

Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?

James L. Gibson Washington University in St. Louis
Michael J. Nelson Pennsylvania State University

Bartels and Johnston have recently presented evidence suggesting that the legitimacy of the U.S. Supreme Court is grounded in the ideological preferences and perceptions of the American people. In addition, they offer experimental data purporting to show that dissatisfaction with a single Court decision substantially diminishes the institution's legitimacy. These findings strongly break with earlier research on the Court's institutional support, as the authors recognize. The theoretical implications of their findings are profound. If the authors are correct that legitimacy is strongly dependent upon satisfying the policy preferences and ideological predilections of the American people, the essence of legitimacy is fundamentally transformed. Consequently, we reinvestigate the relationships among ideology, performance satisfaction, and Court legitimacy, unearthing empirical findings that diverge markedly from theirs. We conclude with some thoughts about how the Court's "countermajoritarian dilemma" can be reconceptualized and recalculated, once more drawing conclusions sharply at odds with those of Bartels and Johnston.

In a recent article in this journal, Bartels and Johnston (2013) report a novel finding about the relationship between institutional support for the U.S. Supreme Court and ideological dissatisfaction with the Court's outputs: "Contrary to conventional wisdom, a potent ideological foundation underlies Supreme Court legitimacy vis-à-vis subjective ideological disagreement with the Court's policy-making" (Bartels and Johnston 2013, 197, emphasis in original). This finding does indeed run strongly contrary to a broad and deep body of research on public support for the Court.

Their research is of immense theoretical importance for American politics. In essence, Bartels and Johnston assert that legitimacy depends upon performance satisfaction. In Easton's (1975) conceptual language, this means that diffuse support depends mightily upon specific support. If so, then the distinction between legitimacy and

satisfaction weakens dramatically, with the consequence that the so-called reservoir of goodwill that many believe protects the Court against retribution for policies displeasing to the majority cannot offer much protection at all. Indeed, in the experiment Bartels and Johnston report, the Court's legitimacy suffers a serious blow when respondents are told of *only a single displeasing decision*. If legitimacy is that fragile, then a wise and prudent Court would shift from emphasizing the "minority rights" half of its democratic assignment to becoming more of an agent of "majority rule."

The Bartels and Johnston article is all the more significant because it may be the only existing example of research showing a strong link between legitimacy and ideological dissatisfaction using a seemingly valid and generally reliable measure of court legitimacy. Much earlier research uses dependent variables heavily

James L. Gibson is Sidney W. Souers Professor of Government, Department of Political Science; Professor of African and African American Studies; and Director, Program on Citizenship and Democratic Values, Weidenbaum Center on the Economy, Government, and Public Policy, Washington University in St. Louis, Campus Box 1063, St. Louis, MO 63130-4899 (jgibson@wustl.edu). He is also Fellow, Centre for Comparative and International Politics, and Professor Extraordinary in Political Science, Stellenbosch University (South Africa). Michael J. Nelson is Assistant Professor, Department of Political Science, Pennsylvania State University, Pond Laboratory, University Park, PA 16802 (mjn15@psu.edu).

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contaminated with specific support variance. With a dependent variable systematically affected by a construct other than the one it purports to measure, it is not surprising to find that performance satisfaction depends upon performance. To the extent that the dependent variable is connected to the expectation that the Court will make pleasing public policies, then, obviously, performance matters.

But that is not the dependent measure Bartels and Johnston use. Indeed—putting aside for the moment one important measurement quip—these authors focus on a variable that extant research has documented as a valid and reliable indicator of the concept. The simple, common, and fatally damning critique that the same thing is being measured by the dependent and independent variables does not apply to the analysis of Bartels and Johnston.

At the same time, however, the validity and reliability of their main independent variable—perceived ideological disagreement—are not nearly so obvious. To be clear, Bartels and Johnston did not design the survey they analyze; the data are from a 2005 Annenberg survey. But, as the authors themselves acknowledge, fully one-half of the respondents gave conceptually and empirically ambiguous answers to the question about their perceptions of Supreme Court policymaking. If a more valid and more reliable measure of ideological agreement were used, then perhaps the empirical findings would differ.

Equally unprecedented is their finding that a single contrary Supreme Court decision can undermine judicial legitimacy: “We examined the influence of a *single decision*, so the size of the effects found is quite impressive and reinforces the importance of Court policymaking for citizen judgments of legitimacy” (Bartels and Johnston 2013, 196, emphasis in original). It is one thing to argue that accumulated grievances can undermine judicial legitimacy (e.g., as among African Americans; see Gibson and Caldeira 1992). It is quite another to claim that *each unpopular Court decision is dangerous to the institution’s health*. If so, the “countermajoritarian dilemma” is truly a profound dilemma. If legitimacy cannot protect the institution when it makes unpopular decisions, then the Court’s precious independence may be precarious. With so much at stake, it would be unwise to let these empirical findings enter the literature without careful scrutiny.

As it turns out, national survey data exist that allow a reconsideration of the Bartels and Johnston thesis. This data set contains a more valid and reliable measure of ideological dissatisfaction and additional control variables—especially the crucially missing support for democratic institutions and processes. The dependent variable is more reliable in this data set, and it does not suffer from a recent

discovery indicating that important contamination exists in the dependent variable analyzed by Bartels and Johnston. Finally, we suggest a different understanding of the Bartels and Johnston experimental findings, arguing that they must be understood within a model positing continuous monitoring of the Court and dynamic updating of satisfactions and dissatisfactions with its rulings.

However, the main purpose of our article is not to redo the Bartels and Johnston analysis; instead, we produce new evidence regarding the relationship between institutional support and ideological dissatisfaction. We also blend ideological disagreement into the traditional specific support concept, discovering that ideological dissatisfaction is a relatively small component of performance dissatisfaction. In the end, our data suggest conclusions directly at odds with those of Bartels and Johnston: The legitimacy of the Court is not overly dependent upon perceptions and evaluations of its performance. Instead, consistent with previous research, institutional support is primarily grounded in more fundamental and obdurate democratic values, and is therefore resistant to change. In the end, our analysis suggests a Supreme Court with institutional legitimacy that is more resilient than depicted by Bartels and Johnston. We conclude by proposing a “new math” by which the Court’s “countermajoritarianism” might be calculated.

