6-1-1974

United States Supreme Courts' Impact: Broadening Our Focus

Stephen L. Wasby
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I. Introduction

Initial studies of the Supreme Court's impact developed along with a shift from a traditional concentration on the Court's doctrinal output toward a perspective which accepted it as another political institution. The early studies of the outcome of cases, narrowly descriptive and narrative, were concentrated on civil liberties and civil rights matters, initially school desegregation, followed by church-state relations, obscene literature, internal security, reapportionment, and criminal procedure. In the latter, Mapp v. Ohio and Miranda v. Arizona received the most attention, particularly in terms of police reaction and the communication of decisions, along with the Gault ruling on juvenile rights, providing evidence of rural-urban differences in factors affecting compliance.

Civil liberties decisions are still the subject of most impact studies, and analysts have tended to concentrate on their effect in a single arena (the courts or the legislature or the community). Church-state topics have continued to provide the most important studies, including those with the greatest theoretical sophistication, utilizing communication and attitude change frameworks. There has been only a limited change in the unavailability of studies in the economic regulation area, and we still find serious gaps concerning the effect of decisions on the executive branch.

While efforts have now been made to pull together the various relatively

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* I wish to express my thanks to my colleagues at the University of Wisconsin-Milwaukee, where I "visited" during 1972-1973, for the opportunity to present portions of some of this material on several occasions, and to Carol Welch for a number of clarifying revisions. An earlier version of this article was presented at the Ninth Congress of the International Political Science Association, Montreal, Canada, August 24, 1973.

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4 Medalie et al., Custodial Police Interrogation in Our Nation's Capital: The Attempt to Implement Miranda, 66 MICH. L. REV. 1347 (1968); Wald et al., Interrogations in New Haven: The Impact of Miranda, 76 YALE L.J. 1519 (1967).


7 For a model for studies of multiple arenas, see A. Sager, "The Impact of Supreme Court Loyalty Oath Decisions," paper presented to the American Political Science Association, September, 1971.


9 The principal works remain A. Miller, The Supreme Court and American Capitalism (1968) and M. Shapiro, The Supreme Court and Administrative Agencies (1968).

10 R. Scioliang, The Supreme Court and the Presidency (1971), is an important addition; see also M. Shapiro, supra note 9.
isolated studies and while problems of conceptualization have been given some attention, two 1970 issues of Law & Society Review devoted entirely to compliance and related processes now provide a new storehouse of materials and a critical starting point for anyone conducting impact research. Because of this developing body of theoretical and methodological material, an increasing number of Supreme Court impact studies are no longer merely descriptive accounts but are undertaken with at least some attention to systematic exploration of factors producing compliance and affecting impact.

Among the variables consistently noted as relevant to a decision's impact are the Court's case-by-case approach to a topic; such characteristics of a case as the unanimity of the vote or the ambiguity of the opinion; the geographical scope of a decision; the process by which the decision and opinion are communicated; follow-up to a decision by government officials; the situation—political, economic, and social—into which a decision is injected; the position and relative power of those who respond to the decision; characteristics of affected communities; and the knowledge levels and belief systems—attitudes, orientation, expectations, role conceptions—of those receiving the Court's decisions. Community elites' ability to withstand conflict or their desire to avoid it and lawyers' consensus on what a case means or on whether or not to comply with it have been noted more recently. So have a set of variables relating to organizational demands and constraints; included are the subordinate employee's "work situation" and work location, e.g., the discretionary authority of the beat patrolman.

Two other variables are "occupational ideology," and a unit's reward structure, which often reinforces noncompliance rather than compliance with Supreme Court rulings. A unit's size and physical location in relation to other units are important in terms of whether or not information about what the Court has done will be received; small units cannot spare a person to monitor outside communications on a full-time basis, but if the unit is near others, it can share information they receive.

