In short, an interest in efficiency will not be permitted to expand the boundaries of an acceptable affirmative action policy.

But it was not only the controversial policy of affirmative action that was undercut by the present Court. The High Bench also checked the use of remedial desegregation plans for the nation's elementary and secondary school systems. In *Board of Education v. Dowell,*[48] a five justice majority ruled that Court ordered busing could be discontinued even in the face of resegregation, if that resegregation was the result of private choices in housing patterns. One year later a unanimous Court ruled that judicially required busing may be discontinued once school districts demonstrated compliance with a desegregation order.[49] Here again, private residential choices had produced substantial demographic shifts that resulted in a resegregated school system. The Court ruled that where such resegregation occurs, it is not the judiciary's place to attempt to counteract these effects. Both decisions threatened to sap the vitality of judicially ordered and supervised desegregation plans.

Finally, in *Bush v. Gore*, the Republican Court further antagonized the political sensibilities and aspirations of Black Americans. In the 2000 presidential election, Blacks had voted for Al Gore at better than a 90% clip. Consequently, when the Court terminated the ballot recounts in Florida (despite substantial questions of voter intimidation) and effectively awarded the Presidency to George W. Bush, Blacks did not support the decision.

The Evolution of Black Opinion on the Court

As we suggested earlier, because the Supreme Court emerged as a pivotal defender of Black political and civil rights in its 1954 *Brown* ruling, it may be that Blacks, more than any other racial or ethnic group, hold the Court uniquely in high regard. As one branch in the American governmental system of checks-and-balances, and historically defined as the defender of minority rights, African Americans may have more positive feelings toward the Court than do other groups. At the same time, however, the Court's support for Black political and legal rights

[48]498 U.S. 237 [1991])

[49]*Freeman v. Pitts* (503 U.S. 467 [1992])

has not followed a constant path. In the 1950s and 1960s the Court was a strong defender of Black interests, but over the past quarter century, it has become a much less reliable advocate. Consequently, we would expect that individual Blacks would have remarkably different attitudes toward the Court, depending upon the era during which they came of political age.

The decades of the mid-twentieth century were halcyon days for the achievement of Black civil rights, and clearly the Supreme Court was instrumental in many of the triumphs. Hoekstra's research (2000) suggests that this era of litigation success should have built up a reservoir of goodwill toward the Court among Blacks, and our scholarship supports this case as well. Hirsch and Donohew (1968) use post-election survey data from 1964 collected by the University of Michigan's Survey Research Center to examine Black attitudes toward the High Bench. Among the survey respondents who had paid attention to the Court in recent years, 72 percent of Blacks had positive attitudes toward the Court, whereas 71 percent of Whites had negative attitudes. This basic relationship held even in the face of controls for education, income, partisanship, efficacy, and geographic area. Thus, at a time when the Court had been handing down rulings in favor of Black interests, Blacks had considerably higher levels of support for the Court than did Whites.

We investigate this further by examining racial differences in opinions toward the Court during the 1970s and 1980s. Data, in fact, from the 1970s reveal that Blacks hold the Supreme Court in higher esteem than do their White, Asian, and Latino counterparts. Ideally, we would have longitudinal survey data from large, representative samples of Black Americans (not to mention random samples of non-Black Americans for comparison purposes) dating from the advent of scientific polling. Unfortunately, those data simply do not exist. What we can do, however, is build a circumstantial case drawing upon a variety of public opinion surveys conducted over the last four decades.[50]

As shown in Table 1, when asked in 1972 "which part of government, the U.S. Congress,

[50]We caution the reader that the surveys we review use different questions to tap attitudes toward the Supreme Court, use varying sampling techniques, sometimes make generalizations based on small sample sizes, and may be susceptible to race of interviewer effects. These methodological issues, of course, make it difficult to draw hard and fast conclusions from the data.

the Supreme Court, the President, or political parties, do you often trust to do what's right," half of the Black respondents named the Supreme Court over any other political institution or organization. Meanwhile, only 23 percent of Whites and other minority groups held the Court in such high regard. Rather than the Court, the largest plurality of Whites and others (43 percent) named the Presidency as the most trustworthy institution in the American political system in 1972. This level of confidence, however, was to decay under the weight of the Watergate scandal, and by 1974, with Watergate in full bloom and Nixon's resignation dominating public attention, fewer Whites named the Presidency as the most trustworthy institution, conferring that label instead on the Supreme Court. Among Whites, the pattern of responses was repeated in 1976. While a smaller percentage of Blacks put the Court first over the other three parts of government in 1976 (46 percent), their faith in the Court in 1976 still was markedly greater than that among Whites at 39 percent. In comparison, Black and Whites' trust in the Congress and in political parties remained relatively constant over the four-year period.

