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IT HAS BECOME commonplace to observe that the Supreme Court is a political body. It is belaboring the obvious to assert that judicial decisions, particularly in the constitutional area, have effects beyond those on the parties to the litigation. Yet both lawyers and political scientists have, by and large, tended to move on to greener pastures once the inner logic, doctrinal contribution, and possible legal implications of a particular decision have been explored and the votes by the judges tabulated for analysis with many other cases. All too frequently, despite the outpouring of words and printers' ink, no attention has been paid to the implementation and effect of the Court's decisions.¹ And this even though it is a part of the profession's "conventional wisdom" that judicial decisions are not self-executing. To speculate why so few have studied the aftermath of the Court's decisions would be profitless. We can simply note that there are few such studies.²

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¹ The major exception is in the area of race relations and there the pressure of events and not professional interest has been responsible for the examination.

² Arthur S. Miller has recently issued a call for more impact studies. Miller, "On the Need for 'Impact Analysis' of Supreme Court Decisions," 53 *Georgetown Law Journal* 365 (1965). The existing impact studies can be quickly listed: Gordon Patric, "The Impact of a Court Decision: Aftermath of the McCollum Case," 6 *Journal of Public Law* 455 (1957); Frank J. Sorauf, "Zorach v. Clauson: The Impact of a Supreme Court Decision," 53 *American Political Science Review* 777 (1959); Jack W. Peltason, *Fifty-Eight Lonely Men* (New York: Harcourt Brace & World, 1961); Walter F. Murphy, *Congress and Court* (Chicago: University of Chicago Press, 1962); David R. Manwaring, "The Impact of *Mapp v. Ohio*," paper delivered at the 1964 Annual Meeting of the American Political Science Association, Chicago, Sept. 9-12, 1964; Stephen L. Wasby, "The Supreme Court, Obscenity, and Oregon Policy," paper delivered at the 1964 Annual Meeting of the American Political Science Association, Chicago, Sept. 9-12, 1964; Richard M. Johnson, "Separation of Church and State: The Dynamics of Supreme Court Decision-Making" (unpublished Ph. D. Dissertation, Department of Political Science, University of Illinois, 1965); W. M. Beaney and Edward Beiser, "Prayer and Politics: The Impact of Engel and Schempp on the Political Process," 13 *Journal of Public Law* 475 (1964).

This paper is a presentation of research findings and the posing of a research problem growing out of examination of the impact of one decision in one state.

I

Since 1915, the policy of the State of Tennessee has been that "it shall be the duty of the teacher . . . to read, or cause to be read, at the opening of the school every day, a selection from the Bible and the same selection shall not be read more than twice a month."³ In addition to the statutory requirement, it has been common practice for students and teacher to recite the Lord's Prayer. In 1956, this statute survived a challenge in the state courts.⁴ A taxpayer and parent had contended that Bible reading in the public schools violated both the First Amendment to the United States Constitution and Article I, Section 3 of the Tennessee Constitution.⁵ Relying primarily on *Everson v. Board of Education*⁶ and several state cases, the Tennessee Supreme Court unanimously upheld the statute. The Court said:

Counsel, it seems to us, confuses an hour, or a short period of reverence, or a simple act of spiritual devotion as being a form of worship that is being sponsored and approved by an agency of the State to the prejudice of other religious groups. We find it more or less difficult to conceive that these simple ceremonies amount to "establishment of a religion," or any attempt to do so; nor is it an infringement with any student's secular belief contrary to law.⁷

Declaring the King James version of the Bible to be non-sectarian, the Court justified the devotional exercises on the ground that

the highest duty of those charged with the responsibility of training the young people of this state in the public schools is in the teaching both by precept and example that in the conflicts of life they should not forget God. And this in substance is about all that our statute requires. For this Court to hold that the statute herein assailed contemplates the establishment of religion, and that it is

³ Sec. 49-1307 (A), Tennessee Code Annotated. Note that this requirement unlike those in some other states does not specify the version of the Bible to be used nor does it restrict the choice of selections to the Old Testament.

⁴ *Carden v. Bland*, 199 Tenn. 665, 288 S. W. 2d 718 (1956).

⁵ Tenn. Const., Art. I, Sec. 3: "*Right of Worship Free*—That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law to any religious establishment or mode of worship."

⁶ 330 U. S. 1 (1947).