In addition to this identification of relevant variables, there have also been some new efforts at theory development such as Baum's view of the Court as an organizational superior dealing with its subordinates, although in only a few studies have theoretically-derived hypotheses been consistently applied to new data and theory-building has remained limited. Some theory has been developed from previous studies including discussions of causes of compliance with law in general and social change resulting from the Supreme Court's rulings.
more, as a result of drawing on social science theory and greater inter-disciplinary attention to law-society relationships, impact studies have become much less isolated from political science and the remainder of social science and can be more closely related to other studies of law and social change.\textsuperscript{16}

II. Toward Comparative Impact Studies

With few exceptions impact studies have been limited to the United States, if not solely to the United States Supreme Court. As we build from single-country studies toward a general theory of the political impact of constitutional courts, we must identify central aspects of the American judicial system which would affect and limit the comparability of American findings if those studies are to be utilized in comparative work.\textsuperscript{17} We might do this in terms of several questions which should be pursued as part of such a comparative study.

One question is whether the power of judicial review exists, and if so, where it is located. While we used to say that judicial review differentiated the United States Supreme Court—and the American judicial system—from the high courts and judicial systems of other countries, many other nations now possess some form of judicial review, although the structural variations are numerous. What is significant about American judicial review is that the power is present in all of the nation’s courts even though some lower court judges may not consider it appropriate to exercise such power. Our federal system, with separate constitutions for national and state governments, reinforces this decentralization of judicial review. In addition our courts carry out their constitutional functions along with their other work further differentiating them from the constitutional courts of other nations. Even the Supreme Court is not solely a constitutional court, and only a small part of its workload, even during the Warren Court, has been devoted to constitutional interpretation.

The decentralization of judicial review complicates the problem of impact in two ways. The lower courts expected to carry out the Supreme Court’s rulings may, through their independent authority for judicial review, reinterpret what the federal high court has done. Furthermore, these lower courts, by deciding issues in advance of Supreme Court rulings, leave far less than a blank slate on which the Supreme Court can write, thus limiting the Court’s potential effects.

Another question concerns the number or percentage of cases which come before the highest court(s). A court’s potential impact is limited to the extent that relatively few cases reach it but are instead resolved elsewhere in the system. Our tendency to engage in a “top-down” approach in studying the judicial system long left us unclear as to the lower courts’ crucial role in framing issues and disposing of an extremely high percentage of cases. While we recognized the Supreme Court’s rejection of most cases brought before it, we paid less attention


\textsuperscript{17} For another discussion of some of these points, see Linde, Admonitory Functions of Constitutional Courts: The United States Experience, 20 Am. J. Comp. L. 415 (1972).
to the (low) percentage of cases people started to bring up to the Supreme Court. A "bottom-up" view allows us to see that most cases are screened out on their way "up the line." Howard, examining litigation flow in three United States Courts of Appeals, concluded that "district courts and agencies made controlling decisions in the vast majority of litigated cases" and that Courts of Appeals, "as courts of last resort in the overwhelming majority of cases . . . make national law residually and regionally." He found that only two percent of nonconsolidated circuit decisions were reviewed by the Supreme Court, leaving the Courts of Appeals as the final court in 98 percent of the cases. Although Richardson and Vines had found some "issue-transformation" between the district court and appellate court levels, with cases changing into civil liberties cases at the higher level, Howard found that district and circuit judges had defined issues differently in only slightly more than 5 percent of the cases, making the trial courts the ultimate issue- framers and deciders in almost all the cases.

The relation between the courts and other branches of the government is another matter which needs to be pursued in any comparative perspective. That the United States operates within the framework of a tripartite separation of powers—in reality, the sharing of powers between three separate institutional branches—is one of the main items differentiating it from other countries, which instead operate under a parliamentary system. Dahl has argued that, with minor exceptions, "the Supreme Court is inevitably a part of the dominant national alliance" and is seldom out of tune for long with law-making majorities.

However, as Howard and Bushoven have asserted:

Contrary to . . . Dahl's argument . . . that the Supreme Court can direct the course of national policy only as part of dominant law-making coalitions, the most aggressive uses of judicial power in the last decade have occurred precisely where political processes were stalemated or atrophied.

That the executive and legislative branches take different positions on policy matters not only serves to protect the Supreme Court from intrusions by the other branches, which might interfere more frequently if President and Congress were more closely aligned, but also allows the Court more freedom of action.

