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Missy, Annica Sophie Vigilia:

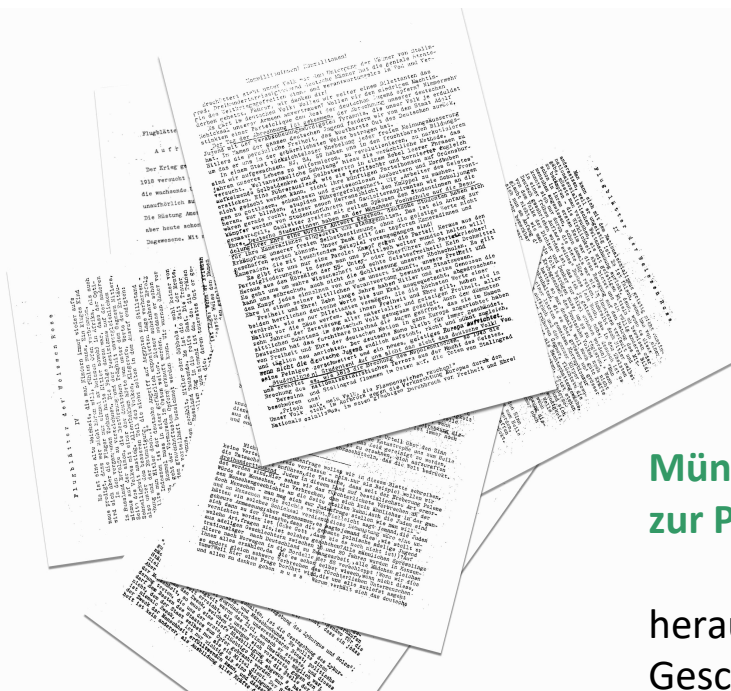
Politicians in Robes? – Understanding the Growing Assertiveness of the United States Supreme Court

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Annica Sophie Vigilia Missy

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1 Introduction

The United States Supreme Court (USSC) is currently facing intense scrutiny. A majority of Americans even agree that the institution is “increasingly facing a legitimacy crisis” (Thomson-DeVeaux and Roeder 2018).

This is reflected in discourse on the USSC, especially regarding the Presidents’ nominations of its nine Justices with life-long terms (Epstein et al. 1994: 14; Lewis 2022). Beginning with President Bill Clinton, this process has evolved into a strategic effort to select ideologically aligned individuals and secure their own legacy (Hasen 2019: 263). However, the outrage sparked by President Donald J. Trump’s three selections is noteworthy. First, Justice Neil Gorsuch was appointed in 2017 after a nearly year-long delay caused by then Senate Majority Leader Mitch McConnell. McConnell opposed President Obama’s nominee, arguing that a vacant seat should not be filled within the year of a presidential election. The unprecedented blockage by Republicans was strongly opposed by Democrats, as reflected in Gorsuch’s narrow confirmation with a Senate vote of 54-45 (McHugh and Riklenn 2022; Olson 2022; Thomson-DeVeaux and Roeder 2018). The second appointee, Justice Brett Kavanaugh, was even more controversial due to an accusation of sexual assault. This prompted public listeners to shout “shame, shame, shame” during his confirmation with a 50-48 vote in 2018 (Foran and Collinson 2018). Trump’s last pick, Justice Amy Coney Barrett, encountered additional opposition from Democrats, becoming the first Justice in 151 years to be confirmed without any votes from the other party. This confirmation, taking place just eight days before the 2020 presidential election, solidified the conservative 6-3 majority by flipping the seat occupied by liberal Justice Ruth Bader Ginsburg until her death (Fandos 2020; Zhou 2020). All three narrow appointments are notable, as previous Supreme Court nominees were usually overwhelmingly confirmed in bipartisan votes (Skelley 2022).

The rulings of the new majority have also been frequently criticized. With the Court’s median being more conservative than the average American, many liberals have expressed their concern over decisions from 2022/2023, which limited LGBTQ rights and abolished the right to abortions (Jessee et al. 2022: 1; Kruzell and Chung 2023). Particularly the latter ignited outrage, prompting President Joe Biden to declare that the Supreme Court’s “outrageous behavior” in overruling *Roe v. Wade* as the one thing undermining America (The White House 2022). U.S. foreign diplomats agreed, worrying that these conservative rulings are hurting the country’s global image and undermining President Biden’s agenda (Ward and Forgey 2022). Additionally, the decisions also contributed to the USSC’s lowest approval rating ever,

reinforcing the public's perception of the Court as a political body (Lin and Doherty 2023; Sinozich 2017: 192-193). While debates on the Court's historical nature exist, the prevailing perception in recent decades has been that of an apolitical USSC (Zeitzi 2022). As this view shifts, many have begun to label the Justices as "politicians in robes" (O'Scannlain 2015: 33; Weiden 2011: 340).

Amid political turmoil, this development is highly problematic. The Supreme Court, formerly one of the most trusted institutions and mostly perceived as an impartial entity to solve conflict, has now seemingly become part of the problem for many Americans (Jones 2023; Leonhardt 2023).

But even before these recent discussions, the Supreme Court's growing assertiveness had been criticized as an aspect of politicized behavior (Huq and Cuéllar 2023a). This is exhibited through a muscular form of judicial review, i.e. the authority to legally evaluate government actions (Mulhern 1988: 102). The assertive USSC is more confident and even willing to challenge the political branches of government, only deferring to them when it serves the Court's interests (Epstein and Posner 2018: 859). This observation also extends to foreign policy. Here, the current Justices have embraced aggressive legal interpretations to transform the Court into a "shadow ministry of foreign affairs" (Huq and Cuéllar 2023a). While judicial review in foreign policy is not new, the growing assertiveness has been criticized for undermining elected officials' powers and causing uncertainty about America's global moves (Huq and Cuéllar 2023b: 247; Marks 2015: 845).

Aspects of the Court's assertive behavior have long been studied (Barkow 2002; Bickel 1986; Henkin 1976; Schacter 2018; Whittington 2014). However, these explanations have remained dissatisfactory, offering only pieces of a much bigger puzzle (Huq and Cuéllar 2023b: 248-249). This thesis aims to address this gap by providing a broader explanation for the Supreme Court's assertiveness in foreign policy before Trump's impactful appointments. Employing a y-centered, theory-driven analysis, it inquires:

Why does the United States Supreme Court act increasingly assertive in foreign policy?

To answer this question, political culture is chosen as the explanatory variable behind the Court's assertiveness for the chosen timespan of 2009 to 2015. In detail, the thesis proceeds as follows. First, judicial supremacy, judicial activism and the political question doctrine are introduced as topics of the study on the Court's assertiveness, highlighting the lack of a comprehensive explanation. Second, the theoretical framework is presented. This entails an

introduction of judicial assertiveness as the dependent variable, followed by a justification of political culture as the independent variable. This leads to a hypothesis connecting both variables and combining five dimensions of foreign relations law and foreign policy analysis to explain the Court's assertiveness along two sub-hypotheses. Third, the research design, predominant methodology (descriptive statistical analysis) and data selection are explained. Fourth, the theoretical sub-hypotheses are evaluated according to this design and discussed in regards to the main hypothesis. Given some limitations, the effect of changing political culture on the Supreme Court's growing assertiveness in foreign policy from 2009 to 2015 is finally confirmed, validating the main hypothesis.

2 The United States Supreme Court's Assertiveness: A Contemporary Research Snapshot

One would be mistaken to assume that the discourse around the United States Supreme Court's politicization is a recent development. Academic discussions on the Court's changing behavior, specifically its assertiveness, have existed for decades. The focus points of these studies have mostly been judicial supremacy, judicial activism and the political question doctrine. The following section aims to summarize the current state of research along these topics. This exploration will demonstrate that while all three provide valuable contributions in conceptualizing judicial assertiveness, they remain only partial explanations of this phenomena.

2.1 Judicial Supremacy and Judicial Activism

Judicial supremacy hints at the USSC's growing assertiveness. It explores the judiciary's relative precedence compared to the legislative and executive branch. The consensus is that judicial power has been expanding since the 1950s under various Chief Justices (Barkow 2002: 301-302). The Court's decision to rule on *Bush v. Gore*, a case determining the presidency, intensified the topic's relevance (*Bush v. Gore*, 531 U.S. 98 (2000)). The deliberation of the case was widely criticized as an overstep of the constitutional powers of the unelected Justices (Barkow 2002: 275-299). Notably, such an increase of judicial power has also been pointed out in foreign affairs (Eksteen 2019).

Judicial activism provides a motive behind judicial supremacy and the Court's new confidence, focusing on the process behind decisions perceived as unconstitutional (Zeigler 1996: 1368). Broadly defined, judicial activism is the opposite of judicial restraint: unelected Justices assume responsibilities of the political branches to advance their preferred policy objectives. An activist Supreme Court is therefore political, with Justices no longer objectively interpreting laws, but deciding subjectively. Interestingly, studies on the evolution of judicial activism reveal that, measured by its tendency to strike down disliked laws, the current Court is actually less activist than before (Whittington 2014: 2220). This is especially noteworthy as one of its former Justices, Ruth Bader Ginsburg, declared the USSC to be "one of the most activist courts in history" in 2013 (Liptak 2013). But this apparent contradiction is explained as indicative of the growing polarization within the Court. Prominent scholars on judicial preferences, Lee Epstein and Andrew D. Martin, have highlighted that Justices' votes to strike down laws increasingly align with their political preferences instead of inclinations of restraint or activism (Epstein and Martin 2012). As the Court shifts towards a more conservative majority, the nature of the rejected statutes have changed to reflect conservative judicial activism (Whittington 2014:

2240-2252). In light of this, it isn't a surprise that a liberal Justices like Ginsburg would perceive the USSC as more activist, employing the concept to critique conservative ideologies (Kmiec 2004: 1458-1477; Martin and Quinn n.d.).

2.2 The Political Question Doctrine

The political question doctrine provides context to the problematic nature of the USSC's growing assertiveness. It originates from former Chief Justice John Marshall's opinion in *Marbury v. Madison* (*Marbury v. Madison*, 5 U.S. 137 (1803)). While this case established judicial review, allowing the Court to authoritatively decide questions of law for all three branches of government, Marshall simultaneously stressed a distinction between legal and political questions (Mulhern 1988: 102). Accordingly, the USSC must defer non-legal questions to the other branches, as "the province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have discretion" (*Marbury v. Madison*, 5 U.S. 137, 170).

Supreme Court Justices have discretion over which cases they rule on (Baum 1995: 107; Bradley and Posner 2023: 1035). The political question doctrine consequently allows them to preclude review to any such incidents deemed to involve a political question, no matter the specifics of the case (Barkow 2002: 247-248).

