15 An actor-based measure of issue salience

Information acquisition and the case of the United States Supreme Court

Ryan C. Black, Amanda C. Bryan, Timothy R. Johnson

Introduction

For some time political scientists have been interested in understanding the theoretical mechanics and empirical implications of issue salience – research on salience cuts across nearly every cleavage in the discipline. It is a topic of interest to those who study political behavior and those who take a more institutional approach to studying politics (cf. Wlezien 2005; Miller et al. 2006; Epstein and Segal 2000; Kiousis 2004; Bramen and Pickerill 2009). Attention to salience also spans across virtually all subfields, including American politics (Epstein and Segal 2000; Clinton and Lapinski 2006), comparative politics (Givens and Luedtke 2004), international relations (Diehl 1992) and formal theory (Selck 2006).

Despite these disparate uses of issue salience, a unifying element in the literature – regardless of sub-field or approach – is the difficulty in finding a valid measure to capture the concept (Best 1999; Epstein and Segal 2000). In their important article examining previous approaches taken to measure the salience of US Supreme Court cases, Epstein and Segal (2000: 69) outline a number of barriers scholars face to developing an accurate and theoretically valid measure of salience. Among the barriers they discuss is finding a measure that is not systematically biased, is valid (especially an operationalization that avoids answering contemporaneous questions with retrospective measures), is not time dependent and is transportable to the study of multiple political institutions.

To account for these important factors Epstein and Segal then propose that coverage of an issue by the New York Times provides a useful surrogate for capturing issue salience. While they initially used this measure to assess case salience in the US Supreme Court, the method has since been widely adopted in a variety of other contexts and a media-based approach to the measurement of issue salience has become somewhat of an industry standard.

In what follows, however, we argue that media-generated measures not only have significant empirical drawbacks – falling victim to the very traps Epstein and Segal outline – but they also face a much more insurmountable problem: failing to ask the question, ‘Salient to whom?’ As such, we argue that scholars’ measures of salience must be consistent with the actor upon which their research question
focuses. In other words, scholars should examine the identity of the actor whose decision is being studied because if the salience measure focuses on a different actor than the decision-maker, it is theoretically invalid. In the next two sections we more fully develop this criticism, first by explaining the empirical drawbacks of the media-based approach and then by explaining the theoretical advantages of an actor-based approach. We then provide a theoretical framework for utilizing our actor-based approach. Third, we examine the theoretical and empirical validity of our measure through a descriptive analysis, explaining its advantages over previous measures. We conclude by exploring how this measure can be generalized across subfields and institutions.

The empirical drawbacks of the media-based approach

Two of the most damning criticisms Epstein and Segal (2000) make of previous approaches to issue salience are that these measures are systematically biased and that they are time-dependent. Unfortunately, the media-based approach cannot avoid either trap. First, despite Epstein and Segal’s contention to the contrary, although the New York Times measure may not over sample certain types of Supreme Court cases, the measure, and others like it, may fall victim to other forms of content bias. For instance, it is possible, despite being regarded as a nationally oriented newspaper, the Times’ coverage of the Court is biased towards cases involving New York or coming out of lower courts from New York. These types of concerns find empirical support in an analysis conducted by Maltzman and Wahlbeck (2003), who examine whether the Times gives front page coverage to cases decided by the Court. Their results suggest that, at best, the Times measure is biased and, at worst, is endogenous. In terms of bias, there is a statistically and substantively significant locality bias with cases originating from New York courts being roughly two-thirds more likely to receive front-page coverage than non-New York cases. Although Maltzman and Wahlbeck’s analysis focuses on the use of the Times measure in the context of the Supreme Court, it can be easily generalizable to other uses. There is nothing to suggest the Times would be more likely to cover stories about New York courts but not be more likely to cover stories about, for example, laws that especially impact their state. Indeed, this is a problem that likely plagues most news sources.

