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Public Perceptions of the Supreme Court: How Policy Disagreement Affects Legitimacy

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Abstract: It is widely agreed that dissatisfaction with Supreme Court decisions harms the Court’s standing among the public. However, we do not yet know how or why Court performance affects legitimacy. We examine the role that mass perceptions of the Supreme Court’s institutional nature—particularly how “political” it is—plays in assessments of its legitimacy. We find that policy disagreement with Supreme Court decisions causes individuals to view that decision, and the Court itself, as being political in nature. We then show that the more political people think the Court is, the less legitimate they consider it to be. In this way, we show that policy disagreement with decisions strongly and directly reduces Court legitimacy.

Keywords: Supreme Court, legitimacy, polarization

Public approval of the Supreme Court is at historically low levels. Many scholars and commentators fear that increasing partisan polarization will profoundly, and perhaps irreparably, harm the Supreme Court’s institutional legitimacy. Polling by Gallup reveals that public confidence in the Supreme Court has been hovering near record lows for more than a decade and three recent, polarizing Supreme Court confirmations are likely to increase the partisan gap in views of the Court (Brockway and Jones 2019). The erosion of public support for the Supreme Court matters because the Court’s institutional legitimacy is a primary source of the Court’s influence and relevance in American politics (Christenson and Glick 2015a; Gibson and Nelson 2014; Hall 2011; Zink, Spriggs, and Scott 2009). Declining institutional support is therefore not merely an academic concern: a Court faced with lower levels of support is likely to behave in fundamentally different ways than a Court enjoying robust support (Gibson and Nelson 2016).

The reason for this decline, many suggest, is that the Supreme Court now appears to be too mixed-up in partisan politics, routinely rendering controversial decisions in high-profile, polarizing cases on topics including gay rights, abortion,

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voting rights, gun rights, and perhaps most notably of all, *Bush v. Gore*. Polarization makes compromise more difficult and moves conflict resolution away from Congress into the courts (Lee 2015). Yet, when the Court decides cases in ways that line up with the ideological preferences of the justices, this can feed into the perception that the Court itself is merely another political institution (Rosen 2013). That is, polarization increases the importance of judicial policymaking, but court decisions on polarizing issues may undermine judicial legitimacy, and thus, efficacy.

Even as polarization elevates the importance and salience of judicial politics to broader publics, the ongoing erosion of legitimacy raises important empirical and normative questions. The Court typically enjoys high levels of legitimacy and diffuse support (Gibson 2007), particularly compared to the other branches of government. The typical strength of this support is rooted in the perception that the Court is a neutral arbiter of the law, and that it thus disposes of the cases and controversies that come before it in fundamentally fair, legalistic ways. However, a large body of research shows that dissatisfaction with the Court's performance significantly reduces public support (Bartels and Johnston 2013; Christenson and Glick 2015a; Gibson and Nelson, 2014, 2016, 2017; Zilis 2018). We do not yet know *why* or *how* Court performance affects legitimacy. In this paper, we show how and why performance dissatisfaction reduces legitimacy.

We argue that, unlike other branches of government that are expressly and purely political, the Court's unique hybrid legal/political identity allows citizens to discount Court decisions they disagree with as "political," which then in turn damages their views of the Court itself. The Court is an explicitly hybrid institution that is at once fundamentally *legal* and fundamentally *political* in nature, and the public acknowledges this (Bybee 2010). The uniqueness of courts as policymakers is fundamental to this dynamic. Legislatures and executives are expected to act in the interests of the party or coalition that controls the institution; courts, in contrast, are expected to behave neutrally with respect to the opposing sides of any controversy (Baird and Gangl 2006; Cann and Yates 2016). And this expectation is largely born out in practice: distinct from legislatures, the "winners" and "losers" in court decisions do not consistently come from one ideological or partisan side. In recent years, liberals and conservatives alike have had reason to celebrate landmark victories won at the high Court.¹ Undermining the legitimacy of the institution as a whole in light of a loss in a particular case would undercut victories along with defeats. This means that people in the public need to find a way to cope with occasional losses without undermining prospective wins. Given the

¹ These victories include *Bush v. Gore*, *D.C. v. Heller*, etc., for conservatives; *NFIB v. Sebelius*, *Obergefell v. Hodges*, etc., for liberals.

importance of the Constitution in the American civil religion, policy winners in any given case are motivated to see decisions that favor their side as being clearly right because the Constitution deems it or the neutral arbiters on the Court declare it so. On the other hand, people respond to Court decisions they disagree with by chalking such decisions up to “politics”—a neutral, fair reading of the law would not, of course, yield a decision they do not like (Badas 2016, Kahan 2015a, 2015b). Together, this suggests that people want to believe that the Court is a political—and that they may punish the Court when it defies this closely-held expectation.

We test this theory in two original surveys, including one with an embedded experiment, and across a range of policy issues. We show that policy disagreement, perceptions of the Court’s nature, and legitimacy are related. We show that policy disagreement with a Supreme Court decision (i.e. getting a case outcome that a respondent disagrees with) causes a strong, significant increase in the perception among the public that the decision was “political” rather than legal in nature, and of the Court itself as being more political in nature. Both of these factors significantly reduce Supreme Court legitimacy. In other words, respondents who disagreed with the Court’s decisions viewed the Court as more political, and thus as less legitimate. The Court is certainly “different” in the American mind, but it is still judged on policy.

In short, we show that policy disagreement powerfully drives legitimacy, and we do so by tracing out how the relationship works: individuals who disagree with Court policy outcomes view Court *decisions* as political and the Court itself as a *political* rather than legal actor, and a more political Court is seen as less legitimate. By showing that policy disagreement and views about the nature of the Court are causally linked, we contribute to the literature on public opinion on the Court by reconciling divergent strands of work.

1 The Supreme Court’s Institutional Legitimacy

The Supreme Court’s unique institutional legitimacy is typically attributed to one of two sources. First, many scholars contend that the Court’s legitimacy is owed to mass perceptions that its decisions are reached by careful and fundamentally fair processes (Braman and Easter 2014; Ono and Zilis 2022; Tyler 1990). On this view, the Court’s existing deep well of diffuse support largely insulates its legitimacy from erosion due to updating based on ideological disagreement (Gibson 2007; Gibson and Nelson 2017). Second, however, some recent works have shown that ideological divergence does lead to lower assessments of the Court’s legitimacy (Christenson and Glick 2019; Nicholson and Hansford 2014).

We argue that these perspectives are complementary, rather than competing (see also Christenson and Glick 2015a). Work in organizational psychology has long held that process and outcome-based views of organizations are intertwined. People view organizations more favorably when they get the outcomes they prefer (e.g. Blau 1964), but views about the procedural fairness of decision-making processes are important when outcomes are not favorable (Brockner and Wiesenfeld 2005). Thus it may be the case that people respond to both the “legal” and “political” aspects of Court decisions differently, even if simultaneously (Cann and Yates 2016).

Numerous recent studies argue that people (re)evaluate the Court’s legitimacy on the basis of ideological agreement with its decisions (Bartels and Johnston 2013; Hetherington and Smith 2007). That is, these scholars contend that individuals’ assessments of the Court’s legitimacy reflect perceived ideological congruence between the Court and the individual (Christenson and Glick 2015b; Grosskopf and Mondak 1998; Malhotra and Jessee 2014; Nicholson and Hansford 2014). On this view, public assessments of the Supreme Court are not much different from assessments of the “political” branches. In one study in this vein, Bartels and Johnston (2013) contend that a single unpopular Supreme Court decision can significantly reduce individual-level diffuse support for the Court. Similarly, Christenson and Glick (2015a) argue that partisan and ideological preferences directly affect assessments of the Court’s legitimacy. Taken together, these studies strongly suggest that politics and policy preferences influence the legitimacy of the Court.

The other widely agreed upon source of legitimacy often posited comes from what Christenson and Glick call a view that “courts are different” (Christenson and Glick 2015a, 406). Many scholars contend that legitimacy is fundamentally about the perceived “rightfulness” of governmental uses of authority (Braman 2016; Easton 1965; Tyler 1990). As Braman puts it, citizens care whether governmental actors “are following required procedures in the implementation and enforcement of rules promulgated pursuant to [their] authority” (Braman 2016, 192). As such, views of legitimacy are powerfully shaped by perceptions of procedural fairness (Braman and Easter 2014), adherence to existing rules (Braman 2016; Braman and Easter 2014), and fair treatment of the parties involved (Tyler 1990). For example, Tyler and Rasinski (1991) argue that the Court’s ability to elicit public acceptance of policies it otherwise disfavors is the result of the public’s strong perception that Supreme Court decisions are determined through fundamentally fair processes (see also Baird 2001; Mondak 1991).

From this perspective, legitimacy is rooted in an understanding of the Court as a neutral and impartial arbiter of controversies, rather than as a political institution subject to the pressures of interest groups or popular opinion as are Congress

and the president. Put differently, public support is informed at least in part by widely held beliefs about the fairness and impartiality of judicial processes—that is, by the fundamentally “legal” nature of the Court as an institution (Baird 2001; Benesh 2006; Braman 2016; Bybee 2010).