Although the Justices' exact definition of a political question long remained vague, certain topics like foreign relations were designated as exempt from judicial examination (*Oetjen v. Central Leather Company*, 246 U.S. 297, 302 (1918)). It wasn't until 1962, that the Court finally clarified by naming six criteria in *Baker v. Carr* (*Baker v. Carr*, 369 U.S. 186, 217 (1962)). For instance, these justified exemptions in cases of lacking judicial resources or a necessary uniformity of official stances (*ibid.*). However, the Court's opinion also limited the doctrine's scope to the explicitly named criteria, refuting the previous notion that a case connected to foreign relations was universally exempt from judicial examination (*ibid.*: 211).

Despite this attempt to clarify, confusion about the doctrine's purpose and the identification of political questions persists among scholars and even judges to this day (Congressional Research Service n.d.). This is even reflected in *Baker v. Carr*'s catalogue, whose factors are split according to the two major purpose theories (Shemtob 2016: 1003-1007). The constitutional theory justifies the doctrine as a means to enforce the constitutionally intended separation of governmental powers. Critics argue that this textual interpretation suggests a complete exclusion of certain topics from judicial review, which has never been reflected in rulings (Scharpf 1966: 538-542). Additionally, some criticize the theory for creating a pseudo political

question doctrine, where standard constitutional interpretation would yield the same outcomes in judgements (Seidmann 2004: 445). In contrast, the prudential theory is largely based on Alexander Bickel's pragmatic arguments for judicial self-restraint. He contends that the judiciary lacks the competences and resources to provide a satisfactory resolution to every issue (Bickel 1986). Even so, critics of the doctrine remain. Louis Henkin argues that neither theory supports the existence of such a "deceptive packaging of several established doctrines that has misled lawyers and courts to find it in things that were never put there" (Henkin 1976: 622).

Still, many scholars agree that the USSC's application of the doctrine has significantly transformed. Since *Baker v. Carr* in 1962, the Court has applied the doctrine sparingly, dismissing only three cases as political questions (Bradley and Posner 2023: 1034). Based on its declining usage of the doctrine, some scholars argue that the Justices are ignoring or opposing this limit of judicial review (ibid.: 1040). Often-cited evidence is the Court's opinion in the foreign policy case *Zivotofsky v. Clinton* (*Zivotofsky v. Clinton*, 566 U.S. 189 (2012)). Its author, current Chief Justice John Roberts, only relied on the two textual factors from *Baker*'s catalogue to oppose the doctrine's applicability (Shemtob 2016: 1002). The development has even prompted some researchers to view the doctrine as a source of judicial power, with the Court in charge of the allocation of matters (Grove 2015). This is especially problematic in light of Chief Justice Marshall's original interpretation of the doctrine as a limit to the Justices' power vis-à-vis the other branches of government (*Marbury v. Madison*, 5 U.S. 137, 170).

In summary, the examination of judicial supremacy, judicial activism and the political question doctrine reveals different aspects of evolving judicial behavior, specifically the assertiveness of the Supreme Court. Growing judicial supremacy proves an increase of the Court's assertiveness. Judicial activism provides the Justices' motives behind their new confident behavior. Finally, the political question doctrine explains why this is problematic based on historical precedent. While valuable contributions have been made in conceptualizing the USSC's assertiveness, this thesis argues that all three studies only capture the named dimensions of this development, neglecting explanatory factors such as the Court's environment. This thesis consequently aims to address this gap by constructing a broader explanation for the assertiveness of the Court.

3 Theoretical Effect of Political Culture on Judicial Assertiveness

To better understand the growing assertiveness of the United States Supreme Court, a comprehensive theory of this phenomenon is needed. As existing research only provides partial explanations, the concept of a changing political culture is chosen as a broader dependent variable of this y-centered research design. In what follows, the dependent variable of assertiveness and the independent variable of political culture are defined and linked to the current research topics. Furthermore, the theory connecting both variables is presented. This exploration develops the main hypothesis of this thesis, suggesting that the growing assertiveness of the USSC in foreign policy decisions can be attributed to a shift of American political culture. Lastly, a more detailed theoretical framework to support this broad claim is introduced. This includes a total of five explanatory dimensions, contrived from both foreign relations law and foreign policy analysis, which are grouped according to two sub-hypotheses. These connect the evolving political culture and the Court's assertiveness in more detail, strengthening the main hypothesis.

3.1 The Dependent Variable: Assertiveness

This thesis aims to examine the growing assertiveness of the United States Supreme Court as a highly debated topic of current public discourse in the United States. While assertiveness is intuitively known as a display of self-confidence in common speech, a more precise is needed for its examination (Merriam-Webster.com 2023).

According to prior research, assertive Justices are those “willing and able to check the power of those in elected offices” (Vondoepp 2006: 390). An assertive Supreme Court therefore employs a more self-confident judicial review, challenging the political branches in their responsibilities (Epstein and Posner 2018: 859; Vallinder 1995: 13).

Given the thesis's scope, examining the assertive behavior of the Supreme Court across several policy areas might lead to multiple superficial analyses due to potential variations in the Court's behavior. This is supported by the two prominent theories of judicial decision making. According to the strategic understanding, the anticipated reactions of other institutional actors might incentivize Justices to tailor their assertiveness according to policy areas, as they depend on Congress and the President to enforce their decisions (Vondoepp 2006: 389-391). In contrast, Justices decide solely based on their ideology according to the attitudinal understanding (Segal and Spaeth 2002: 86-88). Still, this model supports a limitation even more, as the Justices' stances are topic-specific (Baum 1995: 163). To avoid such ambiguity, this thesis thus only concentrates on the single policy area of foreign policy. Specifically, the focus lies on the United

States Supreme Court's increasing assertiveness in cases pertaining to this topic, as recorded by other scholars (Huq and Cuéllar 2023a).

Foreign policy are facets of state operation that impact, by design or unintentionally, the geopolitical environment of the United States (Huq and Cuéllar 2023b: 245). This specific topic is chosen as it entails a variation of issues, linked by the shared characteristic of international impact. An analysis of foreign policy assertiveness is therefore an efficient way to combine a universal explanation with the limitations required by the thesis's scope. Additionally, the topic seems meaningful due to its mentioned ties to the political question doctrine. The clear contrast between the Court's assertive application of this doctrine in foreign policy case *Zivotofsky v. Clinton* versus its intended restriction on judicial review, hint at a potentially fruitful examination of the much-discussed growing assertiveness of the Court.

In accordance to existing definitions of assertiveness and the chosen limitations, the dependent variable of the USSC's assertiveness in foreign policy is consequently defined as 1) an increase in Supreme Court cases related to foreign affairs and 2) instances where Justices disregard the political question doctrine's precedent as a limitation of their own power.

3.2 The Independent Variable: Political Culture

Political culture is chosen as the independent variable to provide a comprehensive explanation of assertiveness. To convey this, a definition of political culture needs to be articulated, before justifying its selection based on ties to the three current study topics of the USSC's assertiveness.

Gabriel A. Almond first defined political culture in the 1950s as a "particular pattern of orientations to political action" (Almond 1956: 36). Later, Almond and Sidney Verba refined this concept to focus on the orientations of individuals (Almond and Verba 1963). Verba went on to further update the definition as a subset of culture, consisting of beliefs, symbols and values that directly impact politics. These encompass individual perspectives on the role of political institutions (e.g. distribution of power) or citizens' rights/responsibilities within a system and are later aggregated into shared values (Verba 1967: 513-542). Lucian W. Pye also defined this behavioral form of analysis, viewing political culture as a comparative classification, standing out for its combined focus on the individual and aggregated level. Interpreting the specific orientations of both as "coherent patterns which fit together and are mutually reinforcing" (Pye 1967: 7), he believed that a political system is characterized by this organized subjective realm of politics which shapes the system. He also differentiated between elite and mass political culture, asserting that the concept bilaterally arises from the political

system's collective history and individual's subjective experiences. Those with governmental responsibilities will therefore always develop different political attitudes than the observing majority (ibid.: 4-16).

Undoubtedly, there have been valuable additions to these first definitions of the 1950s/60s. During the concept's renaissance in the 1980s/90s, its major approaches were described as of comparative and sociological nature. Their difference stems from the fact that the latter examines the relationship of variables within a single political culture, not comparing the political culture of different countries (Welch 1993: 1-10). Additionally, the concept's potential effects were introduced to explain phenomena like different emergences of mass-based democracies (Inglehardt 1988: 1229). Regardless of its popularity, political culture faced complex conceptual challenges. Critics specifically pointed out the concept's difficulties in defining and testing hypotheses, claiming that political culture had remained a suggestive concept (Chilton 1988: 419-427).

Political Culture is consequently not an undisputed concept. However, no contemporary work has surpassed the original definitions' relevancy. Even critics acknowledge their status as classics of political culture research (Chilton 1988: 420; Welch 1993: 4). Given the absence of a commonly cited, contemporary "classic", this thesis employs the original definitions of political culture from the 1950s/60s.

Political culture is chosen as the thesis's comprehensive independent variable due to its ties to the three current topics on the Supreme Court's assertiveness. The political question doctrine limits the Supreme Court's power of judicial review, expressing the constitutional American political culture that values checks and balances among institutions. The Constitution follows this value with written mechanisms designed to "check" the other governmental branches, such as presidential veto power Congress's legislation (U.S. Const. art. I, §7, cl. 2). Used in moderation, judicial supremacy also represents this political culture as a strong judiciary is needed to effectively check the political branches (U.S. Const. art. III). Judicial activism stands in contrast to these values. By applying legal principles to advance their own preferred objectives, Justices might only subjectively check the other branches. Viewed as an overstep of their powers, activism is therefore solely used negatively to criticize the judicial branch (Kmiec 2004: 1459-1462).

Political culture's relevance stems from increased identity-based divides within parties and polarization between Democrats and Republicans. These developments are shaped by shifting

attitudes on partisanship and party loyalty, putting the spotlight back on political culture (Lee 2021).

To summarize, political culture is a subset of culture which impacts politics through attitudes, beliefs and values. The link of all three current topics of study on the USSC's growing assertiveness with the value of checks and balances connect them to political culture. As an underlying variable, changing political culture might therefore influence judicial assertiveness. Due to its proven broad explanatory value, political culture is consequently chosen as the independent variable of this thesis.

3.3 Effect of Changing Political Culture and the Growing Assertiveness of the United States Supreme Court

Having defined and justified the dependent and independent variables, it is essential to establish an explanatory theory between both. In this subchapter, the corresponding main hypothesis of this paper is introduced. Furthermore, the detailed theoretical framework is explained with two sub-hypotheses that connect the independent variable of political culture with the dependent variable of judicial assertiveness, reinforcing the main hypothesis.

3.3.1 Hypothesis

First, the main hypothesis of this paper needs to be articulated. As established, the three primary subjects of contemporary research on the USSC's assertiveness can all be connected to political culture. But how are both variables connected? This thesis seeks to answer this question by arguing that the Supreme Court's growing assertiveness in foreign policy can be explained with a change in U.S. political culture. Aiming to provide more universal research on judicial assertiveness, the hypothesis of this thesis therefore states:

The United States Supreme Court's growing assertiveness in foreign policy can be attributed to a shift of political culture in the United States.