Second, the barrier of time dependency, more broadly conceptualized, is likewise most difficult to overcome with a media-based measure. Although not specifically biased against a particular time period, news coverage itself is time dependent. As Boydstun (2008) suggests, there is variation in the extent to which the news agenda is, in her words, ‘congested.’ Congestion sets the threshold that an event or issue must cross in order to receive news coverage and, by the logic of media based measures of salience, be deemed a salient event. During a slow news period even minor events might receive media coverage. These same events, however, are significantly less likely to receive media attention when the media agenda is congested, which happens, for example, in the wake of a natural disaster or other extraordinary event. Beyond competing against the worldly news agenda
An actor-based measure of issue salience

for front-page coverage, the Court must often compete against itself for coverage of its opinions. Because the Court will usually release multiple opinions on a given day, each case is forced to vie for coverage (Brenner and Arrington 2002).

Outside of coverage of US Supreme Court cases, media-based measures have the additional time dependency problem of being event-driven. An issue may still be salient if no event has happened on which to report. This may bias the measures. For instance, a media-based measure would over-emphasize the national importance of international aid and disaster response in the months following the 2010 Haitian Earthquake while under-emphasizing the salience of the health-care debate raging in the United States because there were developing events – stories – in the former and not in the latter.

Finally, media-based measures are not only time dependent but they are circumstance dependent. For instance, work focusing on the application of media-based measures to the Supreme Court, has found that ‘internal’ case characteristics such as whether the chief justice wrote the opinion and the number of votes in the majority are also systematically related with the *Times*’ front page coverage of a case (Maltzman and Wahlbeck 2003: 22–3). Given that these outcomes are generally characterized as consequences of issue salience and not causes, the *Times* measure, as commonly used by judicial scholars, is endogenous.

**The need for an actor-based measure of salience**

Decision-making scholars find it scholastically valuable to measure issue salience because we assume actors respond differently when issues are more important to them. Of course, not all actors respond to important issues in the same way. Additionally, different actors likely find different issues salient. Indeed, the fact that different political actors often have different agendas only furthers the point that they seek different goals. For example, Jones and Baumgartner (2004) find that although the American public and the US Congress often have congruent interests, these interests are reinforcing rather than identical. McCombs and Zhu (1995) further argue that interest groups recognize Congress and the president have different agendas than their own and thus they seek to strategically alter those agendas through organized democratic movements. That political actors and the public have different agendas is especially troubling when measuring the issue salience of unelected courts, who, because of their intentionally apolitical status, have even less incentive to have the same priorities as the public and are thus less likely to find the same issues salient. As a case in point, Schauer (2006) finds that the US Supreme Court and the general public have systematically different agendas because each body plays a fundamentally different role in American democracy. Ultimately, this research demonstrates that there are as many goals, and subsequently just as many salient issues, as there are actors who pursue them.

Because different salient issues affect decision-making differently for different actors, it is inappropriate to use a measurement strategy that does not draw upon the actor of interest. However, many measures of salience in the literature have failed to make this distinction. For example, previous measures of US Supreme
Court case salience have examined justices’ behavior using measures that tap into issues that are salient to interest groups (Maltzman and Wahlbeck 1996) and the legal community and legal academics (Rohde 1972; Slotnick 1978; Danelski 1989; Segal and Spaeth 1996; Martin 1998) but no scholarship exists, in our estimation, that focuses on issues salient to the justices themselves.2

The focus over the last decade on media-based measures may only have served to entrench this problem. Such measures are appealing because their operationalization is straightforward: a researcher simply performs a series of searches using electronic databases and indexes to determine the level of media coverage for an issue of interest. While other applications make deviations from this as warranted by the substantive context the main thrust of the approach is the same.3 The problem, of course, is that media-based measures most appropriately measure what is important to the public rather than what is important to elites (cf. Behr and Iyengar 1985; MacKuen and Salisbury 1981, MacKuen 1984; McCombs and Zhu 1995; Neuman 1990). Generally, however, because of their appealing and straightforward approach, media-based measures are employed to answer many questions that extend beyond what the public thinks is important.4