Specifying the Research Problem

Ultimately, the research question put forth by Bartels and Johnston concerns the degree of connection between specific and diffuse support, both as theoretical and empirical matters. The issue is whether a “reservoir of goodwill” exists, which, conceptually, is indicated by a broken or weakened relationship between performance satisfaction and institutional support. If an independent reservoir does not exist that cushions the institution from the effects of policy disagreement, then diffuse support is of little practical consequence. Easton himself (1975, 442, fn. 21) implies that the relationship between the constructs should be rather small; he goes so far as to argue that a high correlation between the two concepts may indicate error in the measurement of diffuse support (see also Gibson and Caldeira 1992, 1127). Thus, from a theoretical vantage, the two concepts should be far from perfectly correlated.

At the same time, one would not expect the two forms of support to be unrelated. One way in which diffuse support is built is through a succession of pleasing policy decisions (Gibson, Caldeira, and Baird 1998). Indeed, some have conceptualized institutional support as

a “running tally”—albeit a “sticky” one—through which citizens keep track of their likes and dislikes of courts’ policies (e.g., Baird 2001). So diffuse and specific support ought to be related, at least moderately.

The strength of the relationship has varied in published studies. For example, Murphy and Tanenhaus’s (1968) pioneering research on the connection between the Supreme Court and public opinion reported correlations between various indicators of ideology and diffuse support that ranged from .45 to .55. However, their measure of diffuse support has been criticized due to concerns about endogeneity between it and measures of specific support (Caldeira and Gibson 1992; Murphy and Tanenhaus 1990). In addition, Scheb and Lyons (1999) find a bivariate correlation between diffuse support and specific support of .39.

Scholars have also examined the relationship between specific and diffuse support in courts abroad. In Gibson, Caldeira, and Baird’s study of the legitimacy of national high courts, diffuse and specific support are only moderately related in most countries (1998, 352, Table 7). Indeed, across the 20 surveys included in their analysis, the average correlation of diffuse and specific support is .33.

It is difficult to specify precisely the expected relationship between specific and diffuse support. It seems, however, that validity concerns arise when the shared variance falls much below 10% *and* when it exceeds about 25% ($.3 < r < .5$). With these parameters in mind, we turn to a reconsideration of the Bartels and Johnston data.

Conceptualizing Specific Support and Ideological Disagreement

We should be clear at the outset that we consider ideological dissatisfaction with the direction of the Court’s decisions to be *an element of* specific support. Specific support refers to performance satisfaction, and one component of performance is policymaking. Satisfaction with a court’s performance may therefore reflect agreement with the decisions made by that court. But satisfaction may also reflect other considerations, including satisfaction with how decisions are made, the speed and alacrity with which they are made, how litigants are treated, how the opinion is written, and the overall context of the institution. Perhaps, for some, dissatisfaction with the current Supreme Court has nothing at all to do with the ideological makeup of its decisions, but is based instead on the fact that it makes so few decisions per term. Dissatisfaction may also stem from the actions of the justices, such as writing books for profit, going duck hunting, disagreeing in public with the president, or refusing to televise its proceedings. Bartels and Johnston do not test alter-

natives to ideological dissatisfaction because they do not include in their analysis a more general measure of performance satisfaction. On the contrary, we hypothesize that ideological disagreement with the Court is only a relatively small component of people’s views on how well the Court is doing its job, and therefore we include in our analysis *both* measures of ideological dissatisfaction and more general performance dissatisfaction.

Finally, we agree with Bartels and Johnston on the nature of the causal connection between specific and diffuse support. That is, the authors come down strongly on the view that specific support causes diffuse support, rather than vice versa. One aspect of their analysis we do not challenge is this presumed causal ordering.

Reconsidering the Bartels and Johnston Findings

The Dependent Variable: Institutional Legitimacy

The survey portion of the Bartels and Johnston analysis uses a five-item dependent variable grounded in extant research (e.g., Gibson, Caldeira, and Spence 2003b) and is said to be a measure of legitimacy, or institutional support. It is therefore important to consider the operationalization carefully.

The items used, the percentage of respondents giving a reply supportive of the institution (irrespective of whether that requires an “agree” or a “disagree” answer), the loading on the first unrotated factor extracted by common factor analysis, and the amount of shared variance between the item and the rest of the items in the set are as follows:

- The Supreme Court can usually be trusted to make decisions that are right for the country as a whole. (75.8% support; loading = .55; $R^2 = .26$)
- The decisions of the Supreme Court favor some groups more than others. (24.1% support; loading = .60; $R^2 = .31$)
- The Supreme Court gets too mixed up in politics. (25.0% support; loading = .66; $R^2 = .34$)
- If the Supreme Court started making a lot of rulings that most Americans disagreed with, it might be better to do away with the Court altogether. (75.3% support; loading = .37; $R^2 = .09$)
- Generally speaking, how much do you trust the Supreme Court to operate in the best interests of the American people—a great deal, a fair

amount, not too much or not at all?¹ (74.8% support; loading = .55; $R^2 = .26$)

The percentages of respondents giving supportive answers to these questions reveal that none of these items sharply divided the American people.

Factor analyzing these indicators produces a unidimensional structure, with an eigenvalue of the second extracted factor of .98 (which is close to the conventional threshold of 1.00). Only the “do away with” item has a weak (.37) loading on the first extracted factor. As documented by an R^2 of only .09, this item is poorly connected to the rest of the measures in the set. Cronbach’s alpha is .71 with a mean inter-item correlation of .29.²

The Annenberg study also included a traditional measure of specific support—judgments of how well the institution is doing its job, on a scale ranging from “very good” to “poor.” Unfortunately, the legitimacy measure is strongly correlated with specific support: $r = .57$.

This empirical evidence suggests that the measure used by Bartels and Johnston is contaminated with specific support variance resulting, most likely, from the use of two “trust” items in the five-item set. As Gibson (2011) has recently shown, trust items are more closely connected to specific than diffuse support. Any index including trust items will therefore suffer from diminished validity as a measure of diffuse support. In the case of the Annenberg measure, two of the five items refer to trusting the Court.³

If the relationship of ideological disagreement and the Bartels and Johnston dependent variable is due in part to the fact that ideological disagreement is one of several components of specific support—and specific support itself is not included in the equation—then their analysis may overestimate the effect of ideology on legitimacy. To overestimate the effect of ideology on legitimacy has vast consequences for legitimacy theory, altering the theory in fundamental ways, rendering diffuse support a very shallow protective reservoir indeed (as Bartels and Johnston recognize and accept). Consequently, it is crucial that we get the estimate of the effects of ideological disagreement correct.