Before presenting a detailed framework, this hypothesis's temporal limitation needs to be acknowledged. This thesis only explores the link between political culture and the USSC's assertiveness between 2009 to 2015. This period is marked by a relatively stable environment, with a consistent panel of nine Justices until Justice Antonin Scalia's death in early 2016 (Everett 2016). The Court's ideological center also remained steady until Justice Anthony M. Kennedy's retirement in 2018 (Parlapiano and Patel 2018). Additionally, the whole duration falls within Barack Obama's presidency (Rodrigues 2017). Potential impacts of changing Presidents are thus not studied, although they might influence the Court's assertiveness. While

a focus on the current Court might be interesting, this thesis is therefore more concerned with the time leading up to the final conservative “takeover” in 2020.

With this in mind, a detailed theoretical framework is introduced next.

3.3.2 Detailed Framework: Combining Foreign Relations Law and Foreign Policy Analysis Along Two Sub-Hypotheses

Second, a comprehensive framework is needed to examine the hypothesis. This subsection proposes one that integrates foreign relations law (FRL) and foreign policy analysis (FPA). Given the range of the hypothesis, two more focused sub-hypotheses are then introduced to strengthen the main-hypothesis.

The framework is inspired by Aziz Z. Huq and Mariano-Florentino Cuéllar’s argument that study on the Supreme Court’s assertiveness in foreign policy has been compartmentalized into FRL and FPA dimensions, without much interconnection. This has led to a research gap between law schools and political science departments. To underscore this, the authors point out the different focus points of both studies. They claim that the Supreme Court is at the center of legal subfield FRL. In contrast, FPA mostly omits the USSC from its analyses of emerging foreign policy rooted in the study of international relations. However, they argue that even the combined contributions of both studies only offer a partial explanation to the emergence of foreign policy as neither account for the potential effects of “domestic” policies on foreign policy. To correct this inadequacy, they propose a framework of four lines of jurisprudence whose changing instruments, channels and foundational resources have foreign affairs implications (Huq and Cuéllar 2023b: 250-260).

This thesis agrees with the argument of missing conjunction between FRL and FPA but does not adapt Huq and Cuéllar’s framework, disregarding possible effects of domestic policies within the thesis’s scope. Instead, a plausible structure is established by merging FRL’s focus on the judiciary with FPA’s research on other actors. The rationale behind this approach is the belief that the examination of increasing judicial assertiveness should include both the USSC’s perspective, as well as its environment which might facilitate this shift. Additionally, this approach can focus on the established independent variable of political culture, instead of Huq and Cuéllar’s instruments, channels and resources.

Accordingly, the analysis of a changing political culture’s impact on the Court’s growing assertiveness combines FRL and FPA. In the following section, the detailed framework is introduced, starting with the dimension of FRL.

- **Foreign Relations Law**

According to Huq and Cuéllar, FRL's main topics are the distribution of (constitutional) foreign affairs powers and the domestic impact of international law. Focusing on the Supreme Court, a key question concerns the extent of deference given to other branches in foreign dealings (Huq and Cuéllar 2023b: 250-252).

The here selected FRL scope omits international law. Its extensive nature, marked by diverse opinions on an appropriate implementation in Supreme Court rulings, justifies this exclusion (Kersch 2006). In this context, FRL defines domestic law that governs international affairs and focuses on the proper role of the judiciary in foreign affairs (Bradley 2019: 3-5).

Dimension 1: Deference Allowed by the Supreme Court Towards the Other Branches of Government in Foreign Affairs

The first dimension employs FRL's court-centric perspective to examine the hypothesis. The following argument is proposed: From 2009 to 2015, public trust in the U.S. federal political branches has consistently been lower than that of the overwhelmingly approved judiciary (Brenan 2018). This higher percentage is largely due to the allocation of Justices' ideologies, defined as a collection of positions on political and policy issues (Baum 2013: 91). This is exemplified by the sharp decline of Democrat's USSC approval after a string of conservative rulings from 2018 to 2022, caused by the increasingly conservative median ideology of the Court (Jessee et al. 2022: 1; Lewis 2022; Lin and Doherty 2023; Liptak and Parlapiano 2018). Balanced ideologies consequently moderate rulings by preventing one-sided dominance. This fosters bipartisan trust and increases overall approval of the USSC. In contrast, the political trust in the other two branches declined from 2009 to 2015 (Brenan 2018). Political trust is the degree of individuals' confidence in their political institutions and leaders (Miller 1974: 989). Its impact on political institutions has been proven due to its effect on public perception. As confidence in the President and Congress wanes, public approval diminishes. This hinders both actors from exercising their political power because of lacking citizen support (Hetherington 1998; Newton et al. 2018: 37-39). Political culture functions as the frame shaping these attitudes (Shi 2001: 415). Both actors' approval is thus a part of changing political culture. This also impacts the Supreme Court. It serves as the enforcement agent of prevailing political culture, with judicial behavior being influenced by cultural values and attentive to public opinion. As low trust in the executive and legislative branch is expressed by political culture, the USSC may rethink its previously self-restrained behavior (Grossman and Sarat 1971: 180-196; McGuire and Stimson 2004: 1019). Consequently, a shift in the general political culture affects

the Supreme Court's self-perception, incentivizing the Justices to become more assertive in their rulings and defer less to the other branches. This impact is supported by the attitudinal model of judicial behavior, where Justices vote mostly based on their attitudes and not legal principles (Jacobi and Sag 2009: 4-6; Segal and Spaeth 2002: 86-88; Segal and Cover 1989: 561-563). If such a change in the self-perceived role of the Court can be proven, this would therefore indicate an impact of political culture on the growing assertiveness of the Supreme Court.

In short, the USSC's self-perception is influenced by the political trust in the legislative and executive branch as a component of political culture. As this trust diminishes, the self-image of the Court might change and become more confident due to its own approval. This in turn causes growing assertiveness in its foreign policy rulings. Consequently, a link between the independent and dependent variables of the thesis is established.

The first, "psychological" sub-hypothesis accordingly states:

Sub-hypothesis 1: The United States Supreme Court's more confident self-perceived role in foreign policy has influenced its growing assertiveness.

- **Foreign Policy Analysis**

Huq and Cuéllar's definition of FPA as the study of different actors impacting emerging foreign policy is introduced as the theoretical framework's second and more extensive part (Huq and Cuéllar 2023b: 252-255). After explaining a connection to political culture, its four dimensions are presented to conceptualize the second sub-hypothesis centering on the context of the Court's surrounding.

The proposed goal is to analyze the environment created by other federal actors and establish a connection with the Supreme Court. A shift in the environment is linked to a transformation of elite political culture, defined as the relevant attitudes, beliefs and habits of political leaders. For instance, their perceptions of proper politics or of their own political role are part of elite political culture (Putnam 1971: 651). Amid fragmentation and partisanship of the executive and legislative branch, these perceptions evolve and create conflict, resulting in more space for the Court (Lee 2021). This fosters increased judicial assertiveness. After all, the branches of government don't function in their own respective bubbles, but are interconnected (Marks 2015: 856). Such a "handing over" of responsibility might happen by accident because of the barriers of fragmentation etc. or even be a purposeful decision of the legislative/executive elite (Tate 1995: 28-32).

The four employed FPA dimensions to craft a second sub-hypothesis stem from Valerie M. Hudson's "Domestic Board Game", chosen for its inclusion of various broad aspects and their explicit conceptualizations (Hudson 2007: 128-130). It is based on Robert D. Putnam's theory of mutual influence between domestic and international political "games" (Putnam 1988). Hudson's work aims to organize national actors of domestic politics influencing the regime's foreign policy along several dimensions. This thesis adapts these with some limitations. First, this work exclusively focuses on the domestic game board, omitting possible effects of the foreign game board on domestic actors. Secondly, out of Hudson's five dimensions, "number of people represented" is dropped as this thesis only focuses on federal actors (Hudson 2007: 128-129).

Subsequently, the four dimensions of the second sub-hypothesis are introduced.

Dimension 2: Proximity to Foreign Policy Decision-Making

Hudson's first dimension is the proximity to foreign policy decision-making. She argues that this is indicative of the relative weight accorded to the foreign policy preferences of actors in a political system (Hudson 2007: 128-129). In accordance with the hypothesis, the aim is to examine whether the proximity of the three federal branches towards decision-making-power in foreign policy supports the Supreme Court's assertiveness. The more proximate the Supreme Court, the more likely its assertiveness.

Dimension 3: Regime/Actor Fragmentation

The second dimension focuses on the cohesiveness/fragmentation of the regime and its actors. Hudson follows Joe D. Hagan's regime classification based on fragmentation. High regime fragmentation, where no single party has control over the regime, increases constraints in foreign affairs, leading to more passive behavior in democracies (Hagan 1993: 72-74). This might create an opportunity for the previously excluded Court to step in, explaining its increased assertiveness in foreign policy. Hudson also expands the dimension by incorporating the individual actors' fragmentations as indicators of their relative power. Even the most proximate actor to foreign policy decision-making might be obstructed by fragmentation (Hudson 2007: 129-130). As the President is the sole executive branch representative of this thesis, such fragmentation is only possible for the legislative branch (i.e., Congress). If Congress is internally divided, it may sabotage itself from asserting influence in foreign policy. This creates an opportunity for the Court's Justices to become assertive, given they are unified. Their relative power grows and the other branches are not able to check them anymore.

(Ferejohn 2002: 57-58). Consequently, the higher the U.S. regime fragmentation/internal fragmentation of Congress, the more likely the USSC's growing assertiveness.

Dimension 4: Divergence in Viewpoints Between Domestic Actors and the Regime

The next dimension is the divergence of viewpoints between actors and the regime. The theory states that increased disagreement between both on an issue intensifies competition (Hudson 2007: 129-130). For a concise analysis, the dimension is changed slightly to examine divergence between the President and Congress. As head of state, the former is regarded as a substitute for the regime (Foakes 2014: 110-111). Accordingly, when the President and Congress (actor) disagree on specific foreign affairs issues, competition is created. Recognizing a potentially opposite effect, this thesis argues that such competition creates foreign policy stalemate due to the constitutionally designed codependency between both based on checks and balances (Masters 2017). In times of increased polarization, this is especially true if the President and Congress's majority are from different parties as they refuse to compromise, instead blocking each other's proposals (Bond et al. 2015). This creates space for the Court's assertiveness. Comprehensively, the bigger the divergence between the President's and Congress's foreign policy viewpoints, the higher the chances of an increasingly assertive Supreme Court.

Dimension 5: Actor's Assertiveness

The last dimension is the actor's assertiveness. Hudson contends that uninterest in a foreign policy issue can cause even a powerful actor to not be very active (Hudson 2007: 130). With assertiveness being translated to how active the other two actors are, this thesis deduces that reduced efforts from the legislative and/or executive branch in foreign policy provide a potential opportunity for the USSC to take a more prominent role. Hence, the less assertive Congress and the President are within foreign policy, the more likely is judicial assertiveness.