For instance, Taylor (2003) focuses on how front page New York Times coverage of campaign contributions from the alcohol and tobacco industries indicate what is on the US federal government’s agenda and Holian (2006) studies presidential approval and media coverage by the New York Times as an indicator of the US federal government’s agenda and which party controls it. Unsurprisingly, the popularity of the Epstein and Segal (2000) measure in the American judicial politics literature has caused this problem to extend even more pervasively to our institution of focus, the US Supreme Court. A spate of recent scholarship (cf. Johnson 2004; Baird 2004) focuses on the effects of public issue salience on the Court’s behavior without forwarding a link between the two. Our point, then, is measurements of salience must not only overcome the empirical barriers outlined by Epstein and Segal (2000) but must also have a strong theoretical grounding in the actor of interest.

**Actor-based salience and the US Supreme Court**

It would be nihilistic to simply criticize the status quo without providing a plausible alternative. Thus, because we contend salience can be an important conditioning influence on the behavior of political actors, we turn our sights on developing a theoretically motivated and empirically valid indicator of salience. Specifically, we draw guidance from political science and cognitive psychology. The former tells us salience is an important consideration for political actors when making decisions. The latter tells us, despite the various ways political scientists operationalize it, salience ultimately describes characteristics of objects that stand out in people’s perceptual field (Bramen and Pickerill 2009). In other words, salience is best measured as a concept held by individuals as they think about issues important to them. This view is supported, and evidenced, by Miller et al. (2006), who persuasively demonstrate that the more engaged people are with an issue the more salient that issue is to them. As they put it,
The more salient a particular policy issue is to a citizen, the more he or she is cognitively and behaviorally engaged in that issue. That is, if an issue is salient to a person, he or she thinks frequently and deeply about it, gathers information about it to accumulate in long-term memory, and uses the issue as a basis for making voting decisions and charting other courses of political action (Miller et al. 2006: 3).

While Miller and her colleagues utilize their measure of personal importance to understand the beliefs of the mass public, we suggest it is readily transportable to the study of elite behavior. Indeed, like the citizenry at large, when elites find an issue more salient they are more engaged with it behaviorally and cognitively and should be more apt to gather information and think critically about that issue.

The crucial difference between political elites and the mass public, resource availability, ultimately provides the leverage we need to support the use of our issue salience measure for elites. Information acquisition for the mass public usually means people take in various forms of media related to the topic of interest. These items can be tallied and reported to interested researchers and then used as both independent and dependent variables in their analyses. Elites, by contrast, have tools for information acquisition that dwarf the powers of the mass public. Members of Congress can convene hearings and subpoena witnesses to testify under oath and presidents can form study groups, advisory councils and commissions to gather information. Finally, as we explain in greater detail below, US Supreme Court justices have available an important – and publicly visible – institution used for information acquisition.

In outlining an actor-based approach to measuring salience, the key component is that an actor of interest, whether an ordinary citizen or, in our case, a Supreme Court justice, spends more time gathering information and thinking deeply about issues important to her relative to the time she spends gathering information about issues she deems less important. For our institution of interest we submit the possibility of gauging the salience (personal importance) of Supreme Court cases by analyzing how justices act during oral arguments. Specifically, we posit the more engaged justices are in gathering information during these proceedings the more important the case is to them – both as a collective (i.e. ‘the Court’) and individually.

This argument emanates from existing findings. Johnson (2004) demonstrates how oral arguments provide a unique opportunity for justices to seek out information not found in the briefs or in other materials before the Court. Indeed, between 76 and 80 per cent of the issues raised in oral arguments are novel issues (most often focusing on the policy implications or on information about the preferences of external actors) (Johnson 2004: 40–1). That this information often finds its way into the justices’ conference discussions and opinions further confirms the information-gathering role of oral arguments.