It must be recognized that the Supreme Court is politically independent and efficacious, capable of making policy and not merely resolving disputes. It can move first causing the other branches to react. Its involvement can be "positive, general, and continual," rather than "negative, selective, and episodic."

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In several areas, the Court acted largely alone for some time, for example, in school desegregation from 1954-1955 (Brown v. Board of Education)\textsuperscript{24} until 1964-1965 (the Civil Rights Act of 1964 and the Elementary and Secondary Education Act), and in criminal procedure, from the early 1960's until the last years of the decade, when the Omnibus Crime Control Act was written. There is no question that later involvement of Congress and the executive branch makes a difference in the law's impact. This is evident in school desegregation where the Department of Health, Education and Welfare guidelines following the 1964 Civil Rights Act brought about more desegregation than had the Court. In the public accommodations area the Court, which had avoided deciding the basic constitutional issue concerning “sit-ins,” was able merely to uphold Congressional power to act after passage of the 1964 Civil Rights Act. If the Court comes late to an area, as it did with welfare, it may be able to have only an interstitial effect as it threads its way through a maze of statutes and administrative regulations.\textsuperscript{25}

Closely related to the matter of the Court’s relationship to other branches of government is the question of whether the Court is a “self-starter” or only passive. In legal theory the Supreme Court is basically a passive instrument not able to call up cases for decision thus making its impact largely contingent upon the nature of the inputs or stimuli others provide. Although justiciability standards are somewhat flexible, the fact that the Court will deal only with matters raised within the framework of an actual case or controversy, rather than taking any case any government official might want it to decide, also limits its potential impact.

Nevertheless there are at least three elements which interact to bring a wide range of cases to the Supreme Court and to allow it, within the general constraints of its theoretical passivity, to be quite active. While the Court cannot pick a case not tendered to it, many cases are tendered, in part because of the American cultural phenomenon of transmuting social, economic, and political issues into legal ones, thus making them available for selection by the Court in the exercise of its discretion. Ambiguity in the language of opinions also leads people to come back to the Court in the hope of obtaining further resolution of issues. The stream of obscenity cases after the Court’s initial attempt in the Roth case\textsuperscript{26} to establish standards—a stream not yet over despite the spate of rulings and the redefinition of 1973\textsuperscript{27}—is an example. While the Court chose not to hear cases brought back to it, as it did with most school desegregation rulings after Brown II, this does not change the fact that it has the opportunity to do so. A final element is that the Court can encourage potential litigants to initiate cases or potential appellants to appeal by statements indicating which issues are “not before the Court” or are “not being resolved at this time.” While such statements may be merely attempts at clarification, they can be (and are) read as invitations to bring cases on as yet undecided matters.\textsuperscript{28}

\textsuperscript{26} Roth v. United States, 354 U.S. 476 (1957).
\textsuperscript{27} Particularly Miller v. California, 413 U.S. 15 (1973).
\textsuperscript{28} For a discussion of this point, see S. Wasby, supra note 11 at 65-66.
Viewing the Court as basically passive has deflected us from seeing the Court's full power to choose its own agenda. The certiorari power, providing the ability to pick and choose between cases without having to express a reason for so doing, is certainly one crucial element differentiating the United States Supreme Court from other constitutional courts. That the Court has turned its theoretically mandatory appeals jurisdiction into a similarly discretionary jurisdiction reinforces the special quality of the Court's work. Although many controversial matters are certainly not heard, such exercise of discretion helps to insure that the Court does not deal only with minor errors but rather with questions of major (political) relevance. If the Court were forced, as are most American state high courts, to hear all cases, the important ones would tend to be submerged even if they were heard and decided. Thus under the present system the impact in case X may be greater because case Y was not heard.