To summarize, the Supreme Court's growing assertiveness in foreign policy might indirectly be facilitated by the other two branches of government. As their elite political culture changes, space is created for the Court to step up, incentivizing the Justices to become more assertive.

Consequently, the second, "contextual" sub-hypothesis deduces:

Sub-hypothesis 2: The other two branches of the U.S. government have created an environment which facilitates the United States Supreme Court's growing assertiveness.

This chapter established the theoretical framework for the thesis, defining the dependent variable of increased assertiveness and introducing/justifying political culture as the

independent variable. The conceptualization of both variables' connection formed the main hypothesis. To address its broadness, a detailed theoretical framework was adopted. This includes five explanatory dimensions based in both foreign relations law and foreign policy analysis. Finally, these dimensions were organized into two sub-hypotheses which reinforce the connection between changing political culture and the Court's assertiveness.

The conceptualization of this thesis is summarized as:

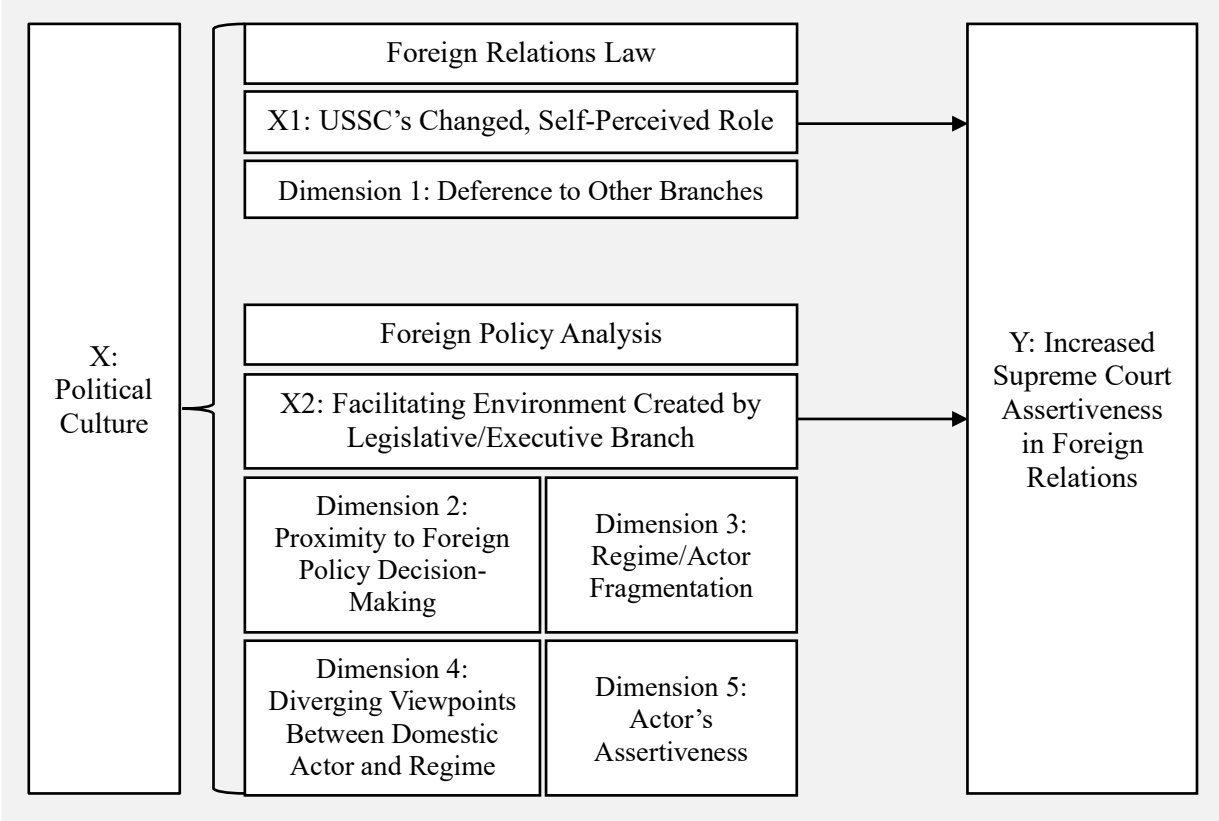


Figure 1: Theorized theoretical framework (by the author).

If x1 and x2 are validated, the main hypothesis of an impact of political culture (x) on Supreme Court assertiveness (y) is proven correct. While these sub-hypotheses seem compelling in theory, their actual validity requires empirical examination. The next chapter will therefore present the research design.

4 Method, Data and Research Design

This chapter outlines the research design used to test the broad main hypothesis. Its goal is to assess if and how well political culture can explain the Supreme Court's growing assertiveness along the chosen dimensions. The later examination represents a theory-driven empirical analysis. Mostly relying on the quantitative method of descriptive statistical analysis, data from existing work such as the Policy Agendas Project is employed. In the following section, the method and used data are presented in more detail to outline this research design.

4.1 Descriptive Statistical Analysis

This thesis involves multiple theoretical dimensions. To enable comparison and empirical steadiness, an effort is made to use similar methods to analyze them. With some later justified exceptions, the method of choice is descriptive statistical data analysis. Descriptive statistics are an empirical approach of quantitative research. The aim is to summarize data to discern trends of frequency distribution, which might help answer theoretical hypotheses (Halperin and Heath 2012: 342-343). Many of the previously proposed dimensions are determined by how often a specific entry connected to foreign policy exists or is exhibited (assertiveness) across time. As the totals of these entries are difficult to classify as high or low, the yearly shifting percentages of foreign policy out of all entries are used. These percentages make for the most effective way to analyze data as they put the totals into perspective (Harrison 2001: 15). Additionally, central tendency and dispersion measures are calculated to give more meaningful insight to exhibited trends. The median of the foreign policy entries' percentages is used as a measure of central tendency. This well-known concept is calculated as the middle value of the distribution. By arranging percentages for specific time periods in ascending order, the percentage separating all observations into two equal parts is the median. This instrument is selected as a better alternative to the commonly known mean (sum of values divided by total number of observations) as it isn't sensitive to extreme outliers which might distort the measure (Halperin and Heath 2012: 349-351).

The interquartile range (IR) is used as the measure of dispersion. By defining the difference between the 75th and 25th percentiles of each timespan, it is observed whether the percentages show sudden shifts or are stable. The range is determined by subtracting the median of the lower half from the median of the upper half of the equal observation parts separated by the overall median (Halperin and Heath 2012: 352-353). As it may be difficult to understand this formula, an example inspired by an existing visualization is given (Byju's n.d.):

Lower half
Upper half

24,0%, 28,2%, **35,1%**
67,7%, 70,1%, 89,5%

Median: $(35,1\%+67,7\%)/2 = 51,4\%$
Median lower half: 28,2%, Median upper half: 70,1%
Interquartile Range: Upper Quartile – Lower Quartile = $70,1\%-28,2\% = \mathbf{41,9\%}$

Figure 2: Example of IR-calculation (by the author, modelled after Byju's n.d.).

Similarly to the median, IR's benefits lie in its insensitivity to outliers and its relatively simple determination without complicated calculations for multiple dimensions (Halperin and Heath 2012: 349-353).

Lastly, to compare the relevance of entries coded as international affairs with other policy areas, the total ranking of this topic might be determined if deemed relevant.

Overall, this method of descriptive statistical analysis follows the system of a univariate analysis by exploring only the variable of foreign policy relevance in different dimensions. By using a time-series approach, trends over time are analyzed to determine if the described dimensions support their respective sub-hypotheses and in turn strengthen the thesis' hypothesis (Harrison 2001: 31-32).

4.2 Data Selection

This thesis does not collect data independently and instead mostly employs datasets from the U.S. Policy Agendas Project (PAP) for the statistical analysis. This venture was established by Baumgartner and Jones in 1993 as a method to prove their theory of slow but sudden agenda-changes (punctuated equilibrium theory). Since then, it has transformed into the independent Comparative Agendas Project (CAP), coding information on the policy processes of over a dozen countries by tracking the attention of different actors to mutually exclusive major topics (Baumgartner and Jones 1993; Baumgartner et al. 2019: 3-8; Fagan and Shannon 2020: 363). The extensive reliance on the PAP is justified with the many theoretical dimensions of this thesis. The PAP includes fitting datasets for the majority of these dimensions due to its extensive records, encompassing government activities from all branches of the U.S. federal government across 24 datasets (Jones et al. 2023c). Additionally, all datasets share consistent coding, providing a stable framework for comparing legislative, executive and judicial actions (Jones et al. 2023d). This shields this work with multiple theoretical dimensions from the potential analysis errors of multiple resources and inconsistent coding (Harrison 2001: 27). Additionally, it is worth mentioning that the PAP is highly established as part of the CAP (Jones et al. 2023a, 2023b).

In summary, the sum of available records, consistent coding and project legitimacy warrant the overwhelming reliance on one collection of data in face of criticism of limited empirical indisputability.

Examined data not from the PAP includes the Martin-Quinn score to determine Justices’ ideologies (dimension 1), the U.S. Constitution (dimension 2) and an overview of the control of the executive/legislative branch (Apple 2020; Martin and Quinn 2002; U.S. Const. art. I-III). These dimensions don’t or only partly rely on statistical analysis as their method. Instead, existing primary literature paints a compelling picture which is summarized. This choice was made to provide the clearest findings possible instead of overly getting stuck on the usage of PAP datasets.

To illustrate the distribution of data sources, they are now listed before being given a closer look in the following empirical analysis.

Dimension	Data
Deference Allowed by the Supreme Court Towards the Other Branches of Government in Foreign Affairs	Supreme Court Cases Dataset (PAP) Martin-Quinn Score
Proximity to Foreign Policy Decision-Making	U.S. Constitution
Regime/Actor Fragmentation	Overview of Control Over Executive/Legislative Branch
Divergence in Viewpoints Between Domestic Actors and the Regime	Presidential Veto Rhetoric Dataset (PAP) Democratic Party Platform Dataset (PAP) Republican Party Platform Dataset (PAP)
Actor’s Assertiveness	State of the Union Speeches Dataset (PAP) Executive Orders Dataset (PAP) Congressional Hearings Dataset (PAP) Congressional Bills Dataset (PAP) Public Laws Dataset (PAP)

Table 1: Distribution of data sources (by the author).

To summarize, the most commonly used method is that of statistical data analysis. The data in question used to test the thesis’s hypothesis is predominantly sourced from the Policy Agendas Project, which provides multiple publicly available datasets on the attention given by various actors to different issues in U.S. politics. By assigning datasets from the PAP, as well as additional data, to fitting theoretical dimension, the research design of a univariate analysis as a time-series model is completed. The next and final chapter will scrutinize the introduced research design in light of the theoretical framework.