Given that justices use oral arguments as an information-gathering device there will exist some distribution of how much information they seek for the population of cases before them. Salient cases, our argument posits, are located in the upper
tail of this distribution and require the ‘harvesting’ of more information from oral advocates than non-salient cases. This stems from the fact that salient cases are likely to have broader policy implications and involve more external actors than average cases. Given that oral arguments are the primary venue for justices to harvest information about cases they deem important, the more salient a case the more questions the justices will ask. We turn next to measuring and exploring this variable.

Measuring questions asked

To construct our measure of salience we turn to the transcripts of Supreme Court oral arguments. Our data are the 3,026 oral arguments beginning with the 1979 term and ending with the 2007 term. We downloaded each transcript from Lexis Nexis and counted the number times a justice spoke during the proceedings. The transcripts indicate the speech of a justice with the marker ‘QUESTION,’ which precedes any utterance, both questions and statements. Of course, not every utterance provides evidence of the Court’s interest in the legal or policy questions at issue in a given case. During argument in *Hudson v. Michigan* (2007), for example, this gem was offered: ‘Sorry, I have laryngitis. Can you hear me all right?’ While this type of remark is unlikely to undermine the validity of our measure, we can think of others that might. We turn next to describing these concerns and the steps we have undertaken to address them.

The most likely confounding factor in using oral arguments to measure salience is the membership of the Court itself. Simply put, justices vary in their verbosity during oral arguments. Among justices on the current court, Justice Antonin Scalia is known for being a relentless questioner (Shullman 2004) whereas Justice Clarence Thomas did not ask a single question during a recent three-year period (Liptak 2009). The danger, then, is that cases might appear to be more or less salient simply based on Court membership when it was heard. This appears to be the case in our raw data. During Scalia’s first term there were significantly more utterances (on average, 20 per cent) than during the Court’s final term before Scalia joined.

A related concern occurs when the Court operates with fewer than its full membership due to non-participation by a justice. This happens, for example, when a justice has a financial stake in a case (e.g. owns stock in one of the litigants). It can also occur when a recently appointed justice participated in a case before becoming a justice. Using the Supreme Court Judicial Data Base ‘non-participation’ coding we note that a justice is absent in approximately 11 per cent of the cases in our data. Accordingly, to jointly account for these influences, we standardize the number of utterances by both the total number of justices recorded as participating and by ‘natural court,’ which refers to every unique combination of justices that sit together.

Our final consideration is the overall length of oral argument. Since 1970, the Court has allocated a standard 30 minutes of time per side in a case (Unah 2009). In some instances, however, the Court grants more argument time for a case. One
of the more notable examples of this occurred in the case involving the McCain-
Feingold campaign finance law (McConnell v. FEC (2003)), where the Court
devoted a total of four hours for oral argument. Similarly, as it did in Roe v. Wade
(1973), the Court may, after an initial round of oral arguments, ask the parties to
reargue the case (Hockstra and Johnson 2003).

As a result, extended time and reargued cases will likely have a higher value on
our measure owing simply to the amount of time provided by the Court. This
would potentially counsel towards adjusting our measure to account for the length
of argument. At the same time, however, the decision to give extended time or to
reargue a case is ultimately made by the justices themselves. Thus, to apply this
ex post adjustment would be to discard valuable information provided directly by
the Court about which cases are worthy of more argument time. As this is part and
parcel of our theoretical argument about information gathering and issue salience,
we ultimately believe such adjustments would omit valuable information from
our measure. For this reason, we elect to not adjust our measure for the length of
argument.

Assessing our measure: empirical and
theoretical improvements

Although we argue that our actor-based approach makes theoretical advance-
ments over previous measures, it is of little value if it does not also avoid the
traditional barriers to accurate and valid measures of salience articulated by
Epstein and Segal (2000). Here we explore how our measure avoids each of these
traps and, in doing so, is an improvement over all previously articulated measures,
including (perhaps even especially) the media-based approach.