¹To our knowledge, this item has not heretofore been used as a measure of institutional support.

²These conclusions are based on our re-analysis of Bartels and Johnston’s replication dataset.

³For the experiment they report in the second portion of the paper, the four-item index also includes one of the “trusted” items.

Measuring Ideological Disagreement

As reported in their Table 1 (Bartels and Johnston 2013, 189), the Annenberg survey uses the following item to measure perceptions of the ideological location of the Supreme Court: “Judging by its recent decisions, do you think the Supreme Court is generally liberal, generally conservative, or is it making decisions more on a case-by-case basis?” About 21% of the respondents view the Court as generally liberal, with 26% seeing it as generally conservative. The problem, however, is that about 53% say that the Court is “making decisions more on a case-by-case basis.” This is a curious way to measure perceptions that the Court’s decisions are “moderate” (as indicated in their Table 2, p. 191: “Case-by-Case [Moderate]”).

What does it mean to say that decisions are made “on a case-by-case basis”? The context of the question may have helped the respondents understand the phrase’s meaning; this last option is implicitly posited as different from both generally liberal and generally conservative. But to use this wording as an operationalization of the concept “moderate” is to use an indicator of dubious validity and reliability.

An alternative to the view that respondents selecting this response category judge the Court’s decisions as ideologically moderate is that this “case-by-case” response category attracted those who reject the premise that Court decisions are made on the basis of ideology; a “case-by-case” approach could well be one in which, *devoid of ideology*, the justices decide the cases as dictated by the law. This is not the same as being ideologically moderate. The response category may also have been a safe haven for those without an opinion, which may be why such a large percentage of the respondents selected this option.⁴ Whatever the interpretation of this phrase, there can be little doubt that the 53% of respondents choosing this response are quite heterogeneous in their views of the Court, and therefore the indicator is heavily laden with measurement error.

Our purpose in this article is not to offer a full-blown critique of the analysis of Bartels and Johnston, in part because they obviously did the best they could with the

⁴Survey researchers have long recognized that offering a middle-category to respondents—especially on a matter on which true lack of opinionation is likely to be fairly widespread—is unwise because social desirability pressures will direct those without opinions to the middle category. For example, Fowler (1995) writes that the “middle category becomes a haven for those people who lack the information needed to have an opinion about a question” (163; see also Peterson 2000). Likewise, Converse and Presser (1986, 37), suggest that researchers should “not explicitly provide the middle category” in order to “avoid losing information about the direction in which some people lean.”

measures available. Instead, we turn to a different data set to try to get better leverage on the nature of the relationship between institutional support and ideological disagreement.

New Evidence on Ideological Disagreement and Institutional Support

This analysis is based primarily upon a survey of a representative sample of the American people conducted in 2011 (see Appendix A in the online supporting information).

Measuring the Court's Ideological Location

Our survey uses an alternative measure of perceptions of the ideological location of the Supreme Court: "Thinking about the United States Supreme Court in Washington and the decisions that it has been making lately, would you say that the Supreme Court is a very liberal court, a somewhat liberal court, a somewhat conservative court, or a very conservative court?" It is instructive to compare our results to those of Bartels and Johnston.

Before considering the differences, recall that the Annenberg survey was conducted in 2005, and our survey was conducted in 2011. Also, the Annenberg survey uses three response categories; our survey uses four response categories.⁵ The Annenberg sample is nearly twice as large, and the percentage of respondents unable to judge the Court's ideological location is somewhat smaller than our percentage. Despite these methodological differences, the substantive differences between the two surveys are remarkable.

Collapsing the 2011 figures to make them somewhat more compatible with the 2005 figures, 55.0% of the American people judged the Court to be at least somewhat conservative in 2011, compared to 26.0% in 2005. The comparable figures for perceptions of a liberal Court are 42.1% and 20.1%. These are remarkable differences.

In addition, an important disparity in these two surveys pertains to the middle category: The Annenberg survey uses the "making decisions more on a case-by-case basis" response category, whereas our survey did not explicitly offer a middle category. The results are dramatically different. According to the Annenberg survey, 53.4%

⁵We anticipated the response "partly conservative and partly liberal" and therefore included it in the response set as a pre-coded volunteered response.

of the respondents thought the Court made decisions on a case-by-case basis. But according to our survey, only 2.6% of the respondents volunteered a response judging the Court to be partly conservative and partly liberal.

We believe the primary difference between the two questions has to do with the "case-by-case" response alternative used in the Annenberg study. One could easily imagine that the Court makes its decisions on a case-by-case basis, but that, in the aggregate, the Court's decisions are still somewhat liberal or somewhat conservative—which is not "moderate." At a minimum, our formulation provides for dramatically better discrimination among the respondents, inasmuch as the Annenberg question places over one-half of the respondents in a highly ambiguous response category.⁶

Ideological Distance

We measured the ideological distance between the respondent and the Supreme Court, based on the respondent's self-identification and the perceived location of the Court. Following convention, self-identifications were collected on a 9-point scale, ranging from "extremely conservative" to "extremely liberal." In terms of perceptions of the Court's position, we felt that it would be too onerous to ask respondents to identify the ideological location of the Court on such a fine-grained continuum—such a strategy would only invite measurement error—and therefore used a 4-point scale graduated from "very conservative" to "somewhat conservative" to "somewhat liberal" to "very liberal." (A handful of respondents answered our question by volunteering that the Court is liberal on some issues and conservative on others. We placed these respondents between "somewhat conservative" and "somewhat liberal.") The analytical task is to map these categories onto the 9-point scale. Obviously, "somewhat liberal" maps directly onto the score for "somewhat liberal" (7) on the self-identification continuum, and similarly for "somewhat conservative" (3). We then scored "very liberal" perceptions at the midpoint between "liberal" and "extremely liberal" (8.5), and similarly for "very conservative" (1.5). The part-liberal and part-conservative responses were scored as "middle of the road" (5). Thus, with this strategy, rough correspondence between the scales measuring self-placement and Court placement is achieved, and ideological distance is sim-