5 Empirical Analysis and Discussion

Finally, this chapter's objective is to test the thesis's hypothesis that the Supreme Court's growing assertiveness can be attributed to changing U.S. political culture. Accordingly, the results based on the presented data and research design are compared to the assumptions made by the theoretical framework. Consequently, the main hypothesis of this thesis is validated.

As mentioned, the chosen timespan for the hypothesis's analysis is 2009-2015. Adding to the discussed benefits, this also allows a simpler data analysis as many PAP datasets don't include recent years (Jones et al. 2023c). For the examination, the shifting percentages, as well as the median and interquartile range of PAP data will consequently be determined for these seven years. To provide context, the same is done for the two equally long, preceding periods (1995-2001, 2002-2008) and, if possible based on the PAP data, for the seven years after 2015.

Out of the 24 PAP datasets, twelve were picked and assigned to one of the five theoretical dimensions, with each being dissected for CAP major topic 19, coded as "international affairs". In total, there are 21 mutually exclusive major topics and 220 subtopics, with some datasets utilizing limited additional codes (Jones et al. 2023e; Jones et al. 2023h). The purposeful selection is based on educated guesses regarding the expressiveness of the data for each dimension's underlying theory. While analyzing all 24 datasets could potentially enhance the analysis, this was deemed impractical due to the limited word count of this thesis.

5.1 First Sub-Hypothesis

The first "psychological" sub-hypothesis focuses on foreign relations law aspects and encompasses a single dimension. The deference awarded by the Supreme Court in foreign policy cases is examined as an indicator of a possible change in the self-perceived role of the Court. This self-image is affected by low political trust in the other two governmental branches, as well as higher approval of the USSC, both components of political culture. To prove a linkage between political culture and growing judicial assertiveness, a change in the Court's self-perceived role, as expressed by its deference given to other branches, must be confirmed.

First Dimension

First, it is examined whether the allocation of Justices' general ideologies was in fact balanced and could have facilitated the higher approval of the Court, influencing its self-perception.

As no PAP data exists that can adequately portray the individual Justices' values, they are instead portrayed by the dynamic Martin-Quinn score (M-Q scores), which captures the evolving judicial preferences ("ideal points") based on voting records (Martin and Quinn 2002).

The approach consequently accounts for the proven ideological drift of Justices during their tenure (Epstein et al. 2007: 15-25).

An independently created graph visualizes the evolving M-Q scores for all Justices during the Supreme Court terms of 2007 to 2021 (Martin and Quinn n.d.). As terms start in October and end in the same month of the following year, this visualization is chosen to potentially include Justices which were active in the year 2009, but only for the 2008 term (Epstein et al. 1994: 40). Because the score itself will not be compared to other dimensions, the usage of terms instead of years is unproblematic. The scores for the depicted timespan range from approximately -4 to 4 M-Q score, with positive ones conveying conservative ideologies and lower ones liberal preferences (Martin and Quinn 2002: 147-149). Analyzing the respective scores from 2009 to 2015, it becomes clear that the allocation of ideologies was balanced. Until the middle of the 2013 term, there were five conservative and four liberal Justices according to their preferences. Interestingly, Justice Kennedy switched from a conservative to a slightly liberal score between the 2013 and 2014 term (Figure 3). This not only cemented his ideology as the median of the Court, but confirmed Kennedy as a “swing Justice”, who often sided with conservatives but also occasionally with liberals (Hasen 2019: 267; Whittington 2014: 2244). This resulted in an even more balanced allocation of ideologies, with the median’s score being close to zero and four Justices on each side (Figure 3). Justice Sotomayor’s ideology with a median of -2,4 M-Q score for 2009 to 2015 and interquartile range of 1,3, M-Q score also evolved significantly. But this did not change the distribution of ideologies on each side, which is what this work primarily focuses on.

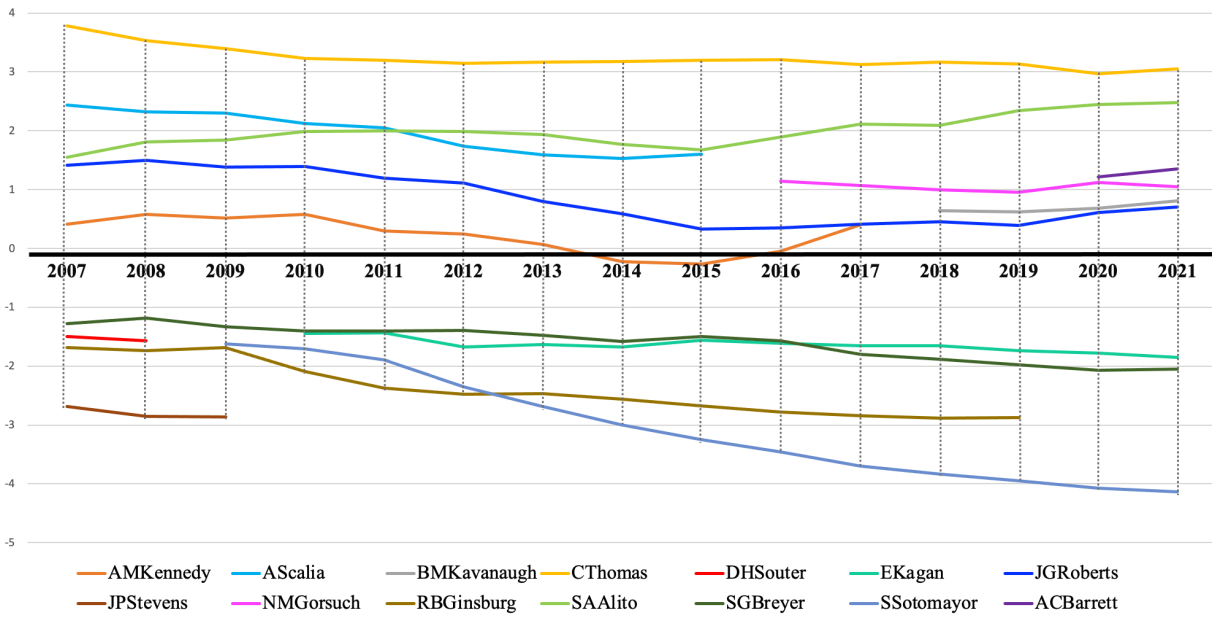


Figure 3: U.S. Supreme Court Ideologies (own visualization, data adapted from Martin and Quinn n.d.)

From 2009 to 2015, Kennedy consequently became a true swing Justice, balancing the rulings of the Court and prohibiting a string of one-sided partisan rulings. The overall steadiness of the Justices' ideologies is therefore proven. As a result, the allocation of ideologies would in fact support the approval of the Court, which remained higher than that of the legislative/executive branch for the entire timespan (Brenan 2018). This might facilitate a changed self-perception of the Court.

Secondly, it is analyzed whether the self-perception of the USSC actually evolved from 2009 to 2015, with the Justices abandoning the principle of judicial self-restraint due to falling political trust in the other two governmental branches and its own relative popularity. This potential change of the Court's own perception is tested by examining the deference awarded to Congress and the President within cases decided in the selected timespan. If this deference decreases, this indicates a more confident self-assessment. If found to be true, this would validate the first sub-hypothesis of an impact of evolving self-image on judicial assertiveness.

The deference is dissected based on the sole PAP dataset on the judiciary (Bird et al. 2009). This provides the only publicly available data on the Court from a policy perspective, encompassing cases heard since 1945 (Eissler and Jones 2019: 188). As the dataset only tracks the USSC's policy agenda until 2011, the dataset was updated until 2017 for this thesis to give insight into more current judgements. The approach used, closely follows the methodology outlined in the PAP dataset's codebook, basing the total number of cases on Harold Spaeth's Supreme Court Database and coding the case summaries of U.S. Reports for international affairs based on their abstract or title (Bird et al. 2009; Spaeth et al. 2022; Supreme Court of the United States 2023). However, a duplication of the CaseIDs in the PAP dataset was noticed during this process. While efforts were made to detect and remove these duplicates for international affairs entries, it is acknowledged that some might persist in other major topics. The possibility of slightly distorted number of total cases and percentages of international affairs cases should thus be kept in mind. Additionally, this results in differing totals between the original PAP dataset and the updated version as no indication on how to reconcile these was found. For simplification purposes, this difference is consequently admitted but disregarded for the later examination of the data.

In total, twelve cases related to CAP major topic "international affairs" were decided from 2009 to 2015. These are grouped by the year of their decision date to account for possible impacts since their hearings. The median for international affairs cases decided between 2009 and 2015 is 2,4 percent with a range of only 0,4 percent, compared to 3,9 percent from 2002 to 2008.

Rulings with a connection to foreign affairs were therefore not common but the median did increase from 0 percent for 1995-2001 and 2002-2008 (Table A1).

For a more nuanced examination, a selection of cases is scrutinized for the deference awarded to the other branches by the Court based on the Court's written ruling and opinion. Cases are picked based on meaningful mentions of the other branches, indicating deference.

The subsequent examination prompts a conflicting assessment. In *Leal v. Texas* the Court denied an appeal by the President to stay an execution (*Leal v. Texas*, 564 U.S. 940 (2011)). This decision reinforced similar rulings from 2008, in which the Court rejected the presidential authority to independently enforce rulings from the International Court of Justice (*Medellin v. Texas*, 552 U.S. 491 (2008); *Medellin v. Texas*, 554 U.S. 759 (2008)). In the 2011 case, the Court ruled along party lines with the four liberal judges dissenting. In their argumentation, the lack of deference awarded to the executive branch was even acknowledged: "The Court has long recognized the President's special constitutionally based authority in matters of foreign relations. (...) It should do so here." (*Leal v. Texas*, 564 U.S. 940, 946-947).

Interestingly, the Court demonstrated a different approach in other cases, where it structured its decision according to Congress's original intent in laws with foreign affairs implications (*Mohamed v. Palestinian Authority*, 566 U.S. 449 (2012); *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014)). Additionally, in *Zivotofsky v. Kerry*, the USSC stressed the President's exclusive authority to recognize foreign sovereign powers, constraining Congress's role (*Zivotofsky v. Kerry*, 576 U.S. 1 (2015)). Notably, this decision was the follow-up to arguably the most prominent foreign affairs case in the 2010s, *Zivotofsky v. Clinton* (*Zivotofsky v. Clinton*, 566 U.S. 189 (2012)). This ruling is known for its narrow conception of the political question doctrine. Deciding almost unanimously, the USSC ruled that, according to only the two textualist criteria from *Baker v. Carr*, the question presented was not a political one and could be reviewed by the Court (*ibid.*: 201). This decision, focusing on whether "Israel" could be listed as a place of birth on a U.S. passport, consequently marked an expansion of the Court's authority, challenging the executive's and legislative's power in foreign policy by disregarding the remaining doctrine as a limitation of judicial review. The Court's controversial review could have been prohibited by considering the four remaining prudential Baker criteria (Shemtob 2016: 1002). Justice Sotomayor acknowledged this in her concurring opinion but ultimately supports alignment with the lower court's textual emphasis in the case (*Zivotofsky v. Clinton*, 566 U.S. 189, 202-210). The narrow interpretation of the doctrine also faced criticism in Justice Breyer's dissent. He argued that a combination of prudential factors justified an exemption from

judicial review, especially considering the foreign policy implications. He asserted that decisions related to foreign affairs are typically better handled by the executive branch (ibid.: 212-220).