This effect of the Supreme Court's discretion on its ability to have an impact gives substantial importance to the Court's strategies of choice. We thus need to see whether by avoiding certain touchy issues, the Court is able to "keep its powder dry" for more effective use later. For example, early avoidance of miscegenation statutes and cemetery desegregation may have decreased friction which could have made acceptance of Brown v. Board of Education even more difficult to obtain.29 Similarly, the "self-inflicted wound" allegedly perpetrated by the Warren Court was created not by merely being involved in controversial issues but by being involved in so many of them. Thus, the Court's avoidance behavior and the doctrines used in aid of such behavior, e.g., standing, "political questions," and abstention, can be seen as important parts of the Court's repertoire in seeking to achieve compliance. So are the ways in which the Court deals with cases it does decide, for example, its use of broad opinions rather than narrow ones to resolve cases and its use of docket-management in the grouping of cases for decision. That the Supreme Court's members are conscious of strategy considerations can be determined from explicit considerations of impact voiced by some Court members, for example, in the criminal procedure retroactivity rulings in the 1960's.30

III. Communication of Decisions

Another question which can be raised as we try to stimulate the comparative examination of the impact of judicial decisions is how the actions of the courts


30 See S. Wasby, supra note 11 at 68-72 and more particularly G. Gregory Fahlund, Retroactivity and the Warren Court: The Strategy of a Revolution, 35 J. Politics 570 (1973). Direct evidence of the Court's use of strategy comes from the Justices themselves. For example, Chief Justice Burger recently commented:

When Taylor v. Georgia was unanimously decided in 1942, Chief Justice Stone assigned the writing of the opinion to Justice Byrnes for the very sound reason that an opinion by a leading figure from the South gave added force to a holding that the Georgia statute violated federal prohibitions against peonage.

Proceedings in the Supreme Court of the United States in Memory of Mr. Justice James F. Byrnes, 93 S. Ct. lxviii, lxxxv (1972). I am thankful to Carol Welch, University of Wisconsin-Milwaukee, for reinforcing the relevance of such comments for social scientists' study of the Court's strategy.
and their opinions explaining those actions are communicated to those affected by the action. If we are to evaluate the low rates with which individuals follow what the courts specify to be "the law," we need to know whether the rulings of those courts are ever getting to those who might be expected to utilize them; compliance cannot occur without information. This requires us to examine the transmission of decisions, an aspect of the impact process which has not been adequately studied. While Newland and Grey have extensively examined the role of the media, relatively little other work has been done to date although systematic study of the communication of Supreme Court decisions has now begun, primarily in the area of criminal procedure, on which we shall draw for examples in the remainder of this article.

One way to begin development of a "communications approach" to the study of judicial impact is to develop an inventory of means by which Supreme Court decisions might reach their intended destination. After an examination of some of those means, we will move on to examine some social science theories which are of potentially great usefulness in studying the communication of judicial decisions and which can assist us in the process of examining such matters in a comparative perspective.

The most obvious means by which Supreme Court decisions would be communicated would be the published opinions themselves, available in a number of versions. These are not universally available. In many rural areas, copies are simply not available at all; in Illinois, only about half the county seats have the Supreme Court's opinions available, with far smaller percentages having the opinions of the lower federal courts. Police departments, even in large cities, are also not likely to have the opinions although the availability of the Bureau of National Affairs' Criminal Law Reporter has changed that situation to some extent.

The court system might be used to communicate decisions, but Supreme Court rulings are usually transmitted only to the courts from which the cases were brought and are not sent down through channels as we might expect to occur in bureaucratically-structured organizations. Judges in other courts, without time to read the cases, may not learn about the Supreme Court's opinions unless the cases are cited by the lawyers handling cases in their courts. Thus, the trial court, while it could be the key link in the process of transmitting criminal procedure rulings to the police, may not actually serve that function. In addition, even when they know about the cases, trial judges may not communicate them, for example, by simply sustaining or denying motions to suppress evidence without explaining why the searches were proper or improper. Even criminal trial judges favorably disposed toward the police may not wish to embarrass a policeman by pointing out in open court how he erred. Even if the trial judge

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32 The first major work was N. Milner, supra note 5.
33 For a more extended discussion of this and related points, see Wasby, The Communication of the Supreme Court's Criminal Procedure Decisions: A Preliminary Mapping, 18 Villa. L. Rev. 1086 (1973) and Getting the Message Across: Communicating Court Decisions to the Police, 1 Justice System J. 29 (1974, forthcoming).
were to explain a Supreme Court ruling and its application, the message often would not get transmitted effectively to the police, because few departments have their "court officer" report what has occurred. Communication, when it occurs, is more likely to come from casual conversation between an officer who may have happened to hear a judge's explanation and a few of his fellow-officers.