First, Epstein and Segal caution against conflating retrospective and contempo-
ranous issue salience. They argue that too often scholars are interested in
explaining contemporary decision-making using retrospective measures. We
agree. Our measure acts as a uniquely contemporaneous measure because it eval-
uates actions taken during the decision-making process itself instead of requiring
that the decision be rendered before we can evaluate the importance of the case.7
The use of oral argument to measure contemporaneous salience has an even more
appealing advantage: oral argument occurs within days of the initial vote on the
merits. Judicial scholars are almost universally interested, in one fashion or
another, in understanding and explaining these votes. Thus, our measure not only
best measures what the justices are thinking about the case in a general sense, but
measures their level of attachment to the case as near as possible to the moment of
decision.

Epstein and Segal then posit that many measures of issue salience fall victim to
systematic content bias. Our measure intuitively avoids this problem. Indeed,
while we limit our analysis to cases of interest to the Court, just about all cases
granted are argued. Given that we do not place further limitations we avoid content
bias by giving each case an equal chance of being salient. More importantly,
because it is the justices themselves who decide whether to hear argument in a
case and how much to participate, finding that our measure represents some issues as salient systematically more often than others indicates the justices themselves find those issues more salient. Finally, because we can measure the salience of every case, our measure is much more nuanced than the dichotomous measures previously proposed.

Next we turn to the problem of time dependency, where a measure’s accuracy depends on circumstances contingent to a specific time period. This issue becomes problematic when time-bound circumstances change. One could argue that our measure faces this problem as the norms of oral argument have changed over time (O’Brien 2008). However, as long as we control for differing participation by each of the justices, the membership of the Court and the length allotted to oral argument we overcome this barrier.

Although the transportability of our measure is the focus of our conclusion, we think it is important to note here that the shared institutional structures between the US Supreme Court and many other nations’ high courts makes our measure particularly appealing when studying courts in an international perspective. For instance, the justices of the High Court of Australia use oral arguments as information seeking tools in much the same way that the US Supreme Court does. Indeed, Australian Justice Kenneth Hayne, in an address to members of the Victorian Bar giving advice to potential oral advocates before the High Court describes the goals of Australian justices as such:

You cannot expect the Court to remain silent during your argument . . . The Court wants to know what consequences follow from adopting particular arguments . . . Bear in mind, as well, that there are times when questions asked of counsel enable discussion of the matter along the bench. A question which you are asked may be intended to provoke an answer that will reflect upon a line of questioning by another member of the Court . . . Because the Court wants to gain as much as it can from oral argument, it is inevitable that argument never quite follows the order which counsel intends to follow.

(Hayne 2004)

Thus the information sought by Australian justice can likewise be interpreted as a measure of salience. The Australian High Court is just one example to support the transportability of our measure. Of course, there are others. A researcher needs only a strong theoretical understanding of the inner mechanics of their institution of interest to employ our approach.

**Describing our measure**

Having established how examining the information-seeking behavior of actors of interest can overcome the traditional barriers to measuring salience, we seek here to describe the empirical traits of our measure. First, we provide general descriptive data of our measure over time. We then compare the actor-based salience of cases that are legally salient with cases that are not, arguing that if our measure is
valid, we should find that cases that are legally salient are also salient to the justices. Finally, we demonstrate our measure’s facial validity by examining a set of cases that fall into the highest or lowest categories of questions asked.

Figure 15.1 provides data on the distribution of oral arguments questions broken down by term. The figure makes clear that a number of outliers exist in our data (as denoted by the dots above or below the whisker of the box plot). Subsequent analysis also reveals the presence of a slight time bias in our data. Indeed, when we regress the (unstandardized) number of questions asked on Term, the equation is $96.6 + 1.41X$, where $X$ is a counter that takes on the value 0 in 1979, 1 in 1980 and so on. This is consistent with the notion that the justices began to ask more questions after Justice Scalia joined the bench in the 1986 term (Johnson et al. 2009). Despite these caveats, the more general point this figure makes is that once we have accounted for personnel change on the Court, the general distribution stays relatively stable across a nearly thirty year time frame.