⁶A Pew survey conducted in July 2007 (the closest date we could find to the date of the Annenberg survey) found that 35% of the American people rated the Court at the time as "middle of the road." It is always hazardous to make strict comparisons across surveys, but there is about a 20 percentage point difference between Pew's "middle of the road" and Annenberg's "case-by-case" findings.

ply the difference between the self-placement and Court placement scores. Note that perfect matches (zero distance) are impossible for some portion of the sample. We therefore treat as “minimal ideological distance” all scores within $\pm .5$ units. The categorization of the continuous index is useful for descriptive purposes only; for all analytical purposes, the continuous measure is used. The index of ideological proximity varies from -7.5 to $+7.5$ and has a mean of $-.44$ (very slightly more liberal than themselves), with a standard deviation of 3.68. The ideological distance between the respondent and the Court is then simply the proximity measure squared.⁷ Using a fairly rough categorization of the index, only 15.7% of the respondents place the Court in very close ideological proximity to themselves. At the same time, 27.9% see the Court as quite a bit more liberal than themselves and 21.0% see the Court as quite a bit more conservative than themselves. Thus, even by fairly loose standards, a considerable proportion of the American people see the Supreme Court as ideologically dissimilar to themselves.

⁷Nearly sixteen percent (15.9%) of the respondents could not locate the Court in ideological space, and therefore no direct ideological proximity measure could be calculated. For descriptive purposes, we report the responses of the approximately 84% of the sample who could place the U.S. Supreme Court on the liberal–conservative ideological continuum. For analytical purposes, however, at least some proportion of the missing data on the ideological distance between the respondent and the Court can be recovered via the specific support item asking whether the Court is too liberal, too conservative, or about right in its policy making. Several steps are involved. (1) The easiest imputation is to score those respondents who answered that the Court is “about right” at zero ideological distance from themselves. This results in scoring 52 of the 119 missing cases. (2) For those who said they “don’t know” whether the Court is too liberal or not, no imputation strategy makes sense. These 41 respondents continue to be coded as missing on the ideological distance measure. (3) For those who judged the Court to be either too liberal or too conservative, and who could also place themselves on the ideological continuum, we pursued an imputation strategy of assigning the mean ideological distance score of those with the same characteristics (perception of the Court, placement of themselves). For instance, there are two respondents who are extremely conservative and view the Court as too liberal, but who could not place the Court on the ideological scale. The mean distance of those who are extremely conservative and who could locate the Court is -5.23 ($N = 31$). Therefore, these two people were scored at -5.23 . At the other end of the continuum, there were 3 respondents who described themselves as “liberal” (no extremely liberal respondents have missing ideological distance scores) and who see the Court as too conservative. These 3 people were assigned a distance score of 5.56, the observed mean of the 18 respondents who are liberal and who see the Court as too conservative. This strategy recovers distance scores for 26 respondents. These various imputation strategies result in assigning ideological distance scores to 79 of the 119 missing cases. The mean and standard deviation of the original variable are $-.44$ and 3.68; for the variable after imputation, they are $-.43$ and 3.52. Both variables have a median of 0. This method almost certainly introduces no bias into our analyses, while contributing significantly to minimizing any consequences of selection bias were no imputation strategy used.

Measuring Institutional Legitimacy

To develop empirical indicators of institutional loyalty, we follow a considerable body of research theorizing about and measuring mass perceptions of high courts. That research conceptualizes loyalty as opposition to making fundamental structural and functional changes in the institution and is grounded in the history of attacks by politicians against courts in the United States and elsewhere. As Caldeira and Gibson (1992, 638) describe it, those who have no loyalty toward the Supreme Court are willing “to accept, make, or countenance major changes in fundamental attributes of how the high bench functions or fits into the U.S. constitutional system.” To the extent that people support fundamental structural changes in an institution, they extend little legitimacy to that institution.

Consequently, seven statements were put to the respondents, with the request that they indicate their degree of agreement or disagreement with each statement.⁸ The statements used, the percentage of respondents giving a reply supportive of the institution (irrespective of whether that requires an “agree” or a “disagree” answer), the loading on the first unrotated factor extracted by common factor analysis, and the amount of shared variance between the item and the rest of the items in the set are as follows:

- It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court. (31.4% support; loading = .75; $R^2 = .45$)
- The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. (29.6% support; loading = .68; $R^2 = .40$)
- Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge. (47.2% support; loading = .67; $R^2 = .37$)

⁸Following Gibson’s (2011) admonition against using the “Supreme Court can be trusted” item in measures of institutional support, we have excluded that variable from the index. Gibson’s analysis of this item demonstrates that responses to it are more heavily influenced by performance satisfaction than institutional support. In this case, the correlation between the item and the index of institutional support is only .27. A factor analysis of the eight-item set of indicators (i.e., including the “trusted” item) reveals that a second significant factor emerges (albeit with an eigenvalue of only 1.004), and that the loading of the trust item on the first factor is only .33. These analyses indicate that the item is not a very valid measure of the concept, confirming Gibson’s earlier findings.

- Supreme Court justices are just like any other politicians; we cannot trust them to decide court cases in a way that is in the best interests of our country. (57.2% support; loading = .60; $R^2 = .30$)
- If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether. (70.3% support; loading = .58; $R^2 = .29$)
- The U.S. Supreme Court gets too mixed up in politics. (27.9% support; loading = .55; $R^2 = .26$)
- The right of the Supreme Court to decide certain types of controversial issues should be reduced. (44.9% support; loading = .52; $R^2 = .26$)

In order to rigorously assess the hypotheses concerning the variability in institutional support, we require a summary index of loyalty toward the institution. Our analysis reveals that these 2011 measures of legitimacy are quite reliable, with a Cronbach's alpha of .81. The average inter-item correlation is .39, which is moderately strong given categorical data that only approximate an interval-level scale and given some degree of degenerate variance in a few of the items. In addition, Common Factor Analysis strongly supports the conclusion that responses to these statements are valid indicators of the legitimacy of the U.S. Supreme Court—the seven-item set is strongly unidimensional (the eigenvalue for the second extracted factor is only .81); all factor loadings are greater than .50. Because the mean of the responses to these seven items is so strongly correlated with the factor score ($r = .99$), we use as the dependent variable for this analysis the average response to the institutional support items.⁹

Performance Satisfaction

In general, the American people are reasonably satisfied with how well the Court does its job, with 70.7% rating the Court as doing a pretty good or great job. Only about one-quarter of the American people believe the Court is doing a not very good or poor job. We use this item as our measure of specific support for the Supreme Court. The correlation of specific support and ideological disagreement with the Court is $-.13$.