In the legitimacy literature, this view that courts are different has been advanced most forcefully by Gibson and colleagues’ “positivity theory” (Gibson 2007; Gibson and Caldeira, 2009a, 2011, Gibson, Lodge, and Woodson 2014, Gibson and Nelson, 2014, 2016). Positivity theory holds that exposure to information about the Supreme Court inherently reinforces the idea that courts are principled decision-makers, and thus reinforces its legitimacy. These scholars argue that “diffuse” support for the Court—that is, its institutional legitimacy—is not much affected by evaluations of the Court’s performance in any given case, making legitimacy very stable over time. Put differently, studies in this vein frequently argue that public opinion (even outrage) toward any one decision—so-called “specific support”—is only tenuously related to “diffuse support.” For this reason, even highly polarizing decisions such as *Bush v. Gore* have had only small effects on legitimacy. Importantly, any small decline in diffuse support for the Court tends to regenerate quite quickly after the decision. This apparent stability is often taken as evidence that policy agreement or disagreement does not much affect institutional legitimacy.

While these views of the nature of the Court’s legitimacy are often presented as rivals, we argue that preference-based and diffuse support perspectives are complementary (Christenson and Glick 2015a). For example, Gibson and Caldeira (2011) find that even members of the public who believe that the Court behaves attitudinally (as opposed to purely legalistically) view the Court as legitimate provided that they do not view the justices as mere politicians in robes. Gibson and Caldeira (2009a) reach a similar conclusion, finding that overtly political advertisements about potential Supreme Court nominees powerfully undermine Court legitimacy. Even positivity theory’s strongest proponents routinely find that information that makes courts and judges seem more “political”—perhaps especially campaigning—directly undermines legitimacy (Gibson and Caldeira, 2009a, 2009b, 2011; Cann and Yates 2016). Moreover, Gibson and colleagues routinely find that performance satisfaction is significantly related to legitimacy (Gibson and Nelson, 2014, 2016, 2017) though they argue that the effect is relatively small compared to other factors. So long as the respondents can believe that the Court’s members and outputs are principled and not overtly political, the Court is viewed as legitimate.

We argue that the public’s half-politics-half-law understanding of the Court as an institution also means that perceptions of its legitimacy are necessarily tied up in both political and legal considerations. Bybee (2010) draws on a variety of

survey data to argue that members of the public view all courts and judges as political in nature, “except when they are not”—that is, except when they are viewed as fundamentally legal in nature. Bybee argues that the public largely believes that courts are principled institutions guided by the just lights of neutrality and impartiality. Paradoxically, however, the public also largely acknowledges that the judiciary is immersed in partisan politics. This dynamic becomes especially important when partisan polarization is high, as it is now. Political considerations become more salient in how ordinary citizens explain Supreme Court decisions with which they disagree, because the political environment is more likely to be perceived as a conflict between policy winners and losers (Donovan et al. 2020; Hitt and Searles 2018).

2 Explaining Changes in Court Legitimacy

We argue that existing research clearly shows that people view the Supreme Court as “different”—but this does not mean they view it as apolitical. Rather, the evidence presented in the studies cited above compellingly shows people view the Court as fundamentally legal *and* political. And just as both “political” (e.g., ex ante policy preferences and partisanship) and “legal” (e.g. fair process, treatment of precedent, decision rooted in “the law,” etc.) considerations influence the public’s willingness to accept a Supreme Court decision (Zink, Spriggs, and Scott 2009), we argue that both legal and political considerations will influence public perceptions of the Court’s legitimacy (Cann and Yates 2016). More specifically, we theorize that “political” considerations are a key pathway by which assessments of the Court’s institutional legitimacy will be updated when individuals receive new information about the Court.

It is widely agreed that policy disagreements with the Supreme Court can undermine individuals’ assessments of judicial legitimacy (Bartels and Johnston 2013; Christenson and Glick 2015a; Nicholson and Hansford 2014; Zilis 2018). Even positivity theory’s strongest proponents consistently find a significant, negative relationship between performance dissatisfaction and diffuse support for the Court (Gibson and Nelson, 2014, 2016, 2017). However, we lack a strong theoretical account of the relationship between performance dissatisfaction and legitimacy. Yet in an increasingly polarized politics, understanding *how* performance evaluations affect legitimacy is crucially important to understanding how the Court may act going forward.

People believe that the Court is fundamentally legal, but also acknowledge that it is political (Bybee 2010). Very importantly, though, despite recognizing that courts contain an element of politics, people believe that Court *should be*

fundamentally legal and not political (Baird and Gangl 2006). When this strong normative belief that the Court should be legal bumps up against the reality that the Court does rule against the policy preferences of people in the mass public, individuals must reconcile the competing desires to have their side “win,” and for the Court to be a neutral body.

As in other areas of political life, when they learn new information about the Court, individuals engage in information processing that allows them to accommodate both sets of beliefs. New political information is not simply accepted on its face; rather, individuals can selectively learn facts, denigrate the source of those facts, and counter-argue uncomfortable facts to stay consistent with their prior beliefs (Jerit and Barabas 2012; Kahan 2015a, 2015b; Lodge and Taber 2000; Redlawsk 2002; Redlawsk, Civettini, and Emmerson 2010). Moreover, polarization has changed the way Americans think about politics (Abramowitz and Webster 2016; Hetherington 2001; Mason 2018), including the ways in which they evaluate political institutions (Donovan et al. 2020). Under polarized conditions, the stakes of your side “winning” are not only important on policy grounds but also for identity reasons, which increases the tendency to engage in partisan motivated reasoning (Mason 2018).

The information environment facilitates this selective information processing. Public monitoring and knowledge of the Supreme Court is extremely low. What little information the public does receive comes overwhelmingly through media coverage (Solberg and Waltenburg 2014; Strother 2017), and media coverage of the Court tends to focus on cases rather than the Court as an institution. Increasingly, media coverage of the Court is “political”—even partisan—in tenor, and politically important cases are more closely covered by the media, with coverage that focuses on the political “winners” and “losers” (Hitt and Searles 2018). Hitt and Searles (2018) demonstrate that the media present Court outputs in the “game frame” which emphasizes strategy and winners and losers rather than law or principle. Cases that are decided by narrow majorities are covered more extensively in the news (Strother 2017), further emphasizing which groups win or lose and the political nature of decisions.

Thus we argue that when people receive information about Court decisions they disagree with, perhaps especially in the context of polarization, they are motivated to denigrate the decision-making of the judges as being incorrect and unfair (Badas 2016; Cann and Yates 2016). In the domain of the Court, this is expressed by calling the decision “political” (i.e. not based on a neutral, legal standard). That is, due the hybrid nature of the Court, when people are unhappy with what the Court is doing, they do not need to denigrate the institution as a whole directly, but rather, they can chalk up a disfavored outcome to “politics,” whereas they attribute favorable outcomes to the fundamentally fair processes at

the heart of the legal nature of the Court. In other words, people do view the Court as different, but this does not mean they view it as apolitical: it is different because it is legal *and* political. This reality creates the cognitive space for individuals to process information about the Court differently from how they understand other branches. Most importantly, these beliefs provide an avenue for people to process decisions with which they do not agree.

Based on the hybrid-Court theory just articulated, we expect that policy disagreement (i.e. disagreeing with the outcome of a Court case) causes people to rethink the nature of the Supreme Court. Specifically, we expect that disagreement with decisions causes people to update their beliefs about the Court's nature by thinking of the Court as more "political." Simply put, we argue that in today's polarized political world, with the ever-increasing tendency for individuals to view Court decisions as a "win" or "loss" for their team, policy disagreement with Court decisions will lead individuals to view the Court as a more political institution. Because a key source of the Court's institutional legitimacy stems from perceptions of the fundamental fairness of its processes, which are derived from its nature as a fundamentally *legal* institution, an increase in perceptions that the Court is a political actor should cause a decrease in legitimacy. *To summarize, we expect that policy disagreement with Supreme Court decisions will lead individuals to view the offending decision as being based on political considerations, to view the Court itself as more political, and to therefore view the Court as less legitimate.*

3 Research Design and Data

To test our theory of the relationship between Supreme Court policy outputs and institutional legitimacy, we fielded two original surveys, one of which included an embedded experiment. Study 1 is a panel survey in which we measure respondents' agreement or disagreement with contemporaneous Supreme Court decisions, along with a variety of views about the Court and its work over time, and then model the effect of that disagreement on legitimacy. In Study 2 we experimentally manipulate disagreement with Court decisions, to rigorously test the linkage identified in Study 1. Together, the studies demonstrate that Supreme Court legitimacy can be powerfully influenced by individuals' disagreement with its decisions. People who disagree with the outcome of a Court case view the decision itself, and the Court, as political; these beliefs drive down views of the Court's legitimacy. Importantly, this strong causal relationship exists even after controlling for partisanship and political ideology, as well as social demographics including education and income. Summary statistics for the variables of interest

for the studies are presented in Appendix B. In all analyses presented below, figures depict point estimates and 95% confidence intervals.

3.1 Study 1: Panel Survey (MTurk)

We argue that (1) when individuals think of the Supreme Court decisions as being rooted in politics (rather than “law”), this should decrease perceptions of the Court’s legitimacy, and (2) perceptions of politicization are driven by disagreement with Court outcomes. To test these arguments, we fielded an original panel survey. In this three-wave panel study, we presented respondents with information and asked questions about four Supreme Court cases.