The lawyer may be a more important link in the communications process than the formal court system. An opinion may move downward from court to court only after first moving "outward" to lawyers who then bring it to the judge's attention, sometimes misstating the law of the case and thus reinforcing improper communication of what the Supreme Court has done. Lawyers who are particularly important in the communication process are state attorneys general and local prosecutors. (The F.B.I. also serves as a major channel of information about court cases through a regularly published bulletin.) State attorneys general issue legal opinions and sometimes publish bulletins for law enforcement officers in which Supreme Court decisions are interpreted and related to state cases and statutes. In some states a contact person is also available in the attorney general's office to answer particularly difficult legal questions on a daily basis. Only a few local prosecutors consider it their task to provide regular information on court decisions to the police, may of whom believe they should receive such assistance. This prosecutorial failure has led a number of larger police departments to hire police legal advisors—full-time attorneys on the police payroll who assist in policy development and interpret Supreme Court rulings for the officers in the department.

Other sources of information include the media—radio, television, newspapers—from which attentive law enforcement officers find out initially about Supreme Court rulings, but only a very few newspapers print excerpts from even the most important decisions, and their tendency is to report effects of decisions rather than the Court's "message." Little use has yet been made of educational television to help train police. Specialized publications are more likely than media of general circulation to contain information relevant for the police, but the contents of court decisions are only sporadically presented in most of the police journals. Legal periodicals contain much discussion of cases, but that discussion is addressed primarily to lawyers, not law enforcement officers, and its utility is decreased by the fact it appears long after a decision has been announced. Handbooks and manuals suffer from the same time lag but can be effectively used in training programs.

Training programs are considered by the officers themselves to be the best means of learning about Supreme Court decisions, but even the relatively low minimum number of pre-recruit training hours is not always mandatory; therefore, by no means are all officers reached. Even fewer officers are affected by in-service training programs, necessary to "refresh" police officers' legal knowledge. Both types of programs, and the increasing number of pre-service programs offered primarily at junior colleges, also contain only a small proportion of

34 Wasby, From Supreme Court to Policeman: A Partial Inventory of Materials, 8 CRIM. L. BULL. 587 (1972).
material on Supreme Court criminal procedure rules, concentrating instead on technical skills.\(^{35}\)

The instructors in training programs are another vital link in the transmission of decisions to policemen; their continuing availability after seminars and courses to provide answers to men trying to apply the knowledge they have just learned would make the communication more effective generally; but there are only a few "circuit-riding" trainers to provide such important follow-up, particularly to officers in departments not close to larger cities.

While inventories of mechanisms, like other classifications, are useful starting devices, they are only a building block toward the development of theory, not theory itself. Some communication theories developed by social scientists with other interests than the impact of judicial decisions seem to have considerable usefulness for scholars of the judicial process. Those which seem particularly useful are the two-step flow of communication, diffusion theory, and portions of the theory of political development. Even when earlier findings from these theories are found not to apply directly or precisely in other settings, the theories are useful in organizing, analyzing, and understanding our data; their heuristic value alone is thus sufficient to warrant discussing them.

Perhaps the best-known communications theory is Katz and Lazarsfeld’s "two-step flow of communication."\(^{36}\) Prior to its development, it was widely assumed that the impact of the mass media, at that time largely the newspapers, was direct—that views were formed by what people read. Social psychology suggested at least one defect in that view: people read selectively and filtered what they read. Katz and Lazarsfeld added a social process to the media-recipient relationship. They argued that an individual is exposed to various subjects and ideas by the media, but that the media’s effects on opinions are attenuated, with opinions more likely to be affected by contact with other individuals, particularly those called “opinion leaders,” who pay more than average attention to the media. They found influence with respect to opinions to flow from opinion leader to average citizen, but it was the latter who usually initiated the contact,approaching others he knew to be more knowledgeable.