⁹Following Bartels and Johnston, all variables in this analysis (independent and dependent) are scaled to vary from 0 to 1 based on the observed frequency distributions.

Multivariate Analysis of the Sources of Institutional Support

So as to be able to compare our results to those of Bartels and Johnston, we have conducted an analysis similar to that reported in their Table 3 (2013, 192), using institutional support as the dependent variable. There are differences in the analytical approach we take and the variables we include and do not include.

We include in our analysis an essential set of predictors of legitimacy, support for democratic institutions and processes, including (1) support for the rule of law, (2) political tolerance, and (3) support for liberty versus order. Appendix B in the online supporting information discusses the measurement of these concepts.

However, we do not have measures of “political trust” or of “differential media exposure.” Both variables are significantly related to institutional support in their results.¹⁰

As for control variables, we include the set Bartels and Johnston used, even when they are not significantly related to support in their analysis. We supplement these controls with a few additional variables.

Table 1 reports a considerable amount of important statistical information. First, the equation is quite powerful when it comes to predicting variability in support for the Supreme Court: $R^2 = .39$ (adjusted $R^2 = .37$). This compares to an adjusted R^2 of .31 for the Bartels and Johnston equation. The superior predictability of our equation is due at least in part to our inclusion of valid measures of support for democratic institutions and processes.

Second, there are some quite notable nonrelationships reported in the table. The bivariate correlation of ideological disagreement and support is $-.03$; for party identification, the coefficient is .04. Several of the control variables (e.g., whether one is an African American) are almost totally unrelated to institutional support. Some significant differences exist on these variables between our data and those of Bartels and Johnston, the most noticeable of which are their observed effects of being African American and of being female. We attribute these differences to specific support linkages built into their dependent measures.

¹⁰Appendix C provides an analysis of the consequences of not being able to fully replicate the equation of Bartels and Johnston. We conclude that media exposure may have a statistically distinguishable effect, but excluding it from their model does not appear to have any substantive consequences. As for trust, Bartels and Johnston use trust as a “surrogate” for support for democratic institutions and processes; our substitution of direct measures of democratic values for a trust measure (which is not available in our survey) results in conceptually equivalent model specifications.

TABLE 1 Multiple Predictors of Institutional Support for the U.S. Supreme Court

Predictor	r	b	s.e.	β
Ideological Disagreement	-.03	-.08	.03	-.10**
Job Performance Satisfaction	.26	.17	.03	.19***
Support for the Rule of Law	.36	.19	.04	.17***
Political Tolerance	.26	.13	.03	.16***
Support for Liberty over Order	.42	.13	.03	.16***
Court Knowledge	.41	.11	.02	.18***
Party Identification	.04	-.01	.02	-.02
Age	.07	.01	.03	.02
Hispanic	-.20	-.04	.02	-.06*
African American	-.06	.03	.02	.04
Level of Education	.37	.12	.02	.18***
Gender	-.10	-.01	.01	-.03
Social Class (Home Ownership)	.17	.01	.02	.02
Church Attendance	.04	-.01	.02	-.02
Whether Born Again	-.11	-.02	.01	-.06
Equation				
Intercept		.07	.04	
Standard Deviation of Dependent Variable		.19		
Standard Error of Estimate		.15		
R ²				.39***
N		683		

Note: All variables have been recoded to range from 0 to 1 (including the dependent variable). Higher scores on the dependent variable indicate greater degrees of institutional support. The coefficients reported are the bivariate correlation coefficients, the unstandardized ordinary least squares (OLS) coefficients, the standard errors of those coefficients, and the standardized OLS coefficients.

Significance of standardized regression coefficients (β):

*** $p < .001$, ** $p < .01$, * $p < .05$.

Source: Freedom and Tolerance Survey, Washington University in St. Louis, 2011.

Third, following earlier research, the democratic values indicators are strong predictors of institutional support. Those who support the Court are stronger supporters of the rule of law, are more tolerant, and are more likely to favor liberty when liberty and order conflict. The magnitude of the effect is not entirely obvious in the table, however, inasmuch as the multivariate coefficients represent only the independent effects of each of

the components of the democratic values set.¹¹ It is noteworthy that when these three variables are added to an equation including only ideological disagreement and job performance satisfaction, the explained variance jumps from 7% to 30%. By any statistical measure, willingness to grant legitimacy to the Supreme Court is very closely connected to more general support for democratic institutions and processes. No comparison to the Bartels and Johnston data is possible because no direct democratic values measures were available to them.

Fourth, ideological disagreement is a poor predictor of institutional support. One can see this in the bivariate ($r = -.03$) and multivariate ($b = -.10$) coefficients. The latter coefficient is distinguishable from .00 at the $p < .01$ level ($N = 683$), but the relationship is still trivial. General ideological disagreement with the Court has little to do with willingness to extend legitimacy to the institution. This finding is directly contrary to that of Bartels and Johnston. And it should be noted that the very small relationship between ideological disagreement and institutional support is not a function of the relationship between disagreement and other independent variables (e.g., as documented by the trivial bivariate correlation).

Job performance satisfaction, however, is connected to institutional support to a significant and important degree. Those who are more satisfied with the Court's decisions are more likely to support it, and, in the multivariate case, this is among the strongest relationships in the table.

It is important to note that the influence of performance satisfaction as shown in Table 1 is independent of and considerably stronger than the impact of ideological dissatisfaction. This means that the bulk of the influence of performance satisfaction has little to do with ideological disagreement with the Court (the variable's coefficient represents its influence apart from that of ideological disagreement). Predicted values illustrate this point well. A movement across the interquartile range for ideological disagreement results in a $-.03$ change in legitimacy, whereas that same movement for job performance satisfaction results in a $.06$ change in the outcome variable. Comparing the effects as one moves from 1.96 standard deviations below the mean to 1.96 standard deviations above the mean, the difference is even more stark: A $.08$ change in legitimacy is brought about by a change in ideological disagreement, and a $.15$ change in legitimacy—an effect almost twice as large—results from a similar change in job performance satisfaction.