⁷ 288 S. W. 2d 718, 722.

a subtle method of breaking down Mr. Jefferson's "wall of separation" between church and State, would be a spectacular exhibition of judicial sophistry.⁸

No appeal or petition for certiorari apparently was filed with the United States Supreme Court and so the matter rested until 1963.

*Engel v. Vitale*⁹ had foreshadowed the Supreme Court's decision in the 1963 case of *Abington School District v. Schempp*.¹⁰ In *Engel* the Court declared the New York Regents' prayer invalid as an establishment of religion. The narrow holding was "that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."¹¹ The broader implications of the decision brought an immediate reaction from all parts of the country. Religious groups split over the wisdom of the decision, newspapers praised or damned the Court, and private individuals quickly took sides.¹²

After the initial reaction, church groups began to assess the probable future of all types of devotional exercises in the public schools. Despite differing opinions concerning the desirability of such exercises most conceded that, if challenged, required exercises such as Bible reading and recitation of the Lord's Prayer were doomed. Some churches tried to prepare their members for this eventuality. The relative lack of outcry when the *Schempp* decision confirmed the predictions may be looked upon as an index to the success of the churches' "educational" program.¹³

In its simplest form *Schempp* declared that the required reading of the Bible without comment and the use of the Lord's Prayer as a regular religious exercise in the public schools was constitutionally impermissible as an establishment of religion. The Court was careful to note that "nothing we have said here indicates that . . . study of the Bible or of religion, when presented objectively as part of a secular

⁸ *Ibid.*, p. 725.

⁹ 370 U. S. 421 (1962).

¹⁰ 374 U. S. 203 (1963).

¹¹ 370 U. S. 421, 425.

¹² For the reaction to *Engel* see Phillip Kurland, "The School Prayer Cases," in Dallin H. Oaks, ed., *The Wall Between Church and State* (Chicago: University of Chicago Press, 1963), pp. 142-46; and Donald F. Boles, *The Bible, Religion and the Public Schools*, 3rd ed. (Ames: Iowa State University Press, 1965), chs. 6-8.

¹³ There was, of course, a reaction in 1963. It was mild only when compared to the outburst of a year before.

program of education, may not be effected consistently with the First Amendment.”¹⁴ As a result of this decision there was no doubt about the invalidity of the practices in Pennsylvania and Baltimore where the cases originated. In theory there should be no doubt about the status of similar programs in other states including Tennessee. Yet a cursory reading of the newspaper documents a definite lack of compliance in several states.¹⁵ One school superintendent in Tennessee explained why his schools had not changed their practice: “In that the state law has not been voided, I as Superintendent instructed the teachers to proceed as before.”

II

If the *Schempp* decision had any effect in Tennessee it should be noticeable in the policies adopted and enforced at the school district level. The State Commissioner of Education was reported as saying that it was permissible to read the Bible in public schools despite *Schempp* but he left the final decision to local school officials.¹⁶ The school boards were left free to continue the practice required by state law or to comply with the Court’s ruling. This study was undertaken to determine what the school boards did and, if possible, why. Even though it was expected that, in Gordon Patric’s words, the “decision was put into effect in diverse ways and ‘obeyed’ to varying degrees,”¹⁷ board action in response to *Schempp* was classified as changing or not changing policy. All districts reporting a departure from the pre-*Schempp* provisions of state law were considered changing districts. It was believed that one of several factors could be used to explain the differences between changing and non-changing districts. These were degree of urbanization, extent of religious pluralism, articulate opposition within the district to devotional exercises, or differences in the socio-economic composition of the school boards.¹⁸

To test these suppositions three questionnaires were prepared and

¹⁴ 374 U. S. 203, 225.

¹⁵ “Good Book Going Back to School Too,” *Nashville Tennessean*, August 25, 1963, p. 1; “Kentucky Schools Keep Prayer Policy,” *New York Times*, August 30, 1964, p. 36; “Prayer Decision Skirted in Jersey,” *New York Times*, October 4, 1964, p. 122.

¹⁶ *Nashville Tennessean*, August 23, 1963, p. 1. In an interview October 16, 1964, the Commissioner confirmed that he had left the decision to local officials. He said at that time that he had taken no official position on the issue.

¹⁷ Patric, *op. cit.*, p. 455.