Further refinement of the theory suggested that opinion leaders, while paying more attention to the media than does the average citizen, are themselves influenced more by other people than by the media. In a sense opinion leaders have opinion leaders; one can posit several levels of such leaders similar to the several levels through which a Supreme Court opinion must pass to reach the ultimate recipient, a “multi-step flow.” Opinion leaders not only influence opinions, but also channel information, produce social pressure to conform, and provide social support for the views people hold.\(^{37}\)

The applicability of this middle-range theory of the transmission of Supreme Court decisions appears clear although some particulars may vary. For example, law enforcement officers hear about decisions from the media although usually not in great detail; the media may merely make them aware that the


Supreme Court has ruled in a way which might affect their work. Certain people in the "law enforcement community," including attorneys general, defense attorneys, and editors of special bulletins, play the role of opinion leader by devoting far more attention to what the Court is doing than does the average policeman although, unlike Katz and Lazarsfeld's opinion leaders, they may be paid to do so. Unlike the citizens in the original two-step flow theory, who usually initiated inquiry, the law enforcement specialists initiate communication; in fact, the call for greater professional training of policemen is, in effect, a call for the specialists to initiate more communication. Some police officers seek out legal advice from prosecutors, and there is evidence that the effect of law enforcement specialists on policemen will be greatest if the policemen want the training, if they want to know what the Supreme Court has said, and if they want to comply with it even if they have not initiated "search behavior" in the direction of obtaining legal information.

Some research based on the Katz-Lazarsfeld model has led to the suggestion that the two-step flow hypothesis might not apply to groups other than those on which it was first tested, particularly in the case of foreign groups. For example, Harik found that in a small Egyptian delta village:

The more people are exposed to the mass media, the more likely they are to obtain political information directly [from the media] . . . The role of mediators [opinion leaders] in disseminating information may decline in relation to the increase in exposure to the mass media.38

While mass media do not carry much information of direct relevance to the law enforcement officer, making him more dependent on the "opinion leader," greater emphasis on professionally-prepared specialized communications, like the International Association of Chiefs of Police's (IACP) "Training Keys," could easily reduce the informal opinion leader's transmission role.

Somewhat related to the two-step flow of communication idea, but differing notably in its emphasis, is "diffusion theory," associated with the name of Everett Rogers,39 in which attempts are made to explain how an innovation is adopted in a particular population. For Rogers the basic elements in the diffusion process are the innovation itself (for our purposes the Supreme Court ruling), the process by which it is communicated, the social system, and the passage of time. Some innovations are apparently adopted regardless of the decisions of others; that is, the social system seems to have little effect. There are, however, others which require that a majority of those in the social system accept the idea before individuals can adopt the innovation. With still other innovations, a group decision—requiring all to adopt, even when unwilling—may be necessary before adoption. At first blush it seems likely that Supreme Court decisions fall into the second category—that there must be a broad acceptance of the idea of the decision before many in a particular agency or jurisdiction will adopt it as part of their daily routine.

39 E. Rogers, Diffusion of Innovations (1962). I am indebted to Neal Milner, University of Hawaii, for suggesting Rogers' applicability to impact studies.
Relevant findings from diffusion research include Menzel’s report from a study of physicians that those in isolation are not likely to defy existing standards and that to be an (early) innovator one needs allies before long-established customs can be abandoned.\textsuperscript{40} Rogers had previously found that early adopters are younger, of higher social status, in more specialized work, and have a “different type of mental ability” than do later adopters.\textsuperscript{41} They also have a tendency to perceive themselves as deviant from others in the system. As these seemingly contradictory findings may suggest, groups vary in the degree to which they are open to innovation, with some having a norm of being “up-to-date.” Such a norm may mean that much organizational innovation, particularly in larger or more successful organizations, is “slack” or not related to efficiency. As Mohr has put it, “[a]fter solution of immediate problems, the quest for prestige rather than the quest for organizational effectiveness or corporate profit motivates the adoption of most new programs and technologies.”\textsuperscript{42}