Study 1 presents respondents with multiple, ideologically diverse decisions. Respondents are likely to encounter information about multiple cases during a Supreme Court term and have a chance to be on both the winning and losing side of Court cases. Thus, assessments of legitimacy are likely influenced by a mix of case outcomes, not a single outcome. We use real world cases, measure respondents’ policy views about these cases in Wave one, and provide them with information about the outcome. All four cases used in this study were actual decisions announced in 2017: *Matal v. Tam* (free speech/copyright), *Trinity Lutheran v. Comer* (religion/school funding), *Lewis v. Clarke* (tribal sovereign immunity), and *McWilliams v. Dunn* (due process). We chose these cases because they touch on a variety of legal and constitutional issues and because none has a clear ideological valence, presenting a hard test for our theory.² Additionally, when providing information to respondents, we told them the truth—that is, we did not treat them with false or stylized information to induce them to disagree with the Court. *We expect that disagreement with a Court decision will drive perception that the Court is a political actor and in turn, dampen views of the Court’s legitimacy.*

In the first wave of the panel (fielded between April 25 and May 2, 2017), 1158 respondents participated. We restricted participation to MTurkers who are United States citizens, at least 18 years of age, and who have at least a 97% MTurk approval rating. On June 27, we re-contacted all respondents who completed the first wave of the survey, requesting that they participate in a followup survey (like wave one, wave two was open for 8 days). Ultimately, 702 respondents completed the second wave, for a successful re-contact rate of 60.6%. Two weeks

² Indeed, the Court’s entire 2016 term (which ended in June 2017) was relatively low salience. Justice Scalia’s death and the ensuing battle over his replacement left the Court facing considerable uncertainty and induced the eight-member Court to dodge several of the highest-profile and most divisive cases, such as the “transgender bathroom case.”

later (July 13–July 17) we re-contacted those respondents who had participated in both preceding waves for a final followup study. In this third wave, 545 respondents participated, for a successful re-contact rate of 77.6% (47% of respondents from wave one participated in all three waves).³ Respondents spent approximately 10 min responding to the each of the first two waves of the survey, and approximately 5 min completing the third. We paid respondents \$1.00 for completing each wave of the survey. Summary statistics are presented in Appendix B.

The panel design has two chief virtues: first, it allows us to observe and assess within-respondent attitude change over time; second, the panel provides leverage on the pathways by which policy views translate to changes in legitimacy that would not be possible if all outcomes were measured at the same point in time. At wave one, all respondents first answered a series of questions regarding media consumption, interest in and attention to politics, and attitudes toward the Supreme Court, including the standard institutional legitimacy battery. Respondents then answered questions about social and political demographics (partisanship, ideology, socio-economic status, etc.). We also measured respondents' views of their preferred outcome of the cases in Wave one prior to decisions being made, giving us a pre-treatment measure of policy preferences about the case outcomes.

In the second wave, respondents read brief vignettes describing the Court's ruling in each of four cases; after each vignette, they answered a series of questions regarding their attitudes on the Court's announced policy decision and whether they think the decision should be accepted. After finishing all four cases, respondents answered a range of questions regarding the Court as an institution, including the legitimacy battery. All questions took the same form at each wave, so any differences would be attributable to within-respondent attitude change. Information was presented on one case at a time, such that respondents read information about a case, answered questions about it, read information about a second case and answered questions about that case, and so on. Full text of the vignettes is presented in Appendix A. Finally, we fielded a third wave of the survey 2 weeks after wave two, in order to observe the duration of any observed effects of treatments. No respondents received case information at wave three.

Because we asked the battery of questions concerning the respondents' views on the institutional legitimacy of the Supreme Court (Gibson, Caldeira, and Spence 2005) at each wave of the survey, we are able to assess individual-level changes

³ Panel attrition from wave one to wave two, and wave two to wave three is random with respect to the quantities of interest, and with respect to all relevant political and demographic characteristics of respondents. Analysis of attrition is presented in Appendix B.

due to treatment with information about the Court's decisions. These questions probe respondents' support for the Court and approval of the role it plays in American politics. This approach creates a baseline attitude regarding perceptions of the Court's legitimacy (measured at wave one) against which to compare post-decision attitudes. However, this study constitutes a hard test for our theory because at wave two respondents are treated with information about four cases one after another, where their preferred policies may have been both upheld and defeated, and the true outcome of each case is presented rather than a fictitious outcome intended to provoke disagreement. In addition, the study only asked about the nature of the Court (how political it is) once, after treatment with information about all four cases.

We first present evidence that decision agreement directly influences Supreme Court legitimacy. After telling respondents about the outcome of the cases, we asked respondents whether they agreed or disagreed with the outcome of the case that they just read about. Figure 1 graphically depicts the effects of decision agreement (and disagreement), measured at wave two, on individuals' assessments of the Court's legitimacy, net of political and demographic controls.⁴ In the analyses presented below, decision agreement/disagreement is measured as the aggregate strength of agreement/disagreement across the four cases. The findings are robust to specification of agreement/disagreement as the simple count of decisions agreed with. The dependent variable in the graphs presented in Figure 1 is the institutional legitimacy at wave two (panel at left), and wave three (panel at right), controlling for legitimacy in the preceding wave. The left-hand panel shows that the more strongly the respondent agreed with the decisions, the more she updated her views of the Court's legitimacy in a positive direction. The more strongly she disagreed with the decisions, the more she downgraded her view of the Court's overall legitimacy. For respondents who agreed with two decisions and disagreed with two decisions, legitimacy did not change.⁵ That is, equal policy wins and losses offset each other and did not either benefit or harm views of the Court overall. In other words, the effects of (dis)agreement on perceptions of the Court appear to be cumulative.

Moreover, the panel at right indicates that this is not a short-lived effect: it shows that the effects of agreeing or disagreeing a Court decision persists for at least 3 weeks: there are no significant changes in legitimacy from wave two to wave three. Respondents' views on legitimacy do not change after wave two, regardless of how many decisions that respondent agreed with in wave two. Rather, the

⁴ The full models from which the figures are derived are presented in Appendix C.

⁵ See Appendix D for a full discussion of the effects of multiple decisions accumulating (and offsetting, for some respondents), and supplemental analysis demonstrating these effects.

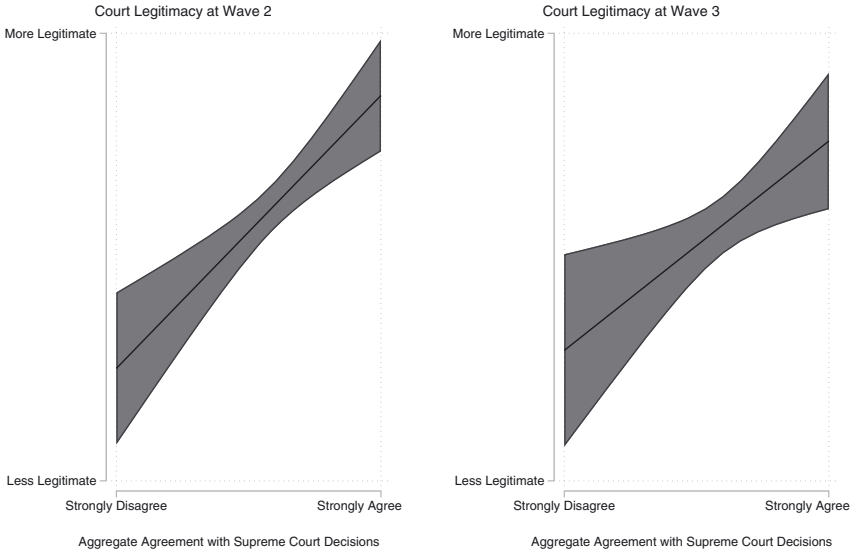


Figure 1: Policy agreement powerfully influences SCOTUS legitimacy (study 1: MTurk panel).

effects from policy disagreement at wave two endure at least as far as the end of the study (wave three). Put differently, the effects of policy disagreement on legitimacy are not only substantively large but also endure over time, and thus present a real threat to Supreme Court legitimacy.

Next, Figure 2 shows that changes in individual-level assessments of the Court’s political nature drive changes in institutional legitimacy. In Figure 2, the dependent variable is institutional legitimacy at wave two, and the key independent variable is how “political” the Court is viewed as being wave two, controlling for legitimacy at wave one. The effect here is the average effect of within-respondent change in perception of the nature of the Court on change in assessed institutional legitimacy, net of controls. As a respondent perceives the Court to be more political, it drives down their view of how legitimate it is.

Finally, we present the full models in Figure 3. We find that individuals’ views of the Supreme Court’s institutional legitimacy are powerfully driven by views of the Court’s nature as a political institution: the more political, the less legitimate. This is true net of a variety of controls, including perceived legitimacy and how political the Court is at wave one. We find that disagreement with Court decisions independently decreases institutional legitimacy. Taken in conjunction with the findings presented above, this analysis strongly indicates that in a politicized political environment, policy disagreement with Supreme Court decisions decreases institutional legitimacy by leading individuals to view both the specific decision and the Supreme Court as an institution as being “political” in nature.