¹⁸ Boles, *op. cit.*, p. 340, suggests the urbanization and religious pluralism explanations.

sent out in late 1964 and early 1965. One was mailed to each of the 152 superintendents of schools in the state. The second was mailed to the chairman and two other randomly selected members of each school board. The third was sent to the remaining school board members in those districts from which responses were obtained to either or both of the first two questionnaires. The superintendents were asked what the policy on Bible reading and devotional exercises had been in their district before June, 1963, and what it currently was. They were asked to identify any factors inducing change and to describe, in each time period, the policy-making role of the board, superintendent, principals, teachers, parents, religious groups, and any other participants. The first group of board members was asked about current (post 1963) policy, how it differed from that of the past, what groups or persons made policy suggestions to the board, and what groups or persons were consulted by the board. The second group of board members was simply asked to supply information on age, occupation, education, income, religious affiliation, length of service on the board, and length of residence in the school district of its members. Response to the first and third questionnaires was good. Ninety-two (60.5%) of the superintendents responded; ninety-seven (21.2%) of the first group of board members representing eighty-four of 152 districts replied; and 237 (56.1%) of the second group of board members from 109 out of a possible 121 districts returned the questionnaire. By combining the reports of the superintendents and the first group of board members (cross-checking where possible) the policy currently in effect in 121 of the state's 152 school districts was determined.

Of the 121 districts, 70 were reported to be still following the requirements of state law. The other 51 districts were reported to have made some changes in their policy but only one of these completely eliminated all Bible reading and devotional exercises. The other fifty merely made student participation voluntary and left the decision whether to have devotional exercises to the discretion of the classroom teacher. Thus 42 percent of the reporting school districts no longer adhere strictly to the provisions of state law even though all but one could have some form of classroom devotional exercise.

The most reasonable explanation for these differences in response to *Schempp* seemed to lie in the extent of urbanization. Table 1 shows the distribution of changing and non-changing districts according to this factor.

TABLE 1.

RELATIONSHIP OF URBANIZATION AND SCHOOL RELIGIOUS EXERCISE POLICY CHANGE

% of District Population Urbanized *	Number of Districts	
	Changing	Not Changing
90-100	17	19
80-89	1	0
70-79	0	0
60-69	0	0
50-59	1	0
40-49	3	1
30-39	2	0
20-29	5	9
10-19	3	4
0-9	19	37
Totals	51	70

Using the point bi-serial correlation¹⁹ the relationship between urbanization and tendency toward partial compliance with *Schempp* was found to be practically non-existent ($r_{pb} = -0.08$).²⁰ Thus, on the basis of questionnaire responses, school boards and superintendents in urban areas showed no greater tendency to change Bible reading and devotional exercise policy than the respondents from rural areas.

The possibility that increasing religious pluralism may account for objections to religion in the schools must remain largely in the realm of speculation since accurate figures on denominational membership by school district or even county do not exist. The National Council of Churches has issued a rough compilation by counties²¹

* On the basis of 1960 census data.

¹⁹ Allen L. Edwards, *Statistical Methods for the Behavioral Sciences* (New York: Rinehart & Company, 1954), pp. 182-85.

²⁰ As a cross check on this finding the districts were grouped by per cent rural non-farm and per cent rural farm. These were equally inconclusive. Rural non-farm $r_{pb} = 0.20$. Rural farm $r_{pb} = -0.12$.

²¹ *Churches and Church Membership in the United States* (New York: National Council of Churches of Christ in the U.S.A., 1956). These figures are no more than approximations since 137 denominations furnished no data and the membership of the Jewish and Roman Catholic faiths are estimated. Of particular importance in Tennessee, the Church of Christ is one of the denominations for which no figures were available. For this study the number of this group's congregations per county was determined and an average membership per congregation was used to estimate county figures.

and in lieu of anything else these figures were used to test this possibility. Only those counties with a single area-wide school district (no city districts) and those counties in which the county district and the city district took the same position could be used. This distorts the results somewhat but was made necessary by the impossibility of breaking county religious affiliation figures down into smaller units. On this rough test there is only slight correlation between religious pluralism and tendency to change ($r_{pb} = 0.02$). The pattern of change classified by total population of the district was also checked on the theory that heavily populated districts would be more likely to be religiously heterogeneous; again only a slight correlation was found ($r_{pb} = 0.24$).²²

The other two possibilities advanced above are equally ineffective in explaining the pattern of change. From only one of the eighty-four districts represented by responses from the first group of board members was there a report that the board had been approached by an individual who objected to a continuation of the Bible reading and devotional exercises. In this instance the protester's efforts were in vain since that district still complies with state law. Either there was no significant opposition to devotional exercise or else no board member wanted to admit that there had been any.