As a result, the judiciary's deference to the other branches in foreign affairs cases fluctuated from 2009 to 2015. While the Court occasionally accommodated the President or Congress, it also asserted its own power in some instances. Nonetheless, as the political question doctrine defines the judiciary's power in this policy terrain as inferior to that of the executive/legislative, it is noteworthy that this assertion took place at all. Additionally, there appears to have been a proactive shift towards increased judicial review. The political question doctrine is only utilized in one case, where it is dismissed through a restricted application of the Baker criteria (*Zivotofsky v. Clinton*). This indicates sinking deference, supporting a changed self-perception of the Court. As the USSC seemingly becomes more confident of its own abilities in this policy terrain, it gets increasingly assertive. Although this does not apply for all cases, the first sub-hypothesis of an impact of the USSC's own psychology is overall validated. Due to its underlying argument, a first link between changing political culture and growing judicial assertiveness is established, reinforcing the thesis's hypothesis.

5.2 Second Sub-Hypothesis

The second "contextual" sub-hypothesis follows foreign policy analysis, relying on established dimensions from Hudson. The Court's surroundings created by the President and Congress are dissected along four aspects. By proving a confined executive and legislative, the second sub-hypothesis's argument of a facilitating environment for judicial assertiveness is supported. This strengthens the connection between (elite) political culture and the dependent variable.

Second Dimension

Proximity to foreign policy decision-making was chosen as the first FPA dimension. The more proximate the Court, the more likely its assertiveness.

The data used to answer this question does not stem from a PAP dataset or uses descriptive empirical analysis, instead relying on the U.S. Constitution itself to present the constitutionally awarded foreign policy power of each branch. This symbolizes the intended proximity of all three.

Examining Articles I, II and III of the U.S. Constitution, it becomes clear that the legislative and executive branch are a lot closer to foreign policy. Important foreign affairs powers are exclusively shared between these two branches (Henkin 1987: 285). The President's foreign

affairs powers include the authority to make treaties and appoint ambassadors. Additionally, he is commander in chief of the military (U.S. Const. art. II). Congress supplements the foreign affairs power, having the ability to declare war or regulate commerce with foreign nations (ibid.: art. I). The legislative branch therefore checks the President in areas of foreign policy. In reality, the President has taken the lead in this policy terrain, accumulating power at the expense of a willing Congress during foreign crises (Henkin 1987; Masters 2017).

In contrast, the judiciary only has the constitutional ability to rule on cases affecting ambassadors or involving a foreign states, citizens or subjects (U.S. Const. art. III). These are not explicit foreign affairs powers and instead ensure that limited checks and balances also apply to cases involving foreign actors (Curtis 2020: 1652). The constitutional supremacy of the executive and legislative branch was even underlined by USSC Justices: “The conduct of the foreign relations of our government is committed by the Constitution to the Executive and Legislative” (Oetjen v. Central Leather Company, 246 U.S. 297 (1918), 302)).

The Supreme Court is the least proximate branch to foreign policy decision-making, being third after the President and Congress. Due to the Court’s limited constitutional abilities in foreign affairs, the first FPA dimension does therefore not support growing judicial assertiveness.

Third Dimension

Regime/actor fragmentation is the second FPA dimension. The higher the fragmentation within the U.S. regime or Congress, the more plausible is growing judicial assertiveness.

This dimension also does not rely on data from the PAP as no adequate dataset were found. Instead, an existing visualization of party control over the government is used to detect regime fragmentation between both branches, as well as within Congress (Apple 2020).

103rd	1993-1995	Bill Clinton	258	176	57	43
104th	1995-1997	Bill Clinton	204	230	47	53
105th	1997-1999	Bill Clinton	206	227	45	55
106th	1999-2001	Bill Clinton	211	223	45	55
107th	2001-2003	George W. Bush	212	221	50**	49
108th	2003-2005	George W. Bush	205	229	48	51
109th	2005-2007	George W. Bush	202	232	44	55
110th	2007-2009	George W. Bush	233	202	49***	49
111th	2009-2011	Barack Obama	257	178	56	42
112th	2011-2013	Barack Obama	193	242	51	47
113th	2013-2015	Barack Obama	201	234	53	45
114th	2015-2017	Barack Obama	188	247	44	54

Figure 4: Visualization of political control over executive branch and both chambers of Congress (left: House of Representative, right: Senate) (Apple 2020).

The provided data supports a regime fragmentation from 2009 to 2015 (110th-114th congressional term). In four out of the five terms, the President was of a different party than the majority of one or both chambers of Congress. This accounts for a trend of a fragmented regime, as control was rarely unified in times of increased polarization between parties (Schacter 2018: 227). Following Hagan's categorization, the U.S. regime was therefore strongly constrained in crafting foreign policy (Hagan 1993: 72-74).

In contrast, the fragmentation of Congress was not as consistent, only being divided for two terms from 2011 to 2015. Instead, the overwhelming trend seems to be of equal majorities in both chambers. Nonetheless, two out of three divided Congresses from 1995 to 2019 fall within the thesis' timespan and this internal fragmentation would have obstructed Congress from using its power in foreign affairs (Figure 4).

The fragmentations of the U.S. regime and Congress both support growing judicial assertiveness, although to different degrees. Especially the consistent regime fragmentation reinforces the second sub-hypothesis as the U.S. becomes more passive in foreign affairs. This creates space for a confident Court to fill.

Fourth Dimension

Divergence in viewpoints between domestic actors (Congress) and the regime (President) is the third FPA dimension. The bigger their divergence for foreign policy opinions, the more likely is an assertive Court in times of political stalemate.

For the examination, three PAP datasets are used to determine the viewpoints of both. First, the Presidential Veto Rhetoric dataset gives insight into all statements of administration policy which contain explicit or veiled veto threats towards one or more provisions of a Congressional bill from 1985 to 2016 (Kernell and Lewallen n.d.). The selection of this dataset is based on the assumption that the President, who for simplicity reasons is considered the regime substitution of this slightly altered dimension, may signal disagreement with Congress by vetoing provisions of a proposed foreign policy bill.

However, the examined data shows that these threats significantly dropped under Obama from 2009 to 2015, with none related to international affairs being made until 2014. The median of 0,0 percent of this time period stands in contrast to those of 8,5 and 5,9 percent for 1995-2001 and 2002-2008. This decreasing median (and interquartile range) is especially noteworthy as the overall number of threats went up during this time (Table A2). Still, international affairs

seem to generally be not very represented in this dataset, ranking in the middle of all major topics (Kernell and Lewallen n.d.).

The sole PAP dataset on the relationship between Congress and the President does therefore not indicate a divergence of viewpoints, as Obama did not block any of Congress's foreign policy proposals. However, as the President is arguably the most powerful in this area, he simply might not have had to. This might be different for Congress. But the PAP does not provide any datasets to account for this.

For a more meaningful analysis of different opinions in foreign affairs, the positions of President Obama's democratic party are contrasted to those of the Republicans as the majority party in one or both chambers of Congress from 2009 to 2015 (Figure 4). The impact of party affiliation is supported by other works proving increased congressional partisanship and partisan polarization of the legislature for this time, including in foreign affairs (Andris et al. 2015; Desilver 2022; Peake et al. 2012). Such partisanship is specifically linked to party-unity voting and strongly associated with support for the President (Gelman and Wilson 2022: 247). Obama's approval was consequently historically polarized between both parties (Jones 2012). His legislative strategy was not only characterized by the promised bipartisanship but instead also embraced the trend of partisan leadership due to Congress's polarization and Republican's overwhelming opposition to his agenda (Milkis et al. 2012: 58-69).

The datasets of the Democratic and Republican Party Platforms are therefore additionally employed to identify the viewpoints of the President (Democrats) and Congress (Republicans) between 2009 and 2015 according to this simplified approach. Both are only published every four years but their focus on international affairs is similar, with a median of 14,20 and 14,30 percent for the five platforms published from 2000 to 2016. However, the IR of the Republican Party Platform is much higher at 9,1 percent compared to 3,0 percent, indicating that this party might just be influenced by major events like 9/11 (Table A2). By comparing both parties' statements in regards to selected relevant policy issues in their 2012 and 2016 platforms, more detail of the positions of both actors is provided.

Here, the PAP summarizations of party platforms for the 2012 and 2016 election are dissected for the timespan of 2009 to 2015. This selection is justified, due to the rare publication. For those written in 2016, it is assumed that the contents are symbols of the party's beliefs over these years, reflecting the time between 2012 and 2015.

With all this in mind, both parties' statements towards topics such as China and Cuba are compared. Due to the thesis's scope, only some issues will be examined more closely according to their relevance in both parties' platforms. The incompleteness of this approach is acknowledged.

Dissecting the statements made in regards to issues like China and Cuba more closely, a divergence between the views of both parties becomes evident. In its 2012 platform (as coded by the PAP), the Democratic party advocated for increased cooperation with China, while stressing the importance of China respecting human rights and reinstating its commitment to both the One China policy, as well as the Taiwan Relations Act (Wolbrecht et al. 2023a). In the respective 2012 Republican platform (then the minority party in the Senate and under democratic President Obama), the party echoed the strategy on Taiwan but criticized China more harshly, condemning Chinese human rights violations directly instead of simply pointing out the importance of these rights (Wolbrecht et al. 2023b).

Differences in viewpoints between both parties are even more clear in to the country's relations to Cuba, a key initiative of Obama at the time. In their 2016 platform (as coded by the PAP), the Democratic party praised the President's efforts to end the travel ban and embargo on Cuba and stated that the U.S. must engage in such partnerships to remain a global leader (Wolbrecht et al. 2023a). In contrast, this very initiative is described as a "shameful accommodation to the demands of (...) tyrants" by Republicans (Wolbrecht et al. 2023b). Additionally, the party warned of unnecessary alliances, in contrast to the Democrat's plea for more international partnerships (ibid.).

To summarize, while the presidential vetoes do not point at a foreign policy stalemate due to a growing divergence in the opinions of Congress (actor) and President (regime), there is evidence for such a difference between both of them based on party platforms. This is regarded as a fitting indication of a divergence in viewpoint on certain foreign policy issues between actor and regime. While not a direct confirmation, this hints at a potential blockade between Congress and the President, making space for an assertive USSC more likely and potentially supporting the second sub-hypothesis.

Fifth Dimension

Actor's assertiveness is the final dimension of the second sub-hypothesis. The less assertive/active Congress and the President are within foreign policy, the more likely is judicial assertiveness.