In addition to these findings, we have some other propositions from diffusion theory which are potentially applicable in our judicial impact work. For example, Rogers’ suggestions that “impersonal information sources are most important at the awareness stage, and personal sources are most important at the evaluation stage in the adoption process,” and that “[c]osmopolite information sources are most important at the awareness stage, and localite information sources are most important at the evaluation stage.”\textsuperscript{43} The process of transmitting Supreme Court decisions to their ultimate user is more often started by the national press, the wire services or the FBI, with the most effective ultimate communication to the law enforcement officer being in local training sessions. Rogers also suggests that those adopting innovations earlier will have relied more on impersonal and cosmopolite sources of information than will have later adopters.\textsuperscript{44} Those who first begin to follow Supreme Court decisions in their work may well be operating “on their own” before a network of local support—or local training programs, for example—begins.

Those studying political development have been attracted to the role of communication, which helps produce literacy and political awareness, and to the shift in communications systems from “primitive” or undeveloped to more complex and sophisticated stages. The development theorists have produced broader concepts and perspectives which may help us to understand the process of communicating Supreme Court decisions. Two aspects of development theory which are of particular interest to those wishing to study the communication of the Supreme Court’s decisions are the way in which communications systems differ and the transmission of “modern” views and perspectives to those of “traditional” orientation.

Pye suggests the existence of traditional, transitional, and modern communications systems. In a transitional system—the description of which appears

\textsuperscript{41} Rogers, \textit{supra} note 39, at 192.
\textsuperscript{43} Rogers, \textit{supra} note 39, at 99, 102.
\textsuperscript{44} Id., at 179.
particularly appropriate to American law enforcement agencies—there is a heavy reliance upon “foreign and international systems of communication” (read: external sources) for information, “but there are no ready criteria for selecting what should be retransmitted” from the greatly increased volume of communications, resulting in random retransmission. There are, Pye says, few specialized opinion leaders “capable of sifting the messages of the mass-media system and drawing attention to matters of special interest to particular audiences.” By contrast, a modern system “is capable of transmitting a massive flow of uniform messages. . . .” While we have seen the growth of some new methods of communication to law enforcement officers, commenced either by private entrepreneurs or by public agencies operating with Law Enforcement Assistance Act funds, there are few such media. This increases the relevance of Pye’s observation that:

Under . . . conditions of relative sparsity of media it appears that people do not develop the same attitudes of selectivity (common to modern systems), and therefore in transitional societies the media can in fact play a far more potent role in political education than in the saturated societies.

Rogers’ distinction between social systems with traditional norms and modern social systems parallels and adds to this discussion. A modern social system has many ideas entering the system from external sources because of high interaction between members of the system and outsiders, and there is a high value on science and education. While some law enforcement personnel are coming to place more emphasis on training and education, there is still substantial resistance to it; and ideas do not enter law enforcement agencies from the outside in large numbers.

The transmission of new views and perspectives, not merely the development of new transmission systems, is of considerable importance both to development theorists and students of the impact of court decisions. If we define Supreme Court criminal procedure decisions, based on what Herbert Packer has called the Due Process Model, as “modern,” we can see the relevance of transmitting them to the police, whose actions—characterized by the Crime Control Model—may be viewed heuristically as “traditional.” If we are to communicate Supreme Court rulings to the police, we must be concerned with resocializing police to a new set of values. In Pye’s words, one must communicate “with people who have already reached what they feel to be a mature understanding of politics [read: police operations] but [which] is in fact an understanding relevant to a traditional . . . world. . . .”