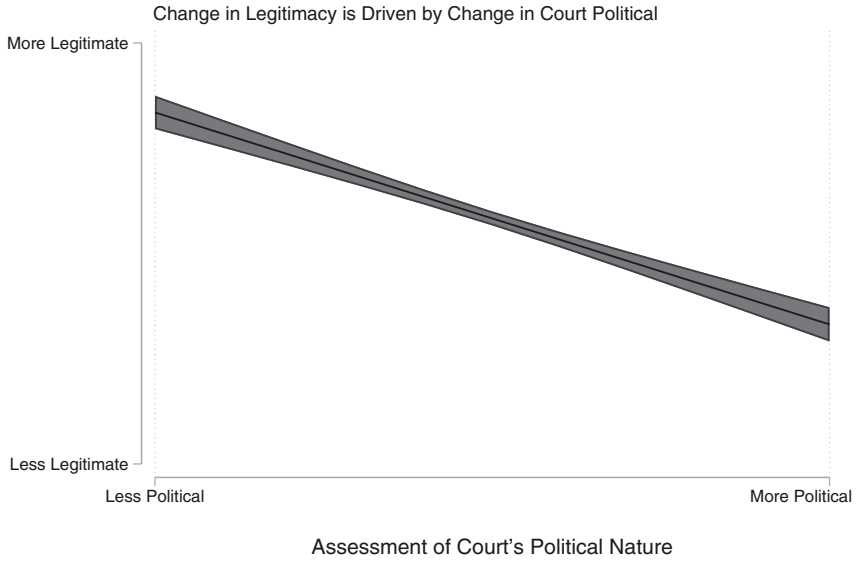


Figure 2: Court perceived as political drives changes in institutional legitimacy (study 1: MTurk panel).

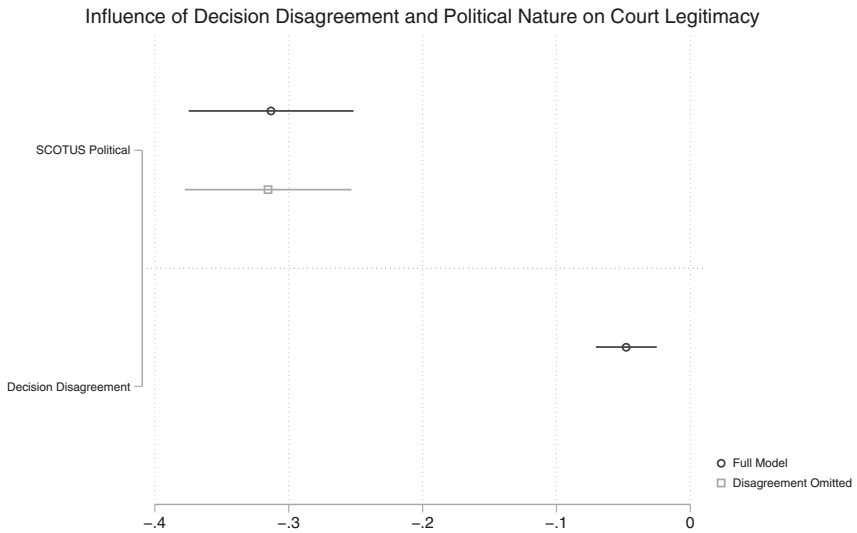


Figure 3: Perceptions of “political” factors drive changes in Supreme Court legitimacy (study 3: MTurk panel).

This panel study indicates that changes in the perceived political nature of the Supreme Court significantly influence institutional legitimacy at the micro level. Additionally, it shows that these changes in perceptions about how political the Court is are driven by (dis)agreement with Court decisions. Finally, it demonstrates that the effects of disagreement with Supreme Court decisions on institutional legitimacy persist over time—for at least 2 weeks post-treatment. In sum, the Court's decisions substantially, significantly, and durably affect individuals' assessment of the Court's nature and its legitimacy.

3.2 Study 2: Survey Experiment (Nationally Representative Sample, SSI)

In Study 1, we established that disagreement with a Supreme Court decision leads respondents to view the Court as political and decreases their evaluation of the Court's legitimacy—and that these effects last over time. In Study 2, we aim to firmly establish whether decision disagreement actually *causes* the observed relationships shown in Study 1. The key treatment in this study is respondents' (dis)agreement with the policy decision ultimately handed down by the Court. To get at this, we first measured respondents' attitudes about the policy the Court would be deciding on (but did not mention the Court, a pending case, or the like). Respondents were then randomly assigned into one of three groups: a true control group with no information, or one of two treatment conditions where the key difference was how the Court decided the case (i.e., which side prevailed). We designed this study to be a clear test of our theory: those assigned to a treatment in which the Court decides differently from the respondents' stated pre-treatment preferences should view the decision as more political than those treated with an agreeable outcome, they should view the Court itself as more political, and they should view the Court as less legitimate.

The survey experiment was fielded by Survey Sampling International/ResearchNow (SSI) between May 9, 2018 and May 21, 2018 on a representative sample of 1000 voting-age Americans. Respondents read about one fictitious case that was, in broad contours, very similar to either *Masterpiece Cakeshop v. Colorado* or *Janus v. AFSCME*. *Masterpiece Cakeshop* was the high-profile 2018 case involving a wedding cake baker-decorator who refused to make a cake for a same-sex wedding. The couple alleged that this action violated their right to equal protection under the law; the baker claimed that he has a free speech right not to be compelled to conduct artistic expression. *Janus v. AFSCME* was a similarly high-profile case involving compulsory union dues for public sector employees. Janus, a

public sector employee, alleged that being forced to pay dues to a union he disagrees with was a violation of his free speech rights.

To strengthen the treatments, we used strong language to describe the Court's rulings (e.g., "sharply divided" with the "Court's five liberal [conservative] members" ruling, and highlighting that a liberal [conservative] interest group celebrated this "success in court."). Additionally, to ensure that there would be both liberals and conservatives who disagreed with the decisions, we included two forms of the treatment: one describing the case as a "liberal" victory, and another describing it as a "conservative" victory. Immediately after treatment, respondents were asked whether (1) they agree with the Court's decision, (2) whether it was based on law, politics, or both, and (3) whether, in general, the Court bases its decisions more on law or more on politics.⁶ Respondents were then asked the standard legitimacy battery (Gibson, Caldeira, and Spence 2003). Full text of the vignettes and question wording are presented in Appendix A.

We test the effect of the experimental treatment—being randomly assigned to agree or disagree with the decision—on perceptions of the political nature of the decision and present the results in Figure 4. Figure 4 depicts the estimated marginal effect (with 95% confidence intervals) of the treatment on respondents' views of how "political" the Court decision was, separated by whether they agreed or disagreed with the treatment outcome. The full model is available in Appendix C. Respondents read only one of the cases, but the models here include the effects of both cases. We measured perceptions of the nature of the decision using a thermometer (values ranging from 0 to 100), asking respondents to move a slider between the extremes of 0 ("Not Political at All") and 100 ("Very Political"); this thermometer was rescaled to vary from 0 to 1 for analysis.

Figure 4 shows that the treatment condition of a disagreeable decision has a substantively large and highly significant ($p < 0.001$) effect on respondents' views as to how "political" the decision they read about was. People tend to view decisions they disagree with as "political."

We then examine the effect of a disagreeable decision on perceptions of the nature of the Court as an institution. Figure 5 depicts the effect of treatment on views of the nature of the Supreme Court as an institution. We again find a strong, highly significant effect of treatment ($p = 0.006$). Respondents who were treated to disagree with the decision view the Court as significantly more "political" than those who were treated to agree with the decision they read about.

⁶ For the sake of robustness, we use multiple measures to capture respondents' views of how "political" a Court decision is across our studies. All question wordings are intended to capture respondents' views of whether Court decisions are based on law or politics and are available in Appendix A. Comparison of the different measures is presented in Appendix D.

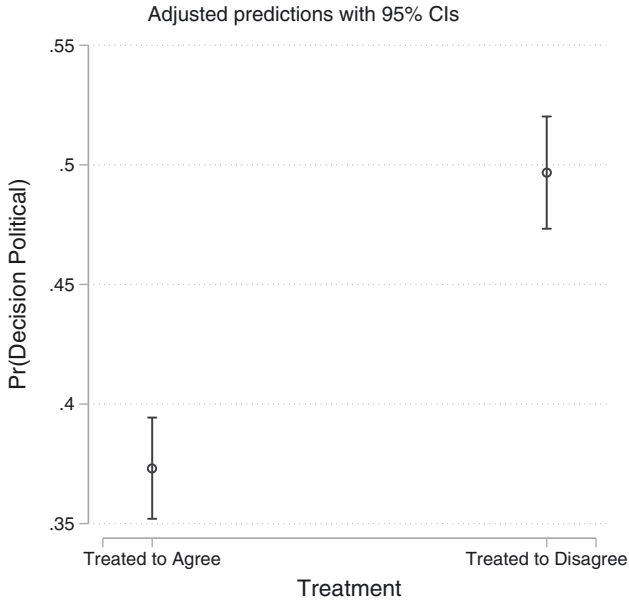


Figure 4: Effect of decision disagreement on assessment of nature of the decision (study 2: SSI).