INSERT TABLE 1 ABOUT HERE

In 1974, 1976, and 1980, the American National Election Study included a question that asked respondents to rate on a scale that indicated whether the Supreme Court was doing a poor job, a fair job, or a good job in dealing with the country's most important problem (a problem the respondent had identified earlier in the survey). Here, shown in Table 2, one can see slippage in Blacks' high approval rating and trust in the Supreme Court relative to Whites. As civil rights remained a pressing problem for a majority of Blacks during this period, decreasing percentages of Blacks said that the Supreme Court was doing a good job from 1974 to 1980. In 1974 over half (58 percent) of the Blacks surveyed said that the Court was doing a good job; by 1980, only 35 percent believed that the Court was doing a good job. Whites also gave the Supreme Court diminished job performance ratings during this period as well. In 1974, 48 percent of Whites and other minorities said that the Supreme Court was doing a good job, whereas by 1980, only 26 percent said the same. In the six-year period, both Blacks and Whites increasingly felt that the Supreme Court was only doing a "fair job," with a significantly higher percentage of Whites also stating that the Court was doing a poor job in contrast to Blacks. Whereas the percentage of Blacks who stated the Court was doing a poor job from 1974 to 1980 increased by only four

percentage points, the percentage of Whites who gave the Court a poor job performance rating increased by ten percentage points. Thus, by the end of the 1970s, one can see that Americans, both Blacks and Whites, were increasingly critical of the Supreme Court, but that Blacks still expressed significantly more favorable attitudes about the judicial branch than did Whites.

INSERT TABLE 2 ABOUT HERE

For Blacks the 1970s marked a period of some notable litigation success in Court, but also some telling failures. Consequently, the Court could no longer be counted on as the stalwart guarantor of their legal and political interests. As a result, the high levels of support for the Court Blacks exhibited in the 1960s decayed somewhat by the end of the 1970s. Other scholars have confirmed this finding as well. Conducting a multivariate analysis, Handberg and Maddox (1982) found that Blacks and minorities were more trusting in the Court than Whites in 1972. But by 1976, this finding had reversed with Whites viewing the Court as more trustworthy than did Blacks (Handberg and Maddox 1982). Handberg and Maddox speculated that these data illustrate "Black America's increasing awareness that the [Burger] Court was no longer the active defender of minority rights it had been in the Warren era" (1982, 339).

Lee Sigelman (1979) also examined Black attitudes toward the Court during the 1970s by aggregating General Social Survey data collected between 1973 and 1977. He found few differences between Blacks and Whites in their level of confidence in the Supreme Court, but that "Whatever racial difference existed . . . was in the direction of greater confidence in the Court among whites than blacks" (Sigelman 1979, 116). Thus, while our conclusions may differ a bit depending on which data are examined and whether controls for other variables are included in the analysis, overall the evidence suggests that Blacks became less supportive of the Court as it retrenched during the 1970s, *but* that they still placed more faith in the Court than other institutions in the U.S. political system.

In addition, Gibson and Caldeira (1992) performed a rough test to determine whether the different eras of litigation success affect levels of commitment Blacks have for the Court as an institution. Using a Black oversample from the 1987 General Social Survey, Gibson and Caldeira (1992) divide their respondents into three age cohorts. They found that those Blacks who came of political age during the "glory days" of the Warren Court era had the greatest level

of diffuse support for the Court. On the other hand, Blacks who were socialized either prior to the Warren Court era or after the Warren Court revolution had significantly lower levels of diffuse support.