Using the chi square test and rejecting the null hypothesis at the 0.01 level of significance, tabulation of the responses of the second group of board members produced no significant differences in socio-economic characteristics between changing and non-changing boards. Tables 2 and 3 show the distribution and significance level of occupation and religious affiliation.²³

In each instance the null hypothesis must be accepted.

Thus far this paper has presented only negative results. Partial compliance with *Schempp* is not explained by degree of urbanization. There are no significant differences in the socio-economic characteristics of changing and non-changing board members. In the changing districts the board members did not report any overt pressure for compliance. And, by a rough test, the extent of religious pluralism in

²² This was expected since heavily populated districts are also the more urban areas. There is some indirect confirmation that religious pluralism was unimportant. Two large urban city districts still comply with state law while the two rural county districts which surround them have changed their policy.

²³ The other characteristics collected and their level of significance are: Age, 0.20; Education, 0.20; Income, 0.30; Length of Service on the Board, 0.50; Years Resident in the District, 0.80.

the district had no effect. These findings are significant and justify reporting. It may well be that the population of the State of Tennessee is too homogeneous—socially, religiously, and economically—for any of

TABLE 2
OCCUPATION OF SCHOOL BOARD MEMBERS

Occupation	Non-changing Districts	Changing Districts
Attorney	7	12
Professional and Banker	19	33
Self-employed	46	34
Managerial	15	12
White Collar	16	12
Skilled and Semi-skilled	18	4
Farmer	38	32
Retired	4	9
Other	15	11
Totals	178	159

$X^2 = 18.76$; $p > 0.05$

TABLE 3
RELIGIOUS AFFILIATION OF SCHOOL BOARD MEMBERS

Denomination	Non-changing Districts	Changing Districts
Baptist	55	39
Methodist	49	42
Church of Christ	20	17
Presbyterian, Congregational, and Episcopalian	14	28
Christian and Lutheran	22	12
Unspecified Protestant	12	10
Jewish	0	2
Totals	172	150

$X^2 = 11.84$; $p > 0.10$

these tests to be significant.²⁴ In some other state with greater diversity, urbanization and religious pluralism might be more important. Even so, Tennessee reaction would remain unexplained.

²⁴ A semi-humorous comment of one of my senior colleagues is relevant: "In Tennessee the cities are made up of rural people who just happen to live close together."

III

The reported response by Tennessee school districts to *Schempp* might be explained by one other hypothesis. There is in the questionnaires some support for it but not enough to make it possible to assert that it is correct. What follows then is largely speculative. The line of reasoning starts with a distinction between procedural and substantive change in policy. Policy change in any situation may take the form of (1) altering procedure without altering the policy goal, (2) changing procedure to reach a new policy goal without, however, making the new goal explicit, or (3) changing the policy goal with or without a change in procedure. Although we cannot be sure, it seems fairly safe to say that in the fifty school districts which overtly changed their policy on Bible reading and delegated the decision to the teachers there has been little change in fact. That is, it is suspected that the classroom teachers are "voluntarily" conducting Bible reading and devotional exercises just as they did before *Schempp*.²⁵ One might go a step further and assert, without being able to prove it, that the school boards were aware that this would probably happen. I am suggesting that the board members acted consciously either to save the substance of the program or to avoid upsetting the community status quo by making slight procedural changes. In the language of Sayre and Kaufman, the contestants who had the prizes of the game were able to keep them by responding to a rules change with a rules change of their own.²⁶ A comment by a lawyer on the board of a changing district indicates the compromise nature of the policy adopted:

My personal conviction is that the Supreme Court decisions are correct, and I so told the Board and Superintendent; but I saw no reason to create controversy. If the Board had made public a decision abolishing devotional exercises, there would have been public outcry. I believe all staff members understand that the continuance of devotional exercises in their schools and in their rooms is entirely voluntary and subject to discontinuance upon objection of any individual or minority group.

There are other reasons that a board might adopt this strategy of procedural change. It could be used to reduce disagreement within

²⁵ This suspicion is based on unsystematic conversations with classroom teachers from two or three districts which made this formal change and on the questionnaire responses of a few superintendents who indicated doubt that any actual change had occurred.