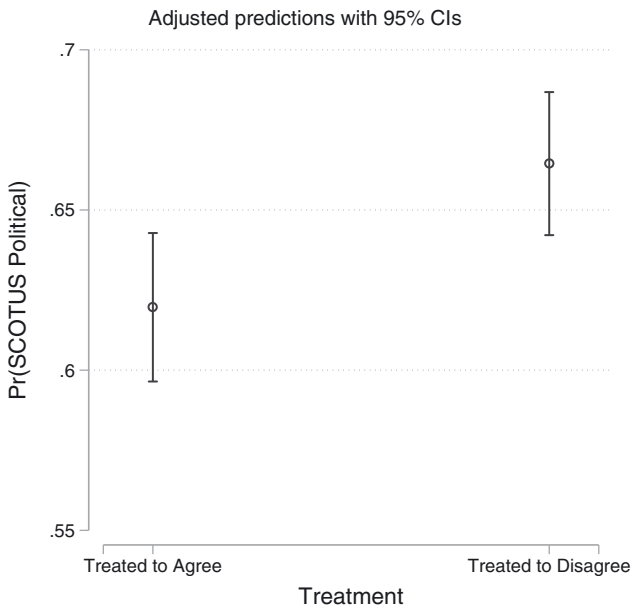


Figure 5: Effect of views of nature of decision on views of nature of the Court (study 2: SSI).

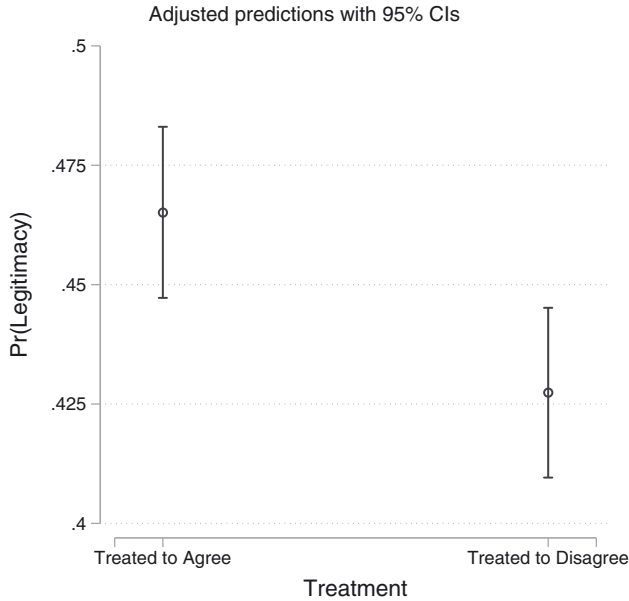


Figure 6: Effect of views of nature of Court on institutional legitimacy (study 2: SSI).

Crucially, Figure 6 shows that individuals' assessments of the Court's legitimacy are powerfully influenced by decision disagreement: respondents who were treated to disagree with the Court's decision view the Court as significantly less ($p=0.003$) legitimate than those treated to agree with its outputs. So far, we have shown that randomly assigned decision disagreement causes individuals to view that decision as having been rooted in politics, to view the Court itself as more political, and that view the Court as significantly less legitimate.

As a final test of the causal pathway from experimentally-induced decision disagreement to Court legitimacy, we estimate a series of causal mediation models on the intermediary quantities of interest (views of the decision being rooted in politics, and of the Court's political nature) (Imai, Keele, and Tingley 2010). Mediation analyses indicate that 60.3% of the effect of treatment on perceptions of how political the Supreme Court is runs through the perception that the decision was rooted in politics. Moreover, the effect of treatment on legitimacy was significantly mediated by respondents' views of how political the Court is *and* how political the decision they read about was (27.8 and 47.2%, respectively). In summary, this survey experiment reveals strong and clear causal evidence linking decision disagreement to Supreme Court legitimacy.

4 Conclusion

Our analyses support several key takeaways. First, we show that disagreement with Supreme Court decisions is directly connected to public assessments of the Court's legitimacy. In doing so, we demonstrate a clear causal link between policy agreement with Court outputs and diffuse support for the institution. Previous studies may have underestimated the importance of outcome satisfaction to legitimacy because satisfaction is often assumed rather than directly measured. That is, studies often specify specific support as "ideological dissatisfaction"—meaning that the researcher assumes that a self-identified conservative (liberal) respondent will disagree with researcher-described liberal (conservative) policy outcomes—but this measure probably asks too much of a public that is largely non-ideological (Achen and Bartels 2017).

Second, and consistent with recent studies of judicial politicization, we show that perceptions of the Court's nature as a hybrid political-legal institution are crucial to understanding changes in Supreme Court legitimacy (Bartels and Johnston 2013; Christenson and Glick 2015b, 2019; Gibson and Caldeira 2009a; Gibson and Nelson 2017; Strother and Glennon 2021). We extend the insights of these earlier works by showing how policy disagreement, perceptions of politicization, and legitimacy are related. Specifically, we show that policy disagreement with a Supreme Court decision significantly increases the perception among the public that the decision was "political" rather than legal. At the same time, disagreement induces individuals to think of the Court itself as being more political in nature. These factors both directly and significantly reduce Supreme Court legitimacy. Moreover, this work contributes to our theoretical understanding of the relationships between outcome- and process-based evaluations of institutions generally. We find that outcome dissatisfaction can influence peoples' perception of the process by which the outcome was reached.

Third, our findings have implications for the apparent aggregate stability of the Court's institutional legitimacy over time. Aggregate stability may mask internal variability, as different groups react in more-or-less offsetting ways based on policy disagreement with decisions. Additionally, or perhaps alternatively, aggregate stability may reflect similar off-setting at the *individual* level; that is, disagreement with one decision is offset by agreement with another later decision. Note, however, that our analyses indicate that both of these potential sources of stability may be imperiled as polarization deepens. If the Court's decisions become less balanced over time such that policy losses disproportionately accrue to one side, then this offsetting will not occur and serious long-run harm to the Court's legitimacy would likely result.

Finally, our findings contribute to our understanding of positivity theory. While our main findings appear to cut against a core tenet of positivity theory, we suggest a more nuanced interpretation: our study indicates a mechanism by which positivity theory works. In general, it may well be the case that being primed with judicial language or symbols evoke for most respondents idealized notions of judicial independence and legality—ideals that may drive out “political” considerations absent other primes, and thus lead to increased assessments of legitimacy. However, in reality most media accounts of the Court use expressly political language (Hitt and Searles 2018), so it is unlikely that people will often be exposed to information about the Court that lacks a political cue. In other words, when citizens encounter information in the real world, it will almost certainly have political valence—but even if it does not, people will still attribute political motives to the Court when they do not like its decisions.

It is a common refrain in the literature that “legitimacy is for losers” (those whose “side” loses before the Court, that is). Our findings reinforce earlier works indicating that winners and losers react to Court decisions in fundamentally different ways (Gibson, Caldeira, and Spence 2005). On these terms, we show that Supreme Court legitimacy is less secure than the prevailing wisdom suggests. Disagreeing with a Court decision—losing, as it were—causes people to view the offending decision and the Court itself as political, and in turn, the Court’s legitimacy is significantly harmed. Additionally, we show that this effect persists for weeks after treatment. By using six different Supreme Court cases that cover issues ranging from free expression to tribal sovereignty, our studies allow for a broad base of empirical and theoretical generalization about the nature of public attitudes toward the Court and thus contribute to a more general understanding of the microfoundations of legitimacy. In our era of deeply polarized politics, this finding has significant implications for the future of the Supreme Court as a functional institution in our democratic system.

Appendix A: Instruments & Question Wording

Study 1: SSI/Research Now Experiment

Treatment 1: Masterpiece Cakeshop # Political (Conservative)

The United States Supreme Court announced its decision in the Masterpiece Cakeshop case today. In a decision divided sharply along ideological lines, the Court’s five conservative members sided with the baker, ruling that he does not have to serve customers when doing so would violate his religious convictions. The

conservative majority held that the baker does not have to decorate cakes for gay clients. Conservative advocacy groups such as the Alliance Defending Freedom hailed the decision as a win for religious liberty.

In July of 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop and requested that its owner, Jack Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages.

Treatment 2: Masterpiece Cakeshop # Political (Liberal)

The United States Supreme Court announced its decision in the Masterpiece Cakeshop case today. In a decision divided sharply along ideological lines, the Court's five more liberal members sided with the couple, ruling that the baker illegally discriminated against Craig and Mullins when he refused them service. The liberal majority held that the baker must bake the cake for the gay wedding or face large fines for behaving in a discriminatory manner. Liberal advocacy groups such as Lambda Legal hailed the decision as a win for equality.

In July of 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop and requested that its owner, Jack Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages.

Treatment 3: Masterpiece Cakeshop # Legal

The United States Supreme Court announced its decision in the Masterpiece Cakeshop case today. The Court's majority sided with the couple, ruling that the baker illegally and unconstitutionally discriminated against Craig and Mullins when he refused them service. The majority held that Colorado's antidiscrimination law does not violate the baker's First Amendment constitutional rights of freedom of speech or free exercise of religion.