Turning to the 1980s through 2000, we report racial differences in how respondents rate the Supreme Court on a feeling thermometer scale from zero, where zero is "very cold," to 100, which is "very warm." Scores in the middle of this hundred-point scale indicate neutrality. As Table 3 shows, in 1980, Blacks still reported more positive feelings toward the Court than did Whites as a group by a difference of 12 points on the 100 point scale. Over time, White attitudes toward the Court improved, while Blacks' average ratings remained roughly the same. By 2000, both groups reported identical average rankings of 65 for the Supreme Court on the hundred-point scale.

To gain some perspective on Black attitudes toward the Court and Congress, we computed racial differences in feeling thermometer ratings for both institutions using data from the 1996 National Election Study (NES) and the 1996 National Black Election Study (NBES).[51] Table 4 reveals an interesting set of results. Given the Court's retrenchment when it came to Black interests, we might expect that Blacks would be less positive toward the High Bench relative to their evaluation of Congress. But, we see that Black opinion (measured by either the NBES or the NES) is significantly warmer toward the Court than Congress in 1996. Thus, despite the Court's cool treatment of Blacks during the 1990s, Black Americans still maintain a special relationship with the Court.

INSERT TABLE 4 ABOUT HERE

Finally, we turn to an analysis of the 2003 Blacks and the U.S. Supreme Court Survey (BSCS). This targeted random-digit-dial telephone survey was conducted during the summer of 2003 immediately before the University of Michigan affirmative action cases were ruled on by the High Court.[52] Over 400 Black Americans were interviewed from a targeted-population of

[51] The NBES is a full-coverage, disproportionate probability random-digit-dial telephone survey specifically designed to examine Black political attitudes and behavior (Tate, 1998). Consequently, it contains a substantially greater number of Black respondents than does the NES.

[52] The data are from a 2003 survey funded by the National Science Foundation as part of a study entitled "Black Public Opinion, the Supreme Court, and the University of Michigan Affirmative Action Decision," 2003-2004 (#SES-0331509, Law and Social Sciences Division) Purdue University. Rosalee A. Clawson is the principal

telephone exchanges having a 15 percent or greater Black density population. To facilitate racial group comparisons, approximately 200 interviews with Whites, Asians, and Latinos who fell into the targeted-population of telephone exchanges were also completed.

In Table 5, we see that Blacks were significantly less warm toward the Court (and Congress) than non-Blacks in 2003. Moreover, with an average score of 59, this is the least favorable feeling thermometer rating Blacks have given the Supreme Court across the time period for which we have comparable data (refer back to Table 3). This dip in Black support for the Court may reflect Black anger over the *Bush v. Gore* decision (but see Gibson, Caldeira, and Spence 2003). But even with this decline in favorability, Blacks still maintain fairly widespread loyalty to the Court and are significantly more supportive of the Court than Congress.

INSERT TABLE 5 ABOUT HERE

Overall, it seems to be the case that Black Americans' levels of support for the Court are affected by the Court's outputs, but there is a substantial amount of residual loyalty (see Hoekstra 2000). As the Court changed from a staunch defender of Black political and legal rights to a lukewarm guardian at best, we observe that Black public trust in the Court did decline somewhat. But at the same time, it is important to keep in mind the historical relationship Blacks have with the Court due to the *Brown* decision. The Supreme Court clearly has a strong foundation of support among Black Americans, a foundation that is not easily shaken even in the face of a torrent of decisions contrary to their interests.

Conclusion

In our pluralist democracy it is essential that some political institution exists that can convince the multiple, competing interests to accept or at least tolerate policies that they otherwise oppose. Arguably, the most effective institution in this regard is the Supreme Court. Its capacity to legitimize controversial policies is well documented (see, for example, Franklin and Kosaki 1989; Mondak 1990, 1991, 1992, 1994; Hoekstra 1995; Hoekstra and Segal 1996; Clawson, Kegler, and Waltenburg 2001, 2003). The Court is invested with substantial levels of

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investigator, Katherine Tate and Eric Waltenburg, co-principal investigators.

institutional credibility, abstract mass approval, and diffuse support (see Mondak 1990; Mondak and Smithey 1997; Caldeira and Gibson 1992; Gibson and Caldeira 1992). And these are not unimportant attributes. They contribute mightily to the Court's capacity to legitimize (Mondak 1992; Clawson, Kegler, and Waltenburg 2003). At the same time, however, they are not necessarily static (Caldeira and Gibson 1992; Mondak and Smithey 1997; Hoekstra 2000). Here, then, is what makes the ebb and flow of both the Court's support for Black political and legal rights and Black support for the Court so important.