²⁶ Wallace S. Sayre and Herbert Kaufman, *Governing New York City* (New York: Russell Sage Foundation, 1960).

the board itself. It could be suggested by an individual as a means of reducing his own tensions between a desire to comply with the Court's decision and a desire to retain perceived advantages of devotional exercises. Finally, change in procedure without change in substance might be made to forestall demands for even greater change. There is nothing in the questionnaire responses to indicate which of these alternatives is correct and it is possible that all were present to some extent. If any or all of these suppositions are correct, a desire to retain the program rather than religious pluralism and urbanization would be responsible for the formal change. To this point the hypothesis does not provide an answer to the question of why the form was changed in some districts and not in others. It does emphasize that the answer must be sought in psychological rather than in demographic or socio-economic factors.

The question being asked in any impact study is why the Court's decision is not self-executing. In a different context Richard Neustadt has concluded that a self-executing order must have five characteristics: (1) the issuer of the order must be unambiguously involved in making the decision, (2) the order must be unambiguously worded, (3) the order must receive wide publicity, (4) those receiving the order must have control of the means of implementation, and (5) there must be no doubt of the individual's authority to issue the order.²⁷ Neustadt was speaking of orders issued by the President but there is no reason that the same analysis cannot be applied to Court decisions. In this instance, there was no doubt that the Court did in fact make the decision though one school board member suggested that the Court was "controlled by small pressure groups." When applied to the Tennessee statute the wording of the order, although negative in content, was clear enough.²⁸ There was wide publicity. The members of the boards of education had control of the means of implementation. However, the fifth factor was not so obviously present.

There was some confusion about the Court's decision. It was clear enough that required devotional exercises were forbidden but the Court did not commit itself on the status of voluntary programs such as those adopted by the fifty changing districts in Tennessee. This

²⁷ Richard E. Neustadt, *Presidential Power* (New York: John Wiley and Sons, 1960), p. 19.

²⁸ In some instances this criterion will not be met by a decision. The best examples are the confusion resulting from the "with all deliberate speed" formula in school desegregation and general ambiguity in the majority opinion in *Zorach v. Clauson*, 343 U. S. 306 (1952). See Peltason, *op. cit.*, and Sorauf, *op. cit.*

ambiguity caused one superintendent to assert confidently "we believe our policy [voluntary participation] is in accordance with the ruling of the Supreme Court and in accord with the desires of the people in this community."

More important is the question of the Court's authority to issue the order. The policy maker's reaction to a judicial decision will be conditioned by his perception of the Court's role in general, his beliefs concerning the importance of the challenged activity or program, his perception of the attitudes of his reference groups and constituents on the issue, and his perception of his role. The differences in policy position may be the result of a general attitude toward the Court and its role in the American system of government.²⁹ The following comments are typical in content and intensity.

Changing Districts

A Surgeon: We must conform with Federal law. If we are to teach our children to obey laws we must set an example.

A Farmer: We did not want to violate any federal law.

A Superintendent: I think the Supreme Court is correct. Very few people understand the religious issue, less seem to understand what is meant by religious freedom, and relatively few seem to understand the Supreme Court's role in our government.

A Farmer: We are commanded by the Bible to be subject to civil powers as long as their laws do not conflict with laws of God.

Non-Changing Districts

A Superintendent: Impeach Earl Warren.

A Housewife: The decision of the Supreme Court seemed senseless and I could see no advantage in making changes.

A College Professor: The Supreme Court decision didn't mean a damn.

A Banker: The general public in this county do not have the respect for the U. S. Supreme Court as they once did. They think it is packed, so to speak, and

²⁹ Speaking to the American Philosophical Society in 1952, Justice Felix Frankfurter observed that "broadly speaking, the chief reliance of law in a democracy is the habit of popular respect for law. Especially true is it that law as promulgated by the Supreme Court ultimately depends upon confidence of the people in the Supreme Court as an institution." Frankfurter, *Of Law and Men*, Elman, ed. (New York: Harcourt, Brace & Co., 1956), p. 31. Brehm and Cohen report an experiment demonstrating that the more credible the source of a communication the greater the change in the recipient's attitude even when there was wide discrepancy between the recipient's initial attitude and the content of the communication. Jack W. Brehm and Arthur R. Cohen, *Explorations in Cognitive Dissonance* (New York: John Wiley and Sons, 1962), pp. 247-48.

doubt very much if all are qualified and unbiased and listen to the whims of the President that gave them the appointment. The standards are on a lower level than back several years ago.