¹¹ However, the three indicators are not so strongly intercorrelated that it makes sense to create an index from them.

This finding should be emphasized inasmuch as it is new to the literature on institutional support. Judgments of how well the Supreme Court does its job seem to be formed in some small part by ideological agreement or disagreement with the Court, but in considerably larger part by judgments of other aspects of the Court's performance.

If we assume for a moment that the ideological disagreement measure used by Bartels and Johnston is really a measure of specific support, we might be able to compare our Table 1 with the results they report in their Table 3 (2013, 192). They nominalize "subjective ideological disagreement," treating it as a set of four dummy variables and excluding the variable demarcating those in "Strong Agreement" with the Court from their analysis. This confuses the comparison a bit, although it is still fruitful to try to draw some comparative conclusions.

Their Table 3 reports coefficients indicating the difference between each of the three dummy variables and the "Strong Agreement" excluded variable. Thus, the strongest difference, logically and empirically, is between those in "Strong Disagreement" and those in "Strong Agreement." This coefficient they report at $-.139$. Notably, those in "Tacit Agreement" with the Court *do not* differ from those in "Strong Agreement." Those expressing "Moderate Disagreement" on their index are different from those in "Strong Agreement."

None of these effects is particularly strong, however. The 27.8% of their sample in strong disagreement differ from the 26.1% of those in strong agreement by at most $-.139$. On a dependent variable that varies from 0 to 1, the substantive difference in the expected value of support between those in strong disagreement with the Court ($\hat{y} = .46$) and those in strong agreement ($\hat{y} = .60$) seems small to us. For the 1,502 respondents with an index score, we find a mean score of .54 (median = .55), with a standard deviation of .21. Furthermore, 35.7% of the respondents score lower than .46 on the index; 32.9% score higher than .60. Those who register at maximal dissatisfaction with the ideological direction of the Court score slightly below the midpoint of the index. These do not seem to us to be findings that seriously threaten the Court's legitimacy.

Our coefficient for job performance satisfaction (.19) is larger than the coefficient representing the difference between strong agreement and strong disagreement ($-.139$).¹² Thus, while we find only a very weak relationship between our measure of ideological disagreement with the Court and institutional support, our measure of specific support is more strongly connected to diffuse

support than that found by Bartels and Johnston.¹³ We attribute this difference to the fact that performance satisfaction includes evaluations other than those based on ideological disagreement (and what we consider to be large amounts of measurement error in their indicator of subjective ideological disagreement). So, in the end, one interpretation of the Bartels and Johnston findings is that they fit nicely with existing (and contemporary) findings on the connection between specific and diffuse support, except that their findings are attenuated by significant quantities of measurement error. This interpretation, it should be noted, is quite contrary to their view that their findings represent a major break with earlier research.

As we have argued above, we consider a bivariate coefficient of .26, accompanied by an unstandardized multivariate regression coefficient of .19, to indicate a moderate degree of relationship, just as predicted by the theory of institutional support. Were this coefficient much lower, it would question the validity of the measure of institutional support. Were it much higher, it would also question the validity of the measure of institutional support. Moreover, job performance satisfaction accounts for only a fraction of the variance that can be explained by the (three) democratic values indicators. From our viewpoint, these relationships are precisely as expected by the theory.

Skeptics might dismiss our efforts to compare our findings to those of Bartels and Johnston. Different measures are used, different variables are included in the equation, their data come from 2005, ours from 2011, et cetera. Our most certain conclusions have to do only with our own data and analysis. From these, we conclude that democratic values are the best predictors of institutional support and that job performance satisfaction covaries with institutional support, whereas subjective ideological disagreement (and partisanship, by the way) covaries to a significantly less degree. Some additional findings from earlier research are also confirmed; for example, our data indicate that "to know the Court is to love it," which replicates the well-known finding of the research by Gibson and Caldeira (e.g., 2009).

We return to legitimacy theory for our final comment about these findings. There are undoubtedly some Americans whose support for the Court is entirely contingent upon satisfaction with its decisions. For most,

¹²Importantly, because both dependent variables are scaled from 0 to 1, direct comparisons of effect size are appropriate.

¹³In Appendix D, we report the results of estimating an equation identical to that in Table 1 except for the exclusion of the job performance satisfaction measure. This equation allows ideological disagreement to take on its maximal influence, that is, without discounting its influence owing to the fact that it is one component of performance satisfaction. This specification of the model also confirms that the influence of ideological disagreement is slight, causing no alternations whatsoever to the substantive arguments of this article.

however, performance satisfaction and legitimacy are only loosely interconnected. Because this is so, the Court enjoys a wide and deep “reservoir of goodwill,” and its supply of institutional support is not overly dependent upon pleasing people on a day-to-day basis with its decisions.

Experimental Evidence

This, then, takes us to the results of an experiment conducted by Bartels and Johnston. The authors rely on this experiment to assuage—successfully—concerns that people’s perceptions of the Court’s legitimacy may color their views of the ideological distance between the Court and themselves. In this section, we briefly critique the survey experiment. Then, taking Bartels and Johnston’s findings as given, we use prior research on Supreme Court legitimacy to suggest that, contrary to Bartels and Johnston’s assertions, any ideological effect that does exist with respect to individual-level evaluations of legitimacy is unlikely, in practice, to affect the overall levels of public support for the Court.

Bartels and Johnston’s experiment is an attempt to “[*manipulate*] rather than [*measure*] perceptions of the Court’s ideology” (2013, 195, emphasis in original). To this end, respondents were provided a vignette describing a Supreme Court decision involving the right of the federal government to monitor citizen communications. Respondents were randomly assigned to either a group hearing about a decision not allowing monitoring or a group hearing about a decision allowing monitoring.

It seems to us that the treatment does not necessarily concern *ideological* disagreement but instead is simply *policy* disagreement on a single case.¹⁴ Respondents may disagree with the outcome of a single ruling even though they do not perceive a broader ideological turn in the Court’s outputs. One consequence of this is that an important disjunction exists between the survey and experimental halves of their article: In the former, the respondents are evaluating the Court’s portfolio of decisions; in the latter, it is a single policy decision.