To compare the interests of both political branches in international affairs, the President's assertiveness is the first to be examined according to two PAP datasets to account for the proposed and actual assertiveness.

According to the dataset on State of the Union speeches, focus on foreign policy declined under Obama. Filtering for only policy sentences, the major topic is overall the second most common entry for the entire dataset. But statements coded as international affairs decreased from 2009 to 2015 (Jones et al. 2023g). The median fell to just eight percent during this time, compared to 12,4 percent for 1995-2001 and 29,0 percent for 2002-2008. Additionally, it is also lower than the median for 2016-2022 at 10,1 percent. Except for 2002-2008, the IR was similar between all time periods (Table A3). This not only indicates sinking relevance of this major topic in the President's speeches but also a possible impact of outside events (like 9/11) or the party of individual Presidents.

In contrast, Obama's actual assertiveness in international affairs, displayed in executive orders, was generally higher than under other Presidents, with a median of 20,7 percent compared to 15,00 and 19,20 percent under Bill Clinton and George W. Bush. The latter is notable as President Bush was President during major foreign incidents like 9/11 and ordered the Iraq war (Leffler 2023). However, it should be noted that the interquartile range of the percentage of Obama's orders is quite high at 24,9 percent (Table A3). This indicates that the high relevancy of foreign policy was not stable and could be attributed to foreign events etc. Nonetheless, "international affairs" is overall the second most common major topic. Most executive orders ever coded as such came in 2014 with 32,3 percent. Additionally, while the percentage usually hovers under 20 percent, it surpassed this threshold four times from 2009 to 2015. The popularity of international affairs orders was thus overall quite high and with the exception of outliers increased under Obama (Jones et al. 2023f).

While President therefore did not place huge emphasis on foreign affairs in his speeches, the executive branch was actually more assertive than before in foreign affairs from 2009 to 2015 according to executive orders.

In comparison, the assertiveness of Congress is analyzed next according to three PAP datasets. The first dataset is on Congressional Hearings, expressing policy attention of the legislative branch (Yanovitzky 2002: 431). Here, major topic 19's percentages are growing, with an increase of approximately 5,5 percent from 2009 to 2015. Still, the median of this time period is slightly lower than before at 9,7 percent (1995-2001: 10,20 percent, 2002-2008: 11 percent). The interquartile ranges of the three time periods are similar (Table A3). In terms of its ranking,

the topic is not very common, usually ranking somewhere in the middle. However, it regained the first place in 2015 with 14,30 percent of all hearings being coded as related to international affairs (Jones et al. 2023i).

The frequency of congressional bills related to international affairs is in comparison much lower for 2009 to 2015. The median for the chosen time period is 2,6 percent, which is very close to previous medians. In 2011, the percentage fell below two percent for the first time since 1982. In contrast, the highest percentage ever recorded of five percent also falls within the timespan (Wilkerson et al. 2023). While the IR remained low at 0,9 percent, it increased from 0,3 percent, symbolizing this range (Table A3). But overall, the relevance of international affairs in congressional bills is much lower than in its hearings.

Regarding actual laws passed, international affairs rank in the middle of all major topics for the corresponding dataset. But compared to 1995-2001 and 2002-2008, the median of this topic goes down from 3,7 to 3,1 percent for 2009 to 2015. This is also expressed in the percentages. In 2011, international affairs only accounted for 1,1 percent of all laws that year, the first time this value was under two percent since 1957. At the same time, these low percentages were not subject of significant shifts with an IR of 0,7 percent, which is lower than before (Table A3). The low percentages thus seemed to become the norm, although they are higher than in congressional bills (Jones et al. 2023j; Wilkerson et al. 2023). In summary, the executive branch was quite assertive in foreign affairs from 2009 to 2015, especially in its actual orders. In contrast, Congress was not. While international affairs did matter in its hearings, the percentage and ranking of this topic dropped drastically when it came to actual bills and laws. This might indicate an effect of the fragmentation of Congress and the diverging viewpoints of both parties.

Based on the median, the relevance of international affairs in all three datasets is lower than before 2009 to 2015. Especially the percentages in bills and laws are quite low, although the former does have a relatively high range compared to before. The end result of falling relevance in public laws seems to be the norm however. It follows that Congress became less assertive during this time. As already mentioned in the first dimension of this sub-hypothesis, the assertiveness of the President in turn went up. Consequently, this only partially supports the sub-hypothesis of space being created in foreign policy for the Supreme Court to step in. As Congress makes space, the President became more active in this terrain and might (at least partly) fill the gap. However, the growing assertiveness of the Supreme Court supports the argument, that the Court also took advantage of this.

In summary, the second contextual sub-hypothesis focuses on the Supreme Court's environment. Recapping all four of its dimensions, the following is deduced for the years between 2009 and 2015:

The Court's limited constitutional abilities in foreign affairs, especially in contrast to the powers of the President and Congress do not support an increasingly assertive Court (Second Dimension).

However, even though the legislative and executive branch are the closest to foreign policy decision-making, the proven regime fragmentation supports the theory that the U.S. was strongly constrained in crafting foreign policy, creating space for the previously excluded Supreme Court to occupy. Validating the second sub-hypothesis, this creates an environment for judicial assertiveness (Third Dimension).

The divergence of viewpoints in foreign policy between the President and Congress potentially reinforces this assumption. While the data on presidential vetoes does not support a policy stalemate due to different opinions, a simplified examination of party platforms hints at diverging viewpoints on relevant foreign policy issues. The U.S. are consequently not only increasingly politically divided, but also polarized with differing opinions on how U.S. foreign policy should look like (Fourth Dimension).

This in turn seems to at least affect Congress, as it has gotten less assertive in international affairs. In contrast, the President seemingly became more active. Consequently, the assertiveness of both only partly supports the second sub-hypothesis. However, the growing assertiveness of the President does not necessarily stand in opposition to that of the Supreme Court. In reality, both have seemingly filled the gap left by Congress, as indicated by their growing assertiveness. As some authors have speculated, the executive branch might even be willing to purposefully give the Court some foreign policy power (Lemieux 2017: 1067-1068; Tate 1995: 28-32). Presidents have frequently viewed judicial power as useful in pursuing certain policy goals. This is partly due to the Court's independence from many of the legislative veto points (Whittington 2007). This presidential perception of the Court as a potential helper is echoed by their careful selection of Supreme Court nominees (Bartels 2015: 176; Hasen 2019: 263). This notion was publicly admitted by President Trump, taking credit for "killing" the access to abortion after the Supreme Court overruled *Roe v. Wade* in 2022 (Trump 2023). Consequently, the context surrounding the assertiveness of the President and Congress tentatively validates the second sub-hypothesis (Fifth Dimension)

In summary, while the four FPA dimensions do indicate that the Supreme Court's growing assertiveness in foreign policy was facilitated by the environment created by the political branches, they do leave some room for doubt. However, the growing regime fragmentation and polarization of both branches due to diverging opinions on important foreign policy issues, still form a strong argument of paralyzing conflict and changing elite political culture. This creates more space for the Court, as seen in its growing assertiveness in foreign policy. Therefore, the second sub-hypothesis of an assisting context is validated. A potential link between evolving (elite) political culture and growing judicial assertiveness is reinforced, supporting the thesis's hypothesis.

5.3 Assessment

In summary, the empirical analysis successfully reinforces both sub-hypotheses according to the proposed arguments. The foreign relations law dimension of the first "psychological" sub-hypothesis proves that this is partly due to the Court's more confident self-perception, which is affected by the political culture aspects of low political trust in the executive and legislative branch and its own approval. This is supported by a general trend of falling deference given to the political branches. The second "contextual" sub-hypothesis's four dimensions based in foreign policy analysis compliment this result by proving that this growing assertiveness in foreign policy is also facilitated by the environment created by the political branches amid a transformation of elite political culture.

It should be noted however, that the examination of the FPA dimensions does not indisputably support the second sub-hypothesis, making it the weaker one of both sub-hypotheses. Additionally, the examination is very much based on the author's own interpretations and arguments how the legislative/executive branch affect the USSC. The thesis's examination therefore indicates that the growing assertiveness of the Court is more affected by the Justices' own choices, than their surroundings.

As both sub-hypotheses are overall confirmed, the thesis's hypothesis that the growing assertiveness of the Supreme Court in foreign policy can be explained with the changing political culture within the United States is therefore validated.

6 Conclusion

Criticizing the narrowness of existing research on the Supreme Court's increased assertiveness in foreign policy, this thesis attempted to take a step back and provide a comprehensive explanation, asking why the Court is exhibiting this behavior. Political culture was presented to answer this question and justified as the explanatory variable of this y-centered, theoretical analysis. To ensure the desired magnitude, foreign relations law and foreign policy analysis were combined for a framework of five dimensions. These were categorized along two distinct sub-hypotheses based on the impact of the Court's psychology, as well as the contextual effect of its surroundings. The assumption was made that while being influenced by changing political culture, both collectively facilitated the USSC's increased assertiveness in foreign policy. The corresponding assessment most commonly employed descriptive statistical analysis, mostly relying on datasets from the U.S. Policy Agendas Project. Based on the subsequent analysis, this thesis confirms that a changing political culture does explain the growing assertiveness of the Supreme Court, at least for the chosen timespan of 2009 to 2015.

During this time, the Court's confidence grew due to the public's low political trust in the executive/legislative branch of government. This partly inspired its assertiveness and led to it ignoring the political question doctrine's precedent of limited judicial review in international affairs. Additionally, the environment created by both political branches facilitated this behavior, although this argument is not as strong according to the dimensions' examination. Still, regime fragmentation and diverging views of both political parties on the U.S. role in international affairs have coincided with Congress becoming less assertive in this policy area. Both indicates a change in elite political culture of representatives, which has made room for the detected growing assertiveness of not only the President, but also the Supreme Court. The growing assertiveness of the Supreme Court in foreign policy is consequently not an accident but a (un)willing choice from both sides.

The contribution of this thesis lies in this comprehensive explanatory value. In contrast to existing concepts, political culture can account for underlying developments influencing the Court's assertiveness. The latitude of this independent variable also allows for an examination not being restrained by exclusively legal or political concepts.

Nonetheless, the chosen framework and method entail several limitations justified by the thesis's limited scope. First, while Hudson's predefined dimensions allowed for a straightforward examination, the thesis's findings must continue to be tested for additional dimensions. For example, it was established that the Court's self-perception is impacted by

public opinion/trust. The perceived public importance of a policy area might have a similar effect on the priorities of the Justices and elected officials. After all, politicians and Justices are also members of U.S. society. Future work might therefore build on this thesis's reinforcement of political culture's impact to focus more on mass political culture. Second, a method independent of the predefined datasets from the Policy Agendas Project might prove valuable, especially to test the second sub-hypothesis. Given more time, the usage of such independently created data might create the possibility to recode the outlined inconsistencies of the PAP datasets. Third, to account for possible impacts of changing Presidents, especially controversial ones like Donald J. Trump, the thesis set its focus on a more stable timespan of 2009 to 2015. But precisely this "chaos" caused by the election of Donald J. Trump and its appointments to the Court warrant an analysis of more recent USSC terms. Especially, the impact of median and swing Justice Kennedy's retirement on the Court's assertiveness should be assessed. This would be facilitated by updated versions of the PAP datasets or independently coded data. Finally, the assertiveness is only inspected for the domain of foreign policy. As indicated by Supreme Court rulings on contested individuals' rights like abortion or the ownership of guns, an analysis of domestic policy areas might not only be interesting but valuable to better understand these decisions. Especially the overturning of *Roe v. Wade* in 2022 hints that the Justices' behavior such as assertiveness might play a role. After all, the law cited had not changed between the original judgement and the 2022 retraction.