A Superintendent: I am at a loss to understand the necessity for this survey. I am of the opinion that 99% of the people in the United States feel as I do about the Supreme Court's decision—that it was an outrage and that Congress should have it amended. The remaining 1% do not belong in this free world.

A Lawyer: We felt that in the absence of some good specific objection, there was no compelling reason to change previous policy.

If one had these comments without information on the policy adopted, it would not be too difficult to predict the position taken by each of these school boards.

The Court-attitude is only one of the variables affecting the impact of a judicial decision. The other major variable is the policy maker's assessment of and commitment to the challenged program or activity.³⁰ Comments on the benefits and value of Bible reading and devotional exercises came only from the school board members and superintendents from the non-changing districts. These are typical:

A Farmer: I believe that if the Bible is removed from our schools and is not read that would be the first step toward removing the Holy Bible from our free society. Then we would eventually drift into heathenism.

A Merchant: This nation was founded and has grown under the firm belief in God. For those who do not believe it, there are places where they do not believe. Let them go there if they choose.

A Locomotive Engineer: I thought the Bible should be read and prayer held on account this was the only time some of our students ever had any spiritual guidance.

A Surgeon: This is a free country. If Bible reading is offensive to a very small minority then this minority may do homework or look out the window. However, we shall not discard Bible reading in order to coddle them.

A Bookkeeper: While this is a federal law, we do not intend to stick strictly to same. We permit Bible reading and devotional exercises in our school. If it was not being done, I would insist that it be done, bearing in mind that perhaps this is the only place some children are exposed to same. I cannot bear to think of communist atmosphere being exercised through our schools and children.

A Superintendent: Political leaders should read Bible and quit playing politics.

In some of these instances the belief in the importance of the program was sufficiently intense to override any desire to comply with

³⁰ See Thomas Schelling, *The Strategy of Conflict* (New York: Oxford University Press, 1963), pp. 24-28 for a discussion of the effect of making a public commitment on an issue or course of action. Brehm and Cohen, *op. cit.*, pp. 7-10, discuss the effect of commitment on the process of reaching a decision.

the decision. In other instances, respondents combined attacks on the Court with a defense of the program. It seems reasonable to assume that the relative intensities of the Court-attitude and the program-attitude determined in large part the policy position taken by the school board.³¹ In changing districts the board must have felt a greater obligation to follow the Court ruling than to continue to enforce their beliefs in the value of devotional exercises. In the non-changing districts *Schempp* was repudiated either because of a pre-existing negative attitude toward the Court or because of a strong belief in the value of the program, or both.

Perceptions of the attitudes of constituents or clientele are important but seem to be secondary. They play the role of reinforcing or modifying the Court-attitude and/or the program-attitude. A dentist on the board of a changing district observed that "we thought public opinion would want us to comply with Federal Law," while a chairman of a non-changing board (who did not indicate his occupation) said that the most important factor influencing him was that "we would have had complaints if we did not have Bible reading." Both of these board members were reacting to their perception of constituent attitude. The officials' constituents or clientele are not the only reference group they have. Other official bodies, such as the State Board of Education and the Commissioner of Education, may

³¹ The Court-attitude and the program-attitude may be either complementary or divergent. If complementary, one attitude would be positive and the other negative; they would reinforce each other and make reaching a decision relatively easy. If the two attitudes were divergent they would carry the same sign and the policy position would be unpredictable if no more were known. The possibilities and results can be diagrammed:

Court-attitude Direction	Program-attitude Direction	Policy-Position Expected
+	—	compliance
—	+	non-compliance
+	+	variable
—	—	variable

In the last two instances shown the intensity of the basic attitudes and the effect of secondary perceptions will determine the final policy position adopted.

Of those responding to this survey from changing districts only one indicated a negative Court-attitude as compared to twenty-six who expressed a favorable attitude. In non-changing districts the ratio was two favorable to thirteen negative expressions. No respondent expressed a negative program-attitude but only two from changing districts as contrasted to twenty-one from non-changing districts made positive statements. Both groups indicated a belief that their course of action had the approval of their constituents.

constitute another while non-official groups and opinion leaders could make up a third. The Commissioner's statement that Bible reading was permissible was not mentioned by any respondent but undoubtedly played a part in the making of decisions. The state has also continued to print the statutory requirement in the handbook of regulations for teachers. This prompted one superintendent to remark that "most teachers consider Bible reading a state law since it is still in their register." And a merchant in a non-changing district said that he was influenced by the necessity of "complying with the laws of the State." Another superintendent indicated his valuation of the Court's decision by reporting that he "suggested teachers continue practices of past until forbidden by law." While official reference groups, constituents, and perceptions of the ranking of state law and Court decisions played an admitted role in the policy making process, no board member indicated that he had been influenced by any non-official reference group. However, the possibility cannot be ruled out. One superintendent justified the lack of change in his district by pointing out that the county education association had adopted a resolution favoring continued compliance with state law.