Bartels and Johnston find that, among respondents told that the Court decided the case in a way contrary

¹⁴Bartels and Johnston report no evidence that liberals uniformly favor prohibitions on the government monitoring citizen communications or that conservatives uniformly oppose such prohibitions. The correlation between ideological self-identification and positions on this issue is not particularly strong: $r = .31$. Curiously, slight conservatives, conservatives, and extreme conservatives differ very little in their support for government surveillance (even while slight liberals, liberals, and extreme liberals do differ in their degrees of opposition).

to their policy preferences, “ideological disagreement depresses Supreme Court legitimacy” (Bartels and Johnston 2013, 196).¹⁵ This finding is inconsistent with at least some published research. Perhaps the acid test of this hypothesis is the Court’s ruling in *Bush v. Gore*.¹⁶ Indeed, in a comparison of a survey conducted at the height of the controversy with surveys from 1987 and 1995, Gibson, Caldeira, and Spence (2003a) found no evidence whatsoever that the Court’s legitimacy took a dip owing to its decision. Similarly, Price and Romantan (2004, 953, emphasis added) draw the following conclusion: “On the whole our findings are consistent with the hypothesis that the election—even with the vituperative disputes in its wake—served to *boost* public attachment to American political institutions.” Others (e.g., Gillman 2001; Kritzer 2001; Nicholson and Howard 2003; Yates and Whitford 2002) concur. In short, the effects of *Bush v. Gore* demonstrate that support for the Court can be quite resistant to backlashes from individual unpopular decisions (see also Ura 2014).

An even broader question arising from the experiment is not addressed by the authors: What are the long-term effects of displeasing decisions on individual-level evaluations of the Supreme Court? Do “good” decisions balance out “bad” decisions in the mind of the

¹⁵In an effort to investigate this conclusion more carefully, we have examined how the manipulation interacts with the pre-existing ideological self-identifications of the respondents. In particular, we conducted a student’s t-test within each category of identification of differences in Court support by experimental treatment. The significances of the differences across the experimental treatments (liberal or conservative Supreme Court decision) are: extremely liberal, .098; liberal, .027; slightly liberal, .975; moderate, .124; slightly conservative, .682; conservative, .408, and extremely conservative, .199. We acknowledge that the within-identification category Ns are sometimes small, but only among liberals is there a difference that even approaches conventional levels of statistical significance. The finding that the support levels of those who are slightly liberal, moderate, slightly conservative, conservative, and extremely conservative (and perhaps extremely liberal as well) do not vary significantly according to whether they were told about a pleasing or displeasing Court decision seems to run counter to the conclusions of Bartels and Johnston regarding ideological disagreement. The statistical significances of the differences in legitimacy are greater within the policy-views categories: strongly oppose monitoring, .000; oppose, .003; support, .280; and strongly support, .000. Still, that the 382 respondents supporting government monitoring do not differ in their levels of support for the Court after being told of either a liberal or a conservative Court ruling reinforces the conclusion that the relationship in their data is fairly weak.

¹⁶*Bush v. Gore* can be considered an “acid test” because of (1) the political significance of the decision, (2) the deep divisions of the justices, (3) divisions paralleling ideology and partisanship, (4) the unprecedented expansion of the U.S. Supreme Court involvement in the administration of elections in the states, and (5) Sandra Day O’Connor’s apparent prejudgment of the case at a cocktail party prior to the Court issuing its decision. See Gibson, Caldeira, and Spence (2003b).

public, or do the effects of displeasing decisions overwhelm those of pleasing decisions?¹⁷ We recognize that conventional wisdom on the psychology of negativity suggests that displeasing judicial decisions have a stronger negative impact than the positive impact of pleasing judicial decisions (Mondak and Smithey 1997). For example, Grosskopf and Mondak (1998), analyzing public response to two highly publicized Supreme Court decisions, found that confidence in the Court declined among individuals who disapproved of both decisions as well as among individuals who approved of one decision while disapproving of the other. Displeasing decisions seemed to have greater consequences than pleasing decisions.

At the same time, even the strongest proponents of negativity bias concede that policy displeasure does not necessarily cause a precipitous long-term drop in institutional support. For instance, Mondak and Smithey (1997) argue that, even in the face of negativity bias, individual-level support for the Court gradually returns to its original, relatively high, level. In other words, even if individuals perceive a single decision negatively, the effect of that displeasure is short-lived (see also Durr, Martin, and Wolbrecht 2000, 774): Support rebounds and does so fairly quickly.

Why should these effects be ephemeral? Extant research implies three possible pathways through which public support may increase or remain steady over time even in the face of countermajoritarian policies.

First, as we have noted, Mondak and Smithey argue that public support for the Court gradually returns to its normal level because of the influence of political values. They claim that “a person’s confidence in the Supreme Court can be shaken by controversial rulings, but the eventual reassertion of democratic values means that the individual’s confidence in the Court may be restored” (1997, 1124) to its level prior to the displeasing decision. By this view, the Supreme Court can make occasional unpopular decisions so long as the citizenry maintains its support for democratic institutions and processes.

The positivity theory of Gibson and Caldeira (2009) provides another possible explanation. This theory argues that, whenever people pay attention to the Supreme Court, they are simultaneously exposed to powerful symbols of judicial authority and legitimacy that can increase support for the institution even among those who are displeased with the Court’s decision. Gibson, Lodge, and Woodson (2014) have discovered that, when displeasing decisions are accompanied by exposure to the symbols

of judicial authority (the building, the justices in robes, etc.), citizens are more likely to accept the unwanted outcome than when the symbols are absent. If this is the case, then any attention to the Court—even if it is the result of learning about a displeasing decision—exposes individuals to legitimacy-enhancing symbols, thereby blocking the negative effect of the unwanted policy. In this way, positivity bias counteracts negativity bias.¹⁸

Finally, as Bartels and Johnston begin their article by reminding us, the current Supreme Court is decidedly mixed in the ideological makeup of its policymaking: “From the Burger era onward, average liberalism hovers around 45%” (Bartels and Johnson 2013, 186), which of course means that average conservatism hovers around 55%. In addition, their respondents are equally split between those who believe that the Court is liberal (20.52%) and those who think the Court is conservative (26.09%), suggesting that the Court makes decisions that should be pleasing to liberals, just as it makes decisions that should be pleasing to conservatives. Any given individual will dislike approximately half of the Court’s decisions, but those “losses” are balanced out by the other half of the Court’s decisions: the “wins.” For most Americans, this is a wash: The good is evenly balanced by the bad. The running tally may be repeatedly changed by Court decisions, but its results stay nearly the same from the beginning to the end of each Court term and from one term to the next.