While these limitations underscore that the thesis is only the first step in a necessary debate of the impact of political culture on the U.S. Supreme Court, they also provide an opportunity for future important research. Ultimately, there are no indications that the controversial assertiveness of the Court might stop anytime soon. As cases on controversial issues like gun rights are due to be decided this current term, the debate of a politicized Court will certainly stay relevant (Chung and Hurley 2022). Surely it can be debated whether the Court has ever been apolitical or if its behavior is only now criticized by many media outlets as its decisions lean into conservative ideologies. But nonetheless, the disregard of its own precedence of judicial restraint should be concerning to everyone. Amid the increased polarization within the United States and a growing number of the population seemingly having lost trust in democratic processes (as demonstrated by the 2021 Capital riots), the country's future ahead of next year's presidential election seems grim. Unelected Justices assuming powers previously held by elected officials surely don't diminish these concerns, much less benefit the country's already unstable democracy.

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Appendix

Table A1. Overview of independently calculated information based on PAP dataset “Supreme Court Cases” (Bird et al. 2009)

First Dimension						
Supreme Court Cases PAP Dataset (cases decided between 1946-2001)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	0 (86)	0,0%	1995-2001	0,0%	1995-2001	1,3%
1996	1 (86)	1,2%				
1997	0 (97)	0,0%				
1998	0 (89)	0,0%				
1999	1 (75)	1,3%				
2000	1 (79)	1,3%				
2001	0 (79)	0,0%				
2002	0 (74)	0,0%	2002-2008	0,0%	2002-2008	3,9%
2003	0 (74)	0,0%				
2004	3 (77)	3,9%				
2005	0 (76)	0,0%				
2006	2 (80)	2,5%				
2007	0 (76)	0,0%				
2008	4 (72)	5,6%				
2009	2 (83)	2,4%	2009-2015	2,4%	2009-2015	0,4%
2010	2 (84)	2,4%				
2011	2 (84)	2,4%				
2012	2 (74)	2,7%				
2013	0 (82)	0,0%				
2014	2 (72)	2,8%				
2015	2 (72)	2,8%				

Table A2. Overview of independently calculated information based on PAP datasets “Presidential Veto Rhetoric”, “Democratic Party Platform” and “Republican Party Platform” (Kernell n.d.; Wolbrecht 2023a, 2023b)

Fourth Dimension						
Presidential Veto Rhetoric PAP Dataset (1985-2020)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	11 (63)	17,5%	1995-2001	8,5%	1995-2001	10,9%
1996	3 (34)	8,8%				
1997	10 (118)	8,5%				
1998	1 (62)	1,6%				
1999	3 (56)	5,4%				
2000	0 (53)	0,0%				
2001	1 (8)	12,5%				
2002	0 (9)	0,0%	2002-2008	5,9%	2002-2008	9,1%
2003	2 (22)	9,1%				
2004	0 (11)	0,0%				
2005	1 (17)	5,9%				
2006	1 (11)	9,1%				
2007	4 (63)	6,3%				
2008	0 (0)	0,0%				
2009	0 (47)	0,0%	2009-2015	0,0%	2009-2015	0,0%
2010	0 (39)	0,0%				
2011	0 (92)	0,0%				
2012	0 (63)	0,0%				
2013	0 (95)	0,0%				
2014	0 (70)	0,0%				
2015	1 (95)	1,1%				
Democratic Party Platform PAP Dataset (1948-2020, every four years)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
2000	161 (1.134)	14,2%	2000-2016	14,2%	2000-2016	3,0%
2004	117 (895)	13,1%				
2008	183 (1.154)	15,9%				
2012	160 (1.127)	14,2%				
2016	132 (1.193)	11,1%				

Republican Party Platform PAP Dataset (1948-2016, every four years)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
2000	287 (1.609)	17,8%	2000-2016	14,3%	2000-2016	9,1%
2004	446 (1.847)	24,1%				
2008	152 (1.060)	14,3%				
2012	151 (1.398)	10,8%				
2016	213 (1.645)	12,9%				

Table A3. Overview of independently calculated information based on PAP datasets “State of the Union Speeches”, “Executive Orders”, “Congressional Hearings”, Congressional Bills” and “Public Laws” (Jones et al. 2023a, 2023g, 2023i, 2023j; Wilkerson et al. 2023)

Fifth Dimension State of the Union Speeches PAP Dataset (1946-2023)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	36 (365)	9,9%	1995-2001	12,4%	1995-2001	7,7%
1996	24 (304)	7,9%				
1997	45 (283)	15,9%				
1998	45 (363)	12,4%				
1999	54 (347)	15,6%				
2000	59 (396)	14,9%				
2001	6 (214)	2,8%				
2002	86 (157)	54,8%	2002-2008	29,0%	2002-2008	28,7%
2003	150 (272)	55,1%				
2004	67 (248)	27,0%				
2005	53 (213)	24,9%				
2006	73 (252)	29,0%				
2007	77 (227)	33,9%				
2008	74 (283)	26,1%				
2009	10 (235)	4,3%	2009-2015	8,0%	2009-2015	5,8%
2010	12 (303)	4,0%				
2011	32 (317)	10,1%				
2012	25 (357)	7,0%				
2013	22 (275)	8,0%				
2014	20 (212)	9,4%				
2015	34 (273)	12,5%				
2016	35 (259)	13,5%	2016-2022	10,4%	2016-2022	7,6%
2017	15 (177)	8,5%				
2018	43 (298)	14,4%				

2019	14 (228)	6,1%				
2020	23 (221)	10,4%				
2021	11 (467)	2,4%				
2022	42 (306)	13,7%				

Executive Orders PAP Dataset (1945-2021)

Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	6 (40)	15,0%	1995-2001	15,0%	1995-2001	8,2%
1996	6 (49)	12,2%				
1997	6 (38)	15,8%				
1998	6 (38)	15,8%				
1999	6 (35)	17,1%				
2000	1 (41)	2,4%				
2001	5 (66)	7,6%				
2002	2 (31)	6,5%	2002-2008	19,2%	2002-2008	5,5%
2003	8 (41)	19,5%				
2004	10 (45)	22,2%				
2005	5 (26)	19,2%				
2006	8 (27)	29,6%				
2007	6 (32)	18,8%				
2008	5 (30)	16,7%				
2009	2 (44)	4,5%	2009-2015	20,7%	2009-2015	24,9%
2010	5 (35)	14,3%				
2011	10 (34)	29,4%				
2012	10 (36)	27,8%				
2013	0 (20)	0,0%				
2014	10 (31)	32,3%				
2015	6 (29)	20,7%				

Congressional Hearings PAP Dataset (1946-2020)

Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	151 (1.480)	10,2%	1995-2001	10,2%	1995-2001	2,1%
1996	125 (1.079)	11,6%				
1997	132 (1.448)	9,1%				
1998	150 (1.250)	12,0%				
1999	163 (1.630)	10,0%				
2000	151 (1.373)	11,0%				
2001	135 (1.415)	9,5%				
2002	159 (1.440)	11,0%	2002-2008	11,0%	2002-2008	3,6%

2003	172 (1.508)	11,4%				
2004	179 (1.288)	13,9%				
2005	206 (1.599)	12,9%				
2006	145 (1.544)	9,4%				
2007	191 (2.055)	9,3%				
2008	111 (1.481)	7,5%				
2009	147 (1.651)	8,9%	2009-2015	9,7%	2009-2015	4,3%
2010	129 (1.342)	9,6%				
2011	110 (1.311)	8,4%				
2012	117 (1.204)	9,7%				
2013	156 (1.456)	10,7%				
2014	166 (1.258)	13,2%				
2015	206 (1.436)	14,3%				

Congressional Bills PAP Dataset (1947-2016)

Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	147 (4.354)	3,4%	1995-2001	2,8%	1995-2001	0,4%
1996	51 (2.189)	2,3%				
1997	132 (4.656)	2,8%				
1998	81 (2.873)	2,8%				
1999	175 (5.514)	3,2%				
2000	98 (3.454)	2,8%				
2001	163 (5.491)	3,0%				
2002	86 (3.455)	2,5%	2002-2008	2,7%	2002-2008	0,3%
2003	165 (5.702)	2,9%				
2004	103 (3.764)	2,7%				
2005	174 (6.820)	2,6%				
2006	99 (3.738)	2,6%				
2007	206 (7.454)	2,8%				
2008	109 (3.627)	3,0%				
2009	165 (7.332)	2,3%	2009-2015	2,6%	2009-2015	0,9%
2010	81 (3.297)	2,5%				
2011	149 (5.787)	2,6%				
2012	81 (4.648)	1,7%				
2013	150 (5.689)	2,6%				
2014	161 (3.215)	5,0%				
2015	248 (7.833)	3,2%				

Public Laws PAP Dataset (1948-2022)						
Year	Total Entries of CAP Major Topic “International Affairs” (All Entries)	Percentage of CAP Major Topic “International Affairs” (approx.)	Median		Interquartile Range	
1995	5 (88)	5,7%	1995-2001	3,7%	1995-2001	2,5%
1996	9 (245)	3,7%				
1997	5 (153)	3,3%				
1998	14 (240)	5,8%				
1999	5 (170)	2,9%				
2000	15 (410)	3,7%				
2001	8 (108)	7,4%				
2002	10 (269)	3,7%	2002-2008	3,7%	2002-2008	1,5%
2003	6 (198)	3,0%				
2004	14 (300)	4,7%				
2005	6 (169)	3,6%				
2006	10 (313)	3,2%				
2007	10 (175)	5,7%				
2008	12 (285)	4,2%				
2009	4 (125)	3,2%	2009-2015	3,1%	2009-2015	0,7%
2010	8 (258)	3,1%				
2011	1 (90)	1,1%				
2012	6 (193)	3,1%				
2013	2 (72)	2,8%				
2014	10 (224)	4,5%				
2015	4 (115)	3,5%				
2016	16 (214)	7,5%	2016-2022	3,0%	2016-2022	4,0%
2017	22 (392)	5,6%				
2018	9 (138)	6,5%				
2019	7 (278)	2,5%				
2020	2 (66)	3,0%				
2021	2 (81)	2,5%				
2022	6 (281)	2,1%				