We turn next to examining some comparisons that can be made using our measure. First, the stakes are higher for the justices in salient cases and thus the decisions they make may be seen as more critical. In turn, justices may act differently in these cases. Past research, for example, indicates the chief justice is more likely to assign opinions to ideological allies in salient cases (Maltzman et al. 2009).

---

**Figure 15.1** Box plots of standardized number of questions asked at oral arguments, conditional on the term in which the case was decided.

The white line in the middle of each box is the median and the upper and lower edges of the box represent the 75th and 25th percentile of the distribution, respectively.

*Source: Authors’ figure.*
2000) while other justices bargain more frequently before joining an opinion in highly salient cases (Spriggs et al. 1999). We also know the role of oral argument differs in salient cases (Johnson et al. 2007). For our purposes we compare legally salient cases – what Maltzman et al. (2000) define as cases that include constitutional interpretation or where the justices alter a past precedent – with cases where they are not asked to interpret the constitution or to overturn precedent. Figure 15.2 depicts this comparison. The left panel indicates justices are more active at oral argument when their ultimate opinion implicates constitutional interpretation. This is consistent with Maltzman et al.’s argument.

At the same time there appears to be no systematic difference between cases where the Court alters precedent versus when it does not. Specifically, a difference in means test between the two categories is not statistically significant at the conventional level ($p = 0.15$). We note that these comparisons are necessarily coarse as they based on the Court’s final opinion. Ideally, we would examine oral argument activity in cases where the Court is asked to overturn a precedent versus those when it is not (i.e. by examining the litigant briefs). Such data are not, however, readily available (and are beyond the scope of this project).

![Figure 15.2](image)

Figure 15.2 Violin plots of standardized number of questions asked at oral arguments, conditional on whether the court's opinion was based on constitutional authority (left panel) or altered a previous Supreme Court precedent (right panel).

The thick horizontal line represents the mean within a plot. The dotted horizontal line is the overall mean in the population;

*Source:* Authors’ figure.
Justices may also view cases as more salient when they exercise judicial review in statutory cases. In these cases the Court interprets statutes, treaties, executive orders etc., and there is evidence the Court responds to this. Figure 15.3 presents the distribution of our measure conditional on whether the Court’s opinion ultimately exercised its power of judicial review. Cases where the Court struck down a law – whether federal, state, or local – evidence a higher level of interest by the justices during oral arguments. In other words, justices ask more questions as they decide that a law passed by democratically elected officials should be overturned. This is consistent with Ringsmuth and Johnson (2010).

These figures indicate our measure is consistent with the prevailing operationalization of Supreme Court case salience. Specifically, the media based account forwarded by Epstein and Segal (2000) finds results consistent with Figures 15.2 and 15.3. However, our measure is a marked improvement because it varies over time and because it is more theoretically pleasing than the media based measure.

We provide one final glimpse into our justice centered oral argument measure in Table 15.1. This table lists the ten most and ten least salient cases according to our measure. We suspect many readers will recognize more than a few of the most salient cases – including *McConnell v. FEC* (2003), *Patterson v. McClean Credit Union* (1989) and *US Term Limits v. Thorton* (1995). These cases largely fall into issues areas that are usually deemed to be more salient – civil liberties and civil rights. At the same time, we believe even the most diligent reader of the Court’s opinions will need to dig deep to recall even a handful of those our measure deems to be the least salient, including *Toibb v. Radloff* (1991), *Bennett v. Arkansas* (1988) and *Breuer v. Jim’s Concrete of Brevard, Inc.* (2003). These cases, which

![Violin plots of standardized number of questions asked at oral arguments, conditional on whether the court's opinion exercised the power of judicial review.](image)

*Figure 15.3* Violin plots of standardized number of questions asked at oral arguments, conditional on whether the court's opinion exercised the power of judicial review.