Thus, whether we believe that (1) individual-level democratic values regenerate support for the Supreme Court over time; (2) positivity negates some of the effect of displeasing decisions, reducing the negative impact to about the same level as the positive impact of pleasing decisions; or (3) the mixed nature of the Supreme Court’s decisions balances the effect of policy dissatisfaction on the Court’s legitimacy with the effect of policy satisfaction, the conclusion is the same: The countermajoritarian dilemma may not be much of a dilemma for the Supreme Court.¹⁹ Indeed, while Bartels and Johnston suggest that “legitimacy . . . is ‘politicized’ in the mass public, which

¹⁸These findings cast doubt on the Bartels and Johnston experiment’s external validity inasmuch as the survey context in which the Court’s ruling was revealed is a decidedly unnatural one. In reality, unpopular Court decisions are commonly paired with symbols of judicial authority that enhance the institution’s legitimacy, even in the context of policy disagreement.

¹⁹Another possibility is that the Bartels and Johnston experiment has little external validity, and that the effect in nature of a single decision is considerably smaller than they discover. The research of Barabas and Jerit (2010, 238) indicates that experiments capture the *maximum possible treatment effect*: “[a]lthough the real world does not look so different as to throw into doubt the validity of survey experiments, there is drop-off in terms of both the size of treatment effects and the population experiencing those effects” when comparing real-world treatment effects to experimental ef-

¹⁷In the Bartels and Johnston experiment, the statistical effect of a good decision is, by definition, simply the obverse of the effect of a bad decision.

questions many of the core tenants of the legitimacy concept” (2013, 197), extant research and the mixed ideological nature of the Court’s policymaking suggest that any politicization of legitimacy that may exist is unable, in practice, to exert any long-term consequences for the Court’s public support. For various reasons, over time, Court support is likely to remain stable.

Discussion and Conclusions

The overwhelming weight of the evidence we present in this article is that the legitimacy of the Supreme Court is not much dependent upon the Court making decisions that are pleasing to the American people. Nor is the Court’s legitimacy connected to the ideological and partisan cross-currents that so wrack contemporary American politics. Whether desirable or undesirable, it seems that the current Court has a sufficiently deep reservoir of goodwill that allows it to rise above the contemporary divisions in the American polity.

These empirical conclusions have enormous theoretical importance. It seems that the Court as currently configured is unlikely to consistently disappoint either the left or the right. As we have documented above, the current Supreme Court makes fairly conservative policy, but it clearly does not make uniformly conservative policy. Thus, even the Rehnquist and Roberts Courts have made many decisions that should be pleasing to liberals, even if conservatives should be slightly more pleased with the Court.

Perhaps a court closely divided on ideology cannot produce the consistent decisional fuel needed to ignite a threat to the institution’s legitimacy. Some worry that an ideologically divided Court undermines the institution’s legitimacy (e.g., Liptak 2011). Perhaps the truth is exactly the opposite: An ideologically divided court is able to please both liberals and conservatives with its decisions, and therefore decisional displeasure does not build to the point of igniting challenges to the institution’s legitimacy.

This then takes us to the Court’s so-called counter-majoritarian dilemma, a problem in which many legal

facts. This attenuation could happen for any number of reasons; to take one example, every respondent in the treatment group of a survey experiment is exposed to the exact same stimulus whereas, outside of the “laboratory,” the public differs widely in the extent to which it pays attention to (and therefore is exposed to) the effects that serve as experimental stimuli. Thus, even if one accepts the Bartels and Johnston’s results, one must remember that the magnitude of their effects represents the maximum influence one would expect to see, and that the effect in “nature” is almost certainly substantially smaller.

scholars are currently interested. At least a portion of this rekindled interest has been stimulated by the Court’s decision in *Citizens United*. The counter-majoritarian nature of the decision is reflected in evidence that the American people, by a fairly substantial majority, disagree with the substance of the Court’s ruling.

Let us assume that people do not question the legitimacy of decisions made by courts when they agree with those decisions. Legitimacy only comes into play when there is an *objection precondition*.²⁰ So we will assume that the 27% of the American people (according to an interest group poll, cited by Pildes 2010) who agree with the Court’s decision cede legitimacy to the institution.

Nearly two-thirds (64%) of the American people oppose the ruling. But let us assume that about half of this two-thirds extends legitimacy to the Supreme Court and is therefore willing to accept decisions with which they disagree. If we add this 32% to the 27% supporting the decision, then a fairly sizeable 59% is unlikely to be willing to support schemes to attack the Court or to try to overrule its decision. *Thus, the constituency for curbing the Court on most decisions is the fairly small minority who oppose the decision and who do not extend legitimacy to the Court.* These calculations explain why a coalition for attacking the Court is difficult to assemble and, in conjunction with the evidence that the Court today is issuing both liberal and conservative opinions, may provide a clue as to why the Court’s legitimacy is currently so stable.

The Supreme Court is a majoritarian institution, not necessarily in the sense that it must stay in substantive policy agreement with its constituents, the American people, but rather in the sense that it is dependent upon a majority granting legitimacy to the institution. And, as Clark (2011) has ably shown, the Court seems aware of this requirement and acts to protect its core legitimacy. Thus, the Supreme Court need not make decisions pleasing to the majority all or even most of the time. But because the Court currently attracts legitimacy from the majority, its ability to rule against the people’s preferences, even up to one-half or so of the time, is secure. Thus, this “new math” of institutional legitimacy goes some considerable distance toward accounting for the efficacy and the seeming invincibility of the current Supreme Court. This conclusion is entirely at odds with that of Bartels and Johnston.

²⁰Simon and Scurich (2011, 719) found that: “Participants were indifferent toward the modes of reasoning when they agreed with the outcome of the judges’ decision, but were differentially sensitive to the judicial reasoning when the judge’s decision frustrated their outcome.”

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

Appendix A: Survey Details

Appendix B: Measurement

Appendix C: Model Specification

Appendix D: Comparing Effect Sizes

Appendix E: Robustness