Clawson, Kegler, and Waltenburg (2003) have shown that an individual's level of diffuse support for the Court affects the degree to which the Court can bend that individual's attitude toward a controversial policy. More specifically, they have shown that, all things being equal, those individuals' with higher levels of diffuse support for the Court are more likely to accept a policy articulated by the Court, *even when that policy runs contrary to their interests*. But what happens to this effect when the Court behaves like it has on issues of concern to Black Americans for the past three decades — that is, when it consistently articulates policies contrary to a group's interests? Is it still able to legitimize policies for them? Several recent analyses suggest that the Court's legitimizing capacity does still extend to Black Americans (Clawson, Kegler, andWaltenburg 2003; Clawson and Waltenburg 2004). The conclusions of these works remain suggestive, however, because of the complexity of the relationships being examined. Future research should head in the direction of sorting out these causal pathways.

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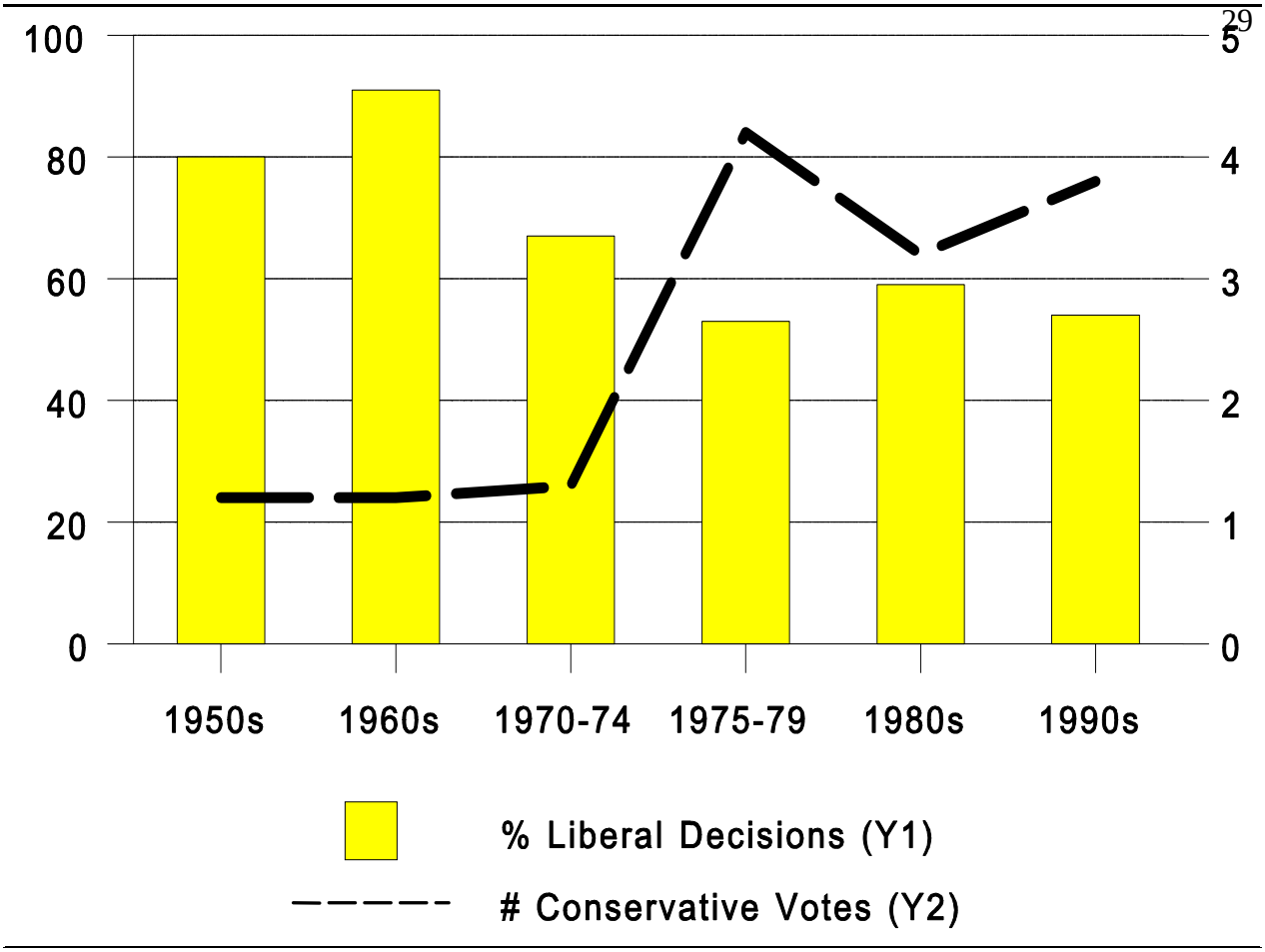
100
80
60
40
20
0
5
4
3
2
1
0
1950s
1960s
1970-74
1975-79
1980s
1990s
% Liberal Decisions (Y1)
# Conservative Votes (Y2)