The thick horizontal line represents the mean within a plot. The dotted horizontal line is the overall mean in the population;

*Source: Authors’ figure.*
largely fall into less salient issue areas (federalism, judicial power and economic activity), garner less attention from the justices. In short, the results here are reassuring and speak to the facial validity of our measure.

**Conclusion: the transportability of information acquisition**

Our analysis demonstrates that, although media-based measures represent an advance beyond earlier measures of issue salience, they face significant drawbacks including the inability to be strictly contemporaneous and the tendency to introduce systematic bias into a variable’s measurement. In lieu of media-based measures, we argue that information acquisition is a useful indicator of issue salience. The study of information acquisition has numerous advantages, not the least of which is its applicability to the study of political elites who, as Epstein and Segal (2000) note, are not likely to submit themselves to the types of surveys that scholars find useful when trying to understand and analyze behavior. In applying our approach to cases before the US Supreme Court, we demonstrate how such a method can yield a meaningful and, more importantly, a valid measure of issue salience.

**Table 15.1** The ten most and the ten least salient cases based on standardized level of justice activity during oral arguments

<table>
<thead>
<tr>
<th>Ten most salient cases</th>
<th>Issue area</th>
</tr>
</thead>
<tbody>
<tr>
<td>McConnell vs. FEC (2003)</td>
<td>First Amendment</td>
</tr>
<tr>
<td>Garcetti vs. Ceballos (2006)</td>
<td>First Amendment</td>
</tr>
<tr>
<td>Lijenberg vs. Health Services Acquisition Corp. (1988)</td>
<td>Due Process</td>
</tr>
<tr>
<td>Patterson vs. McClean Credit Union (1995)</td>
<td>Civil Rights</td>
</tr>
<tr>
<td>US Term Limits vs. Thorton (1995)</td>
<td>Federalism</td>
</tr>
<tr>
<td>New Jersey vs. TLO (1985)</td>
<td>Criminal Procedure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ten least salient cases</th>
<th>Issue area</th>
</tr>
</thead>
<tbody>
<tr>
<td>N. Star Steel Co. vs. Thomas (1995)</td>
<td>Criminal Procedure</td>
</tr>
<tr>
<td>Carrella vs. California (1989)</td>
<td>Criminal Procedure</td>
</tr>
<tr>
<td>Toibb vs. Radloff (1991)</td>
<td>Economic Activity</td>
</tr>
<tr>
<td>Reed vs. United Transportation Union (1989)</td>
<td>Unions</td>
</tr>
<tr>
<td>Bennett vs. Arkansas (1988)</td>
<td>Federalism</td>
</tr>
<tr>
<td>Arizona Dept. of Revenue vs. Blaze Construction Co. (1999)</td>
<td>Federalism</td>
</tr>
</tbody>
</table>

The year in which a case was decided is reported in parentheses. The ‘Issue area’ column corresponds to Spaeth’s value variable.
While our specific application is limited to the US Supreme Court, the general approach is readily transportable across other political institutions and sub-fields within political science. Scholars of foreign policy decision-making may find our approach especially useful. Consider, for example, the United Nations Security Council (UNSC). Rule 45 of the UNSC’s Provisional Rules of Procedure States, ‘verbatim records of meetings of the Security Council shall be drawn up in the languages of the Council,’ (United Nation 1983) and Rule 54 continues, ‘the official record of public meetings of the Security Council, as well as the documents annexed thereto, shall be published in the official languages as soon as possible’ (United Nation 1983). By analyzing the amount of attention paid to each issue by members of the Security Council (through the number of comments made or number of questions asked) scholars can analyze how salient the issue is to the UNSC. They would also be able to as disaggregate the measure to analyze how important an issue is to each member nation.

Our measure can likewise be employed when analyzing the domestic constraints of foreign policy decision-making. For instance, in the US case, a scholar could analyze the number of questions asked in House or Senate Foreign Relations Committee hearings on an issue to measure the salience of that issue. To be sure, there are certainly problems (or at least potential pitfalls) with such an approach, including time limits for speakers and sometimes limits on how many members may actually speak (at least in the House). However, a fruitful approach similar to our oral argument analysis should at least be considered.