In July of 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop and requested that its owner, Jack Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages. Craig and Mullins sued,

alleging discrimination on the basis of sexual orientation in violation of the 14th Amendment. Phillips counters that being forced to make a cake that violates his sincerely held religious beliefs violates the Free Speech and Free Exercise clauses of the First Amendment.

Treatment 4: Janus # Political (Conservative)

The United States Supreme Court announced its decision in the Janus case today. In a decision divided sharply along ideological lines, the Court's five conservative members sided with Mr. Janus, ruling that the union cannot mandate fees from non-members. The conservative majority held that mandatory fees for non-members are essentially subsidies for government advocacy that they [non-members] oppose, and thus struck down the fees. Groups like the conservative Freedom Foundation celebrated this success in Court.

The state of Illinois has a law requiring public employees (like social workers, nurses at public hospitals, and corrections officers) who are not members of a public-sector union to pay fees to the union because they benefited from the union's collective bargaining agreement with the employer. A public-sector employee named Mark Janus sued, claiming that the policy wrongly requires employees who disapprove of the union to contribute money to it.

Treatment 5: Janus # Political (Liberal)

The United States Supreme Court announced its decision in the Janus case today. In a sharply divided decision, the Court's five liberal members sided with the government, ruling that the union can indeed mandate fees from non-members. The liberal majority held that mandatory fees are not unreasonable since the non-members may benefit from the union's activities. Groups like the liberal American Federation of Teachers celebrated this success in court.

The state of Illinois has a law requiring public employees (like social workers, nurses at public hospitals, and corrections officers) who are not members of a public-sector union to pay fees to the union because they benefited from the union's collective bargaining agreement with the employer. A public-sector employee named Mark Janus sued, claiming that the policy wrongly requires employees who disapprove of the union to contribute money to it.

Treatment 6: Janus # Legal

The United States Supreme Court announced its decision in the Janus case today. The Court's majority sided with Mr. Janus, ruling that the Constitution says that the

union cannot mandate fees from non-members. The Court majority held that mandatory fees for non-members are essentially subsidies for government advocacy that they [non-members] oppose, and which thus violate the non-members' right to free speech enshrined in the First Amendment to the Constitution.

The state of Illinois has a law requiring public employees (like social workers, nurses at public hospitals, and corrections officers) who are not members of a public-sector union to pay fees to the union because they benefited from the union's collective bargaining agreement with the employer. A public-sector employee named Mark Janus sued, alleging that the law violates the First Amendment by compelling employees who disapprove of the union to contribute money to it.

Questionnaire:

Do you agree or disagree with the Supreme Court's decision in this case?

- Strongly agree with decision.
- Agree with decision.
- Somewhat agree with decision.
- Somewhat disagree with decision.
- Disagree with decision.
- Strongly disagree with decision.

Some people think Supreme Court decisions are based on law, some think Supreme Court decisions are based on politics, and some people think the decisions are based on both law and politics. Use the sliders below to tell us how much you think the decision was based on law, and how much it was based on politics.

The totals must add to 100.

Decision was based on law [slider 0–100].

Decision was based on politics [slider 0–100].

In general, how well does the word political describe the Supreme Court?

- Extremely well.
- Very well.
- Moderately well.
- Slightly well.
- Not very well.
- Not well at all.

Legitimacy battery:

(all use a six point Likert scale from Strongly agree to Strongly disagree).

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.

The right of the Supreme Court to decide certain types of controversial issues should be reduced.

The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the U.S. Supreme Court favor some groups more than others.

The U.S. Supreme Court ought to be made less independent so it listens a lot more to what the people want.

It is inevitable that the Court gets mixed up in politics; we ought to have a stronger means of controlling the Court.

Study 2: MTurk Survey Experiment

Treatment 1: Masterpiece Cakeshop # Political

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The United States Supreme Court heard the case in late February, and announced its decision this week. The Court's five more liberal members sided with the couple, ruling that the baker illegally discriminated against Craig and Mullins when he refused them service. The liberal majority held that Colorado's antidiscrimination law does not violate the baker's freedom of speech or free exercise of religion.

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Treatment 3: Janus # Political

The state of Illinois has a law requiring public employees (like social workers, nurses at public hospitals, and corrections officers) who are not members of a public-sector union to pay fees to the union because they benefited from the union's collective bargaining agreement with the employer. A public-sector employee named Mark Janus sued, alleging that the law violates the First Amendment by compelling employees who disapprove of the union to contribute money to it.

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Treatment 4: Janus # Legal

The state of Illinois has a law requiring public employees (like social workers, nurses at public hospitals, and corrections officers) who are not members of a public-sector union to pay fees to the union because they benefited from the union's collective bargaining agreement with the employer. A public-sector employee named Mark Janus sued, alleging that the law violates the First Amendment by compelling employees who disapprove of the union to contribute money to it.

The United States Supreme Court heard the case in late February, and announced its decision this week. The Court's majority sided with Mr. Janus, ruling that the union cannot mandate fees from non-members. The Court majority held that mandatory fees for non-members are essentially subsidies for government

advocacy that they [non-members] oppose, and which thus violate the non-members' First Amendment right free speech.

Questionnaire:

Do you agree or disagree with the Supreme Court's decision in this case?

- Strongly agree with decision.
- Agree with decision.
- Somewhat agree with decision.
- Somewhat disagree with decision.
- Disagree with decision.
- Strongly disagree with decision.

Do you think this decision was based on the law, based on politics, or some of both?

- Completely on law.
- Mostly on law.
- Both on law and politics.
- Mostly on politics.
- Completely on politics.

In general, how well does the word political describe the Supreme Court?

- Extremely well.
- Very well.
- Moderately well.
- Slightly well.
- Not very well.
- Not well at all.

Legitimacy battery:

(all use a six point Likert scale from Strongly agree to Strongly disagree).

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.

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The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the U.S. Supreme Court favor some groups more than others.

The U.S. Supreme Court ought to be made less independent so it listens a lot more to what the people want.

It is inevitable that the Court gets mixed up in politics; we ought to have a stronger means of controlling the Court.

Study 3: MTurk Panel Survey

Wave 1:

Questionnaire:

How well does the word political describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

How well does the word legal describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

Legitimacy battery:

(all use a four point Likert scale from Strongly agree to Strongly disagree).

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Wave 2:

Treatment.

Lewis v. Clarke

Brian and Michelle Lewis were driving in Connecticut and were rear-ended by William Clarke, an employee of the Mohegan Tribe (a Native American tribe), who was on the job at the time of the accident. The Lewises sued Clarke for damages in Connecticut state court, however the court ruled that because the tribe has sovereign immunity (and can thus only be sued with its consent), it (the state court) could not hear the case. In a recent decision, the Supreme Court ruled that since the suit was brought against the tribal employee in his individual capacity, the employee (not the tribe) is the real party at interest, and that as a result the tribe's sovereignty is not relevant. In other words, the Supreme Court ruled that tribal employees are not protected by a tribe's sovereign immunity just because they are

employed by the tribe. As a result, the Court ordered the Connecticut state court to hear the Lewises' case against Clarke.

Matal v. Tam

There is a rock band called "The Slants." The band consists of all Asian-American musicians, who say they chose the name "The Slants" in order to "take on these stereotypes that people have about us like the slanted eyes, and own them." The band wanted to trademark their name, but the U.S. Patent and Trademark Office denied The Slants' trademark application on the ground that the name is disparaging to Asian-Americans. The band sued, claiming that it is not the government's place to decide what counts as "disparaging," and that attempting to do so violates the First Amendment's guarantee of Free Speech. The Supreme Court heard the case, and ruled in the band's favor, holding that the government cannot decide what counts as "disparaging" because doing so restricts Free Speech. More specifically, it struck down the law allowing the Patent and Trademark Office to deny disparaging trademarks on the grounds that the law violates the First Amendment's Free Speech clause.

Trinity Lutheran v. Comer (v. Pauley)

Trinity Lutheran Church of Columbia, Missouri, operates a licensed non-profit preschool and daycare called The Learning Center, which has an open admissions policy and incorporates religious instruction into its programs. The Learning Center applied for a grant offered by the Missouri Department of Natural Resources to replace the pea gravel in their play area with a safer, rubberized play surface material. Their application was denied because the Missouri state Constitution states, "no money shall ever be taken from the public treasury, directly or indirectly, in aid of any Church, section, or denomination of religion." Trinity Lutheran sued, claiming that the exclusion of churches from an otherwise neutral and secular aid program violates the First Amendment's guarantee of Free Exercise of Religion. The Supreme Court heard the case, and recently ruled that the exclusion of Trinity Lutheran for a benefit for which it is otherwise qualified, solely because it is a Church, is unconstitutional.

McWilliams v. Dunn

James McWilliams was convicted of the rape and robbery of Patricia Reynolds, who died from injuries sustained in the attack. McWilliams was arrested, tried, and convicted of murder during rape and murder during robbery. At the sentencing phase, McWilliams' attorney requested that the Court order psychological testing to determine McWilliams' mental capacity. The psychological testing was conducted by a doctor employed by the Alabama Department of Corrections. McWilliams sued, claiming that he was denied due process of law because no report by a fully independent doctor was considered when he was sentenced. The Supreme Court heard McWilliams' case, and decided that he was in fact denied the expert assistance that the law requires in the evaluation, preparation, and presentation of his defense. As a result, the Court vacated McWilliams' sentence, and ordered the lower court to re-sentence him using the proper procedures.