Table 1. Political Institutions (Congress, Supreme Court, President, or Political Parties) Ranked First, Second, and Last in Trust By Race, 1972-1976.

	Blacks			Whites/Other		
	1972	1974	1976	1972	1974	1976
Trust Supreme Court 1st	50	58.5	46	23	48	39
Trust Supreme Court 2nd	22.5	20	21	24	23	27
Trust Supreme Court Last	9.5	6	8	18	8	12
Trust President 1st	26	14	22	43	22.5	31
Trust Congress 1st	22	24	28	33	27	28
Trust Political Parties 1st	2	4	4	1	2	2

Source: American National Election Studies, Cumulative Data File, 1944-2000 (Sapiro, Rosenstone et al. 2002).

Table 2. Performance Rating of the Supreme Court by Race, 1974-1980

	Blacks			Whites/Other		
	1974	1976	1980	1974	1976	1980
Poor job (0-2)	8	13.5	12	12	20	22
Fair job (3-5)	34	64	54	40	52	53
Good job (6-8)	58	23	35	48	28	26

Source: American National Election Studies, Cumulative Data File, 1944-2000 (Sapiro, Rosenstone et al. 2002).

Table 3. Average Feeling Thermometer Ratings of the Supreme Court by Race, 1980-2000

	Black	White/Other
1980	68 (N=133)	56 (N=1,141)
1984	66 (N=185)	62 (N=1,638)
1988	69 (N=194)	67 (N=1,478)
1996	67 (N=170)	61 (N=1,312)
2000	65 (N=152)	65 (N=1,332)

Source: American National Election Studies, Cumulative Data File, 1944-2000 (Sapiro, Rosenstone et al. 2002).

Note: For continuity purposes, in the cumulative data file, respondents who gave scores of 97 to 100 for the Supreme Court were recoded as 97, which accounts for the lower average scores reported in 1996.

Table 4. Average Feeling Thermometer Ratings of the Supreme Court and Congress in 1996 by Race

	1996		
	NBES	NES Blacks	NES Whites/Others
Supreme Court Feeling Thermometer	62 (N = 816)	68 (N = 163)	61 (N = 1312)
Congress Feeling Thermometer	55 (N = 825)	64 (N = 165)	55 (N = 1325)

Source: The 1996 National Election Study (Rosenstone, Kinder, and Miller, 1999) and the 1996 National Black Election Study (Tate 1998).

Table 5. Feeling Thermometer Ratings of the Supreme Court and Congress in 2003 by Race

	2003	
	Blacks	**Whites/Others**
Supreme Court Feeling Thermometer	**59 (N = 406)**	**67 (N = 197)**
Congress Feeling Thermometer	**56 (N = 402)**	**62 (N = 191)**

Source: The 2003 Blacks and the U.S. Supreme Court survey (Clawson, Tate, and Waltenburg).