Although our application focuses on measuring information that is sought verbally, the proposed approach can be employed by measuring any method by which decision-makers seek information. In the United States, presidents and members of Congress can also seek information by ordering reports from federal administrative agencies. Members of Congress can order reviews by the Government Accountability Office (GAO) or reports from the Congressional Research Service and presidents have a wide array of bureaucratic agencies from which to request information. A request for additional information from one of these bodies by a decision-maker can likewise be an indicator of the salience of a particular issue.

Ultimately, in deploying our approach, the key hurdle is a sound theoretical understanding of the inner mechanics of each institution of inquiry, something that is almost certainly a prerequisite to conducting good research. Given this understanding, scholars need only ask how actors in those institutions gather information for the cases, bills, or agenda items they deem most important. While the identification and gathering of such data are almost certainly non-trivial tasks, they will ultimately produce variables that are far more meaningful in advancing scholars’ understanding of issue salience for the actors of interest.

Notes

1 An earlier version of this project was the co-recipient of the Pi Sigma Alpha award for the best paper presented at the 2008 annual meetings of the Southern Political Science
Association. Here, we draw heavily from that work. We gratefully thank Lee Epstein and Jeff Segal, who kindly shared their data and provided useful advice at various stages of this project. For providing thoughtful comments and feedback, we thank Tony Madonna, Wendy Martinek, and Robert Walker and other workshop participants from the Center for Applied Statistics at Washington University in St. Louis.

2 It is worth noting, however, that research into other institutions heeds the importance of actor-based measures. For instance, Wilkerson et al. (1999) examine issue salience in the US Congress by measuring the number of bills introduced on a given issue. Making a similar argument as the one we forward here, they posit the time and attention required to write, sponsor and introduce a piece of legislation shows commitment to the issue by individual representative and by the aggregated legislative body.

3 Studies using a media-based measure of salience outside of the US, for example, will use country or region-specific newspapers (cf. Hobolt 2005; Oppermann 2008).

4 We readily admit that not all applications of media-based measures are flawed in this way. We do not question the validity (although we later question the general empirical reliability) of media-based measures when applied to questions of public issue salience. For example, Oppermann (2008) analyzes how media coverage of the Euro in UK newspapers affects public attention towards the issue. Lejano (2006) finds similar results in his analysis of how newspaper articles that mention specific topics indicate which issues are most important. Finally, Hobolt (2005) demonstrates that daily newspapers are a measure of how much people think about EU issues.

5 Reliable transcription is not available prior to 1979. The Oyez Project (<www.oyez.org>) is currently creating transcripts from audio recordings of the oral argument sessions, which are available back through 1955.

6 Starting with the Court’s 2004 term, the transcripts also provide the identity of the justices from whom the statement or question came. Accordingly, we counted the occurrence of the word ‘JUSTICE.’ The Oyez data now employs techniques from computational linguistics to voice identify all cases prior to the 2004 term.

7 Indeed, even day-after media coverage necessarily occurs after a decision has been rendered. As noted by Benesh and Spaeth (2001: 2), ‘because the first consideration of a question and the announcement of its resolution are separated by months and sometimes even a full term, the argument that [the Times measure] reflects the level of salience the justices accorded a case when they agreed to review it is dubious.’

8 An added advantage of studying the Australian High Court using our measure is the extensive transcripts publically available for this institution covering every public hearing back to 1994 (online available: <www.austlii.edu.au/au/other/HCATrans/>). These transcripts are particularly useful because unlike transcripts of oral argument at the US Supreme Court prior to 2004, Australian transcripts clearly delineate which justice is speaking, enabling analysis on the individual justice level.

9 The standard errors for the intercept and term variable are 0.09 and 1.21, respectively. The adjusted R-squared for the regression model is 0.08 and the root mean squared error is 34.43 (questions).

References


An actor-based measure of issue salience