Questionnaire:

How well does the word political describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

How well does the word legal describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

Legitimacy battery:

(all use a four point Likert scale from Strongly agree to Strongly disagree).

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.

The right of the Supreme Court to decide certain types of controversial issues should be reduced.

The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the U.S. Supreme Court favor some groups more than others.

Wave 3:**Questionnaire:**

How well does the word political describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

How well does the word legal describe the Supreme Court?

- Very well.
- Moderately well.
- Not well.
- Not well at all.

Legitimacy battery:

(all use a four point Likert scale from Strongly agree to Strongly disagree)

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.

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The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the U.S. Supreme Court favor some groups more than others.

Manipulation Check

To ensure that the “political” and “legal” frames are conveying the content we intend for them to, we conducted a manipulation check.

This manipulation check was conducted on Amazon’s Mechanical Turk (MTurk) workplace. We restricted participation to MTurkers who are United States citizens, at least 18 years of age, and who have at least a 97% MTurk approval rating. This study was fielded on June 6, 2019. Respondents spent approximately 5 min completing the survey, and were paid \$0.50 for participation. Two-hundred-50 individuals participated in this study.

We tested treatment 1 (*Masterpiece Cakeshop* × Political) and treatment 3 (*Masterpiece Cakeshop* × Legal) from Study 1 (SSI/Research Now Experiment), the full text of which are presented just above.

Respondents were randomly assigned to treatment with one of the two vignettes, and then responded to a series of questions about what sorts of things the “news story” (vignette) made them think about:

Q. To what extent does this story make you think about the following ideas?

- a. The Constitution.
- b. Rule of law.
- c. Neutral decision makers.
- d. Partisanship.
- e. Activist Judges.
- f. Political winners and losers.

Response item for each: slider ranging from 0 (not at all) to 100 (very much).

These six items were presented in random order to avoid any question-order effects.

To assess the frames, we constructed “legal” and “political” consideration indices from these six measured outcomes: items a–c constitute the “legal” index, while items d–f constitute the “political” index. Both items scale well, with scale reliability coefficients of 0.61 and 0.76, respectively.

As depicted in Table A1, below, both treatments are performing consistent with our theoretical expectations: respondents in the legal treatment report

Table A1: Manipulation check for treatment frames.

Variables	Index of “legal” items	Index of “legal” items	Index of “political” items	Index of “political” items
Legal treatment	5.72 ^c (2.86)	5.68 ^c (2.85)		
Political treatment			9.99 ^b (3.52)	10.30 ^b (3.55)
White		-3.92 (3.19)		-6.35 (3.99)
Male		-0.92 (2.96)		2.28 (3.70)
Age		-0.03 (0.13)		0.03 (0.17)
Conservative		4.95 (6.51)		8.22 (8.16)
Republican		8.32 (5.39)		-0.13 (6.75)
Constant	53.73 ^a (2.01)	53.42 ^a (5.70)	38.53 ^a (2.51)	37.22 ^a (7.11)
Observations	246	245	246	245
R-squared	0.02	0.05	0.03	0.05

OLS models. Standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

significantly higher values on the index of “legal” items (rule of law, neutral decision making, the Constitution) compared to those in the political treatment. Conversely, those in the political treatment report significantly higher values on the index of “political” items (partisanship, activist judges, political winners and losers) compared to those in the legal treatment.

In sum, this manipulation check confirms that the frames used here induce the desired ideas and responses in our survey respondents.

Appendix B: Summary Statistics from Survey Samples, etc.

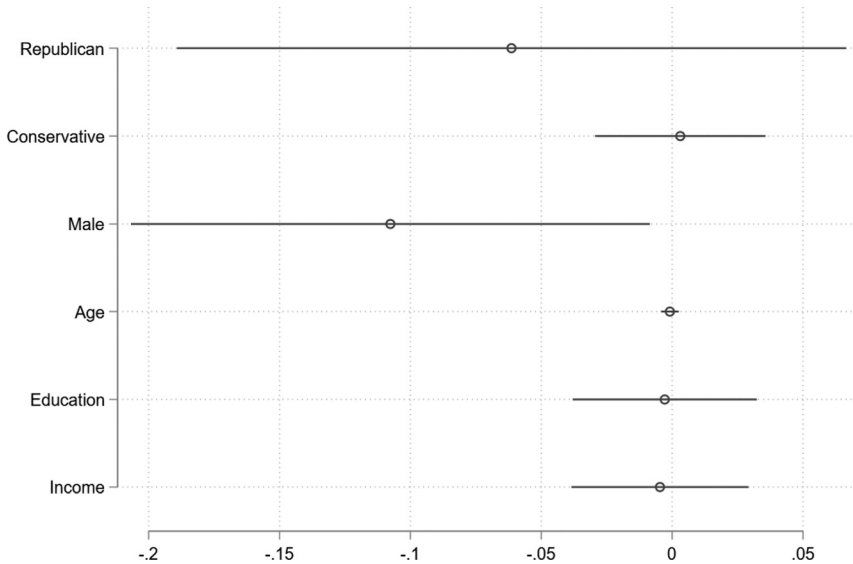
Study 1: SSI/Research Now Survey Exp. Sample Demographics

Female	56.50%
Age	40.47 (mean)
Education	High school (mode)
Democrat	39.33%
Liberal	37.91%

Study 1: SSI/Research Now Survey Exp. Summary Statistics of Key Variables

Variable	Mean	Observed range
Legitimacy	0.44	0–1
SCOTUS political	0.65	0–1
Decision political	0.43	0–1
Decision disagreement	0.40	0–1

Study 1: SSI/Research Now Survey Exp. Randomization Check



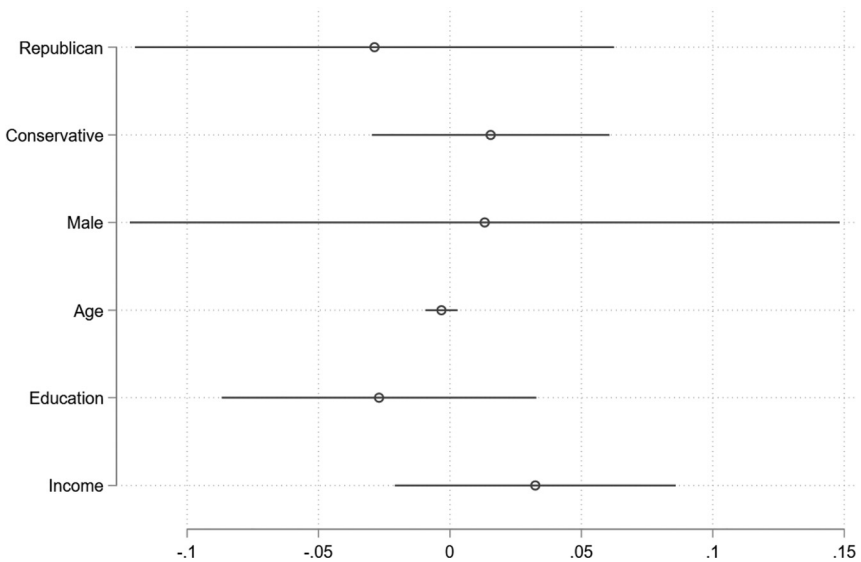
Study 2: MTurk Survey Exp. Sample Demographics

Female	47.17%
Age	37.28 (mean)
Education	4-year degree (mode)
Democrat	44.78%
Liberal	53.70%

Study 2: MTurk Survey Exp. Summary Statistics of Key Variables

Variable	Mean	Observed range
Legitimacy	0.60	0–1
SCOTUS political	0.53	0–1
Decision political	0.41	0–1
Decision disagreement	0.35	0–1

Study 2: MTurk Survey Exp. Randomization Check



Study 3: MTurk Panel Study Sample Demographics

Female	46.15%
Age	37.31 (mean)
Education	4-year degree (mode)
Democrat	59.50%
Liberal	49.96%

Study 3: MTurk Panel Study Summary Statistics of Key Variables

Variable	Mean	Observed range
Legitimacy wave 2	0.66	0–1
Legitimacy wave 1	0.63	0.25–1
SCOTUS political wave 2	0.56	0–1
SCOTUS political wave 1	0.62	0–1
Decision agreement (Agg., wave 2)	0.67	0.21–1