If communication of new ideas is to be successful, attention must be paid to relating the new communications to what has gone before—to establishing “at any particular moment the appropriate balance between a people’s search

46 Id., at 161.
49 Pye, supra note 47, at 125.
for innovation and their need for continuity"—and to transmitting the "modern
world" as not being extremely at odds with present views. Police need to be
informed how Supreme Court rulings fit into what they are doing and how such
rulings will not hinder what they perceive to be their primary task of enforcing
the laws and catching criminals. In short, it is crucial "whether the modern
world has been communicated as being friendly and sympathetic or hostile and
foreign, as being benign and comforting or harsh and intractible." If the latter
is accomplished, then perhaps we will be able to produce more law enforcement
officers of the type Susan White calls "rule-applicants," who allow themselves to be
controlled "by the book" not so much because the book is right but because their
task is made easier as a result.

From the work of development theorists, we can obtain still more ideas
relevant to the explanation of the communication of decisions. For example, we
noted earlier that newly communicated rules may not be carried out because of
the recipients' "work situation." Seidman, examining the relationship between
law and development, has pointed out that "many role occupants may be
expected to be deviantly motivated with respect to the norms of development
because their reference groups adhere to contradictory norms." He also suggests
that "[a] norm of development may be expected to be dysfunctional because
it is not capable of performance under existing physical conditions." Perhaps
because the norm was not well communicated, it is seen as one which cannot be
carried out.

The idea of a patron-client relationship, used by some development theo-
rists, helps to put in perspective the relationship between a police chief and his
officers, an important organizational variable affecting communication. In
development theory, the local leader is quite important in bringing about accept-
ance of new ("external," "foreign," or "national" as opposed to "local") per-
spectives. While Supreme Court decisions do not reach policemen solely through
their chiefs, who thus do not control communication from the national level,
the chiefs can play a crucial role in the process. While newly-trained law enforce-
ment officers may have a more "modern" orientation, the transition must occur
under the aegis of many "traditional" chiefs. That "the conditions of rapid social
change . . . probably intensified the clients' need for something or somebody to
depend on" reinforces the chief's authority. Because some chiefs insist on a
high degree of personal (as well as departmental) loyalty, the relationships be-
tween chief and officers in some departments, particularly those without the merit
system or career service, may be usefully viewed as patron-client relationships.
Thus policemen who want more training may find that a traditionally-oriented

50 Pye, Communications Policies in Development Programs, in Communications and Political Development 231 (L. Pye ed. 1963).
52 White, A Perspective on Police Professionalism, 7 Law & Soc'y Rev. 61, 77 (1972).
54 Scott, Patron-Client Politics and Political Change in Southeast Asia, 66 Am. Pol. Sci. Rev. 91 (1972), is perhaps the most useful.
chief tied to a local power structure may block their way or at least increase the risks of attempting to become better trained. On the other hand, if the police chief, even though not "professional" in the sense of operating impersonally, is attracted to new external law, he can legitimize this new orientation for his men. Nevertheless, we must be aware that "there may be limits to how far traditional patterns can be relied upon to accelerate processes of modernization,"6 and must be extremely cautious not to push too far the application of the patron-client idea to the police chief-police officer situation. As Scott points out, reciprocity "distinguishes patron-client dyads from relationships of pure coercion or formal authority that also may link individuals of different status."57 Further, for Scott, "[c]lients have particularistic goals which depend on their personal ties to the leader," instead of the "common goals that derive from shared characteristics" of "categorical group members," of whom police may be an example.58 In many police departments, particularly in large cities, clearly "formal authority" of "explicit, impersonal-contract bonds"59 characterizes relationships. However, in the many small departments—a majority of all police departments in the United States—such relationships do not exist and the relationship is more like the "diffuse, 'whole-person' relationship"60 which characterizes patron-client ties.

IV. Conclusion

This article first attempted to present a very brief history of the development of studies of the impact of the United States Supreme Court and to indicate some of the aspects of the American judicial system which would affect or limit the findings from these studies when utilized in comparative analysis. It then turned to a more extended examination of the uses of a communications framework for such study, indicating some of the means by which Supreme Court decisions might be communicated and finally explored some social science communication theories which might be of use, indicating examples of their application in the area of law enforcement and criminal procedure.

56 Id., at 88.
57 Scott, supra note 54, at 93.
58 Id., at 97.
59 Id., at 95.
60 Id.