On the basis of the information available, it is impossible to weigh the value of the perceptions that went into the making of the policies. But one might hazard a guess that in the changing districts a perception of the Court as an authoritative body exercising legitimate power was strong enough to override any commitment to devotional exercises. The reverse, of course, would hold true in non-changing districts. The weight given to reference group attitudes and the direction of those attitudes probably, though not necessarily, varied in the same direction as the final policy decision and served to reinforce attitudes toward the Court or beliefs in the value of devotionals. That is, public opinion in changing districts probably was perceived by the board as favoring or at least not opposing compliance with *Schempp* and strengthened the board's desire to comply.³²

One warning is in order. It is not asserted that procedural change to save substance and intensity of attitude explains what took place in Tennessee. All that is claimed here is that with the failure of the initial hypotheses in this study this additional explanation is possible and is supported to some extent by the response to the questionnaires.

³² One board chairman reported that he and the superintendent made the decision to leave devotional exercises to the teacher's discretion "since no one else seemed to be interested."

IV

In the light of the findings of this study, future research on the impact of Court decisions should obtain information on the policy maker's attitudes toward the Court, knowledge of the content and meaning of the specific decision and group of decisions into which it fits,³³ and attitudes on the particular issue under consideration. It should be possible to obtain responses to declarative statements on an "agree very strongly" to a "disagree very strongly" scale to get some indication of the intensity of feelings and perceptions.³⁴ It is believed that the collection of this attitudinal data would enable the researcher to predict whether the policy makers would or would not comply with the Court's decision. It would also lead to the conclusion that the same variables condition response to judicial decisions as affect reaction to other political stimuli.³⁵

One must conclude with Robert A. Dahl that "by itself, the Court is almost powerless to affect the course of national policy."³⁶ It may delay or accelerate adoption of policy but cannot impose or reverse policy. Court decisions, therefore, will increase in effectiveness as those who have to implement them are either in accord with the Court's position or are sufficiently convinced of the legitimacy of the Court's exercise of power that this conviction overrides any prior commitment to an alternative policy. A limit is thus placed on the ability of the Court to make policy and this impales the justices on the horns of a strategic dilemma. Their decisions have the greatest effectiveness when the policy laid down is non-controversial and the Court's prestige is high. But in a period of massive social (and therefore legal) change the justices' policy choices will be controversial and as a result the Court's prestige will be lower than in quieter periods.³⁷ The

³³ Compare Sorauf, *op. cit.* The fact that a policy maker is mistaken or uninformed about the meaning of a decision is important but his reaction will have to be evaluated in light of his understanding of the Court's order.

³⁴ See Johnson, *op. cit.*, Appendix B, for a questionnaire which could easily be adapted for use in any impact study.

³⁵ If this conclusion is correct the findings of the various voting behavior surveys, e.g. Angus Campbell, *et al.*, *The American Voter* (John Wiley and Sons, 1960), will become highly relevant to impact studies.

³⁶ R. A. Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker," 6 *Journal of Public Law* 279, 293 (1958).

³⁷ It may be that the making of more controversial decisions and weakened prestige plus abandonment of the mechanical explanation of the judicial decision-making process explain the differences in public and professional reaction to President Roosevelt's "court-packing plan" of 1937 and the Jenner-Butler Bill

options available are to deal with one problem area at a time in an attempt to maximize effectiveness by minimizing controversy or to take the problems as they come since any decision will have some, even if not total, effect. Unless we are to counsel judicial abdication the only way to resolve this dilemma is for the Court to utilize every legitimate means at its disposal to convince other policy-makers and the general public that its policy choice is the best of the possible alternatives.³⁸

in 1957. See Joseph Alsop and Turner Catledge, *The 168 Days* (New York: Doubleday, 1938) and Walter F. Murphy, *Congress and the Court* (Chicago: University of Chicago Press, 1962).

³⁸ On this point see: Martin Shapiro, *Law and Politics in the Supreme Court* (New York: Free Press, 1964), pp. 17-32.