Study 3: MTurk Panel Study: Panel Attrition

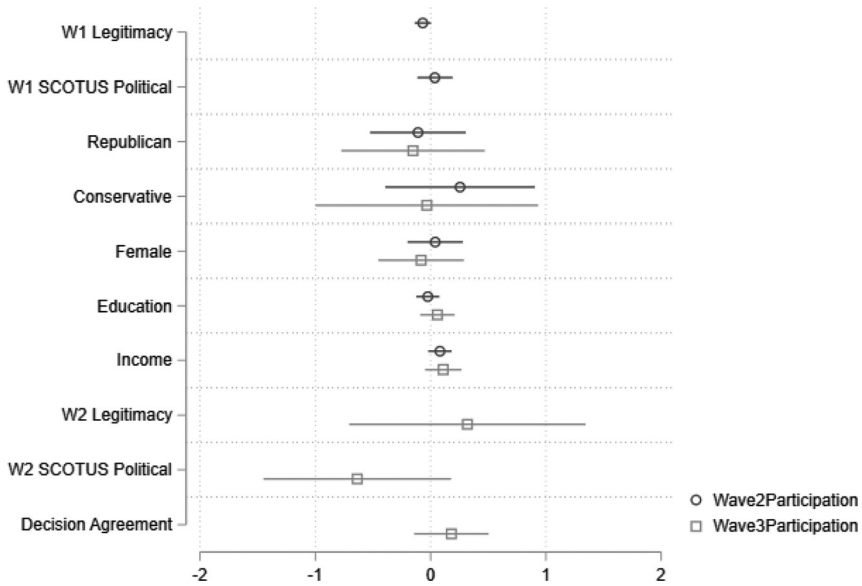


Figure B1 shows that participation at wave N is unrelated to attitudes toward the Court (legitimacy, Court nature, decision agreement) and social and political demographics at wave N-1. That is, participation in wave two is not driven by demographics or attitudes about the Court at wave one, and participation in wave three is not driven by demographics or attitudes about the Court at wave two.

Appendix C: Full Model Specifications

Full Models for Figure 1

Variables	(Legal treatment) Decision based more on politics	(Political treatment) Decision based more on politics
Disagree w/Decision	0.47 ^a (0.05)	0.42 ^a (0.04)
Republican	-0.01 (0.04)	0.02 (0.02)
Conservative	0.01 (0.01)	-0.00 (0.01)
Male	-0.00 (0.03)	0.02 (0.02)
Age	-0.003 ^a (0.00)	-0.001 ^c (0.00)
Education	-0.01 (0.01)	0.00 (0.01)
Income	-0.01 (0.01)	0.00 (0.01)
Constant	0.36 ^a (0.07)	0.29 ^a (0.05)
Observations	253	529
R-squared	0.36	0.28

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 2

Variables	(Legal treatment) SCOTUS political	(Political treatment) SCOTUS political
Decision more political	0.23 ^a (0.07)	0.26 ^a (0.05)
Republican	0.06 (0.04)	0.02 (0.03)
Conservative	-0.02 (0.01)	-0.01 (0.01)
Male	0.04 (0.03)	0.00 (0.02)

(continued)

Variables	(Legal treatment) SCOTUS political	(Political treatment) SCOTUS political
Age	-0.001 (0.001)	-0.002 ^b (0.0007)
Education	-0.01 (0.01)	-0.00 (0.01)
Income	-0.00 (0.01)	-0.00 (0.01)
Constant	0.67 ^a (0.08)	0.67 ^a (0.06)
Observations	253	529
R-squared	0.09	0.09

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 3

Variables	SCOTUS legitimacy (wave 2)	SCOTUS legitimacy (wave 2)
SCOTUS political (wave 2)	-0.31 ^a (0.03)	-0.32 ^a (0.03)
Disagree w/decision	-0.05 ^a (0.01)	
SCOTUS legitimacy (wave 1)	-0.01 (0.00)	-0.01 (0.00)
SCOTUS political (wave 1)	-0.11 ^a (0.03)	-0.12 ^a (0.03)
Republican	0.04 (0.02)	0.04 (0.02)
Ideology	-0.02 (0.04)	-0.02 (0.04)
Male	0.01 (0.01)	0.01 (0.01)
Education	0.00 (0.01)	0.00 (0.01)
Income	-0.00 (0.01)	-0.00 (0.01)
Constant	1.03 ^a (0.05)	0.98 ^a (0.05)
Observations	684	684
R-squared	0.28	0.26

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 4

Variables	SCOTUS	SCOTUS	SCOTUS
	Legitimacy full mod	Legitimacy mod 2	Legitimacy mod 3
SCOTUS political	-0.32 ^a (0.03)	-0.32 ^a (0.03)	-0.32 ^a (0.03)
Decision more political	-0.07 (0.04)	-0.07 ^c (0.03)	
Disagree w/Decision	-0.01 (0.03)		
Political treatment	0.02 (0.01)	0.02 (0.01)	-0.01 (0.02)
Republican	-0.01 (0.02)	-0.01 (0.02)	-0.01 (0.01)
Conservative	0.01 (0.004)	0.01 (0.004)	0.01 (0.004)
Male	0.004 (0.01)	0.004 (0.01)	0.003 (0.01)
Age	0.002 ^a (0.0004)	0.002 ^a (0.0004)	0.002 ^a (0.0004)
Education	0.01 ^c (0.004)	0.01 ^c (0.004)	0.01 ^c (0.004)
Income	-0.003 (0.004)	-0.003 (0.004)	-0.002 (0.004)
Legal treatment			-0.03 (0.02)
Constant	0.53 ^a (0.04)	0.53 ^a (0.05)	0.52 ^a (0.04)
Observations	782	782	934
R-squared	0.26	0.26	0.25

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 5a (top left).

Variables	(Legal treatment)	(Political treatment)
	Decision based more on politics	Decision based more on politics
Disagree w/Decision	1.42 ^a (0.14)	1.40 ^a (0.13)
Republican	0.12 (0.08)	0.14 (0.09)

(continued)

Variables	(Legal treatment) Decision based more on politics	(Political treatment) Decision based more on politics
Conservative	0.04 (0.04)	0.04 (0.04)
Male	-0.02 (0.12)	0.07 (0.12)
Age	-0.01 (0.01)	-0.01 ^c (0.01)
Education	-0.02 (0.06)	0.02 (0.05)
Income	-0.03 (0.05)	-0.02 (0.05)
Constant	2.30 ^a (0.43)	2.08 ^a (0.39)
Observations	185	188
R-squared	0.44	0.43

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 5b (top right)

Variables	(Legal treatment) SCOTUS political	(Political treatment) SCOTUS political
Decision political	0.41 ^a (0.07)	0.51 ^a (0.06)
Republican	-0.04 (0.02)	-0.02 (0.02)
Conservative	0.01 (0.01)	0.01 (0.01)
Male	0.08 ^c (0.03)	0.04 (0.03)
Age	-0.00 ^a (0.00)	-0.00 ^c (0.00)
Education	-0.02 (0.02)	-0.01 (0.01)
Income	-0.02 (0.01)	-0.00 (0.01)
Constant	0.56 ^a (0.10)	0.44 ^a (0.09)
Observations	185	188
R-squared	0.28	0.36

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 5c (bottom left)

Variables	(Legal treatment) SCOTUS legitimacy	(Political treatment) SCOTUS legitimacy
SCOTUS political	-0.39 ^a (0.06)	-0.49 ^a (0.06)
Republican	-0.02 (0.02)	-0.00 (0.02)
Conservative	-0.02 ^c (0.01)	-0.02 (0.01)
Male	-0.02 (0.03)	-0.02 (0.03)
Age	0.00 (0.00)	0.00 (0.00)
Education	0.01 (0.01)	0.00 (0.01)
Income	0.02 (0.01)	-0.00 (0.01)
Constant	0.79 ^a (0.09)	0.89 ^a (0.08)
Observations	185	188
R-squared	0.34	0.35

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 5d (bottom right)

Variables	SCOTUS Legitimacy full mod	SCOTUS Legitimacy mod 2	SCOTUS Legitimacy mod 3
SCOTUS political	-0.35 ^a (0.05)	-0.35 ^a (0.05)	-0.43 ^a (0.04)
Decision political	-0.15 ^b (0.05)	-0.17 ^a (0.04)	
Disagree w/Decision	-0.01 (0.03)		
Political treatment	0.00 (0.02)	0.00 (0.02)	-0.01 (0.03)
Republican	-0.01 (0.01)	-0.01 (0.01)	-0.01 (0.01)
Conservative	-0.01 ^c (0.01)	-0.01 ^c (0.01)	-0.02 ^b (0.01)
Male	-0.03 (0.02)	-0.03 (0.02)	-0.02 (0.02)

(continued)

Variables	SCOTUS Legitimacy full mod	SCOTUS Legitimacy mod 2	SCOTUS Legitimacy mod 3
Age	0.00 ^c (0.00)	0.00 ^c (0.00)	0.00 ^c (0.00)
Education	0.00 (0.01)	0.01 (0.01)	0.01 (0.01)
Income	0.01 (0.01)	0.01 (0.01)	0.01 (0.01)
Legal treatment			-0.01 (0.03)
Constant	0.84 ^a (0.06)	0.84 ^a (0.06)	0.83 ^a (0.06)
Observations	373	373	444
R-squared	0.37	0.37	0.33

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 6

Variables	SCOTUS legit Wave 2	SCOTUS legit Wave 3
Aggregate decision	0.28 ^a (0.07)	0.01 (0.05)
Agreement		
Wave 1 legitimacy	-0.01 (0.01)	
Wave 2 legitimacy		0.87 ^a (0.04)
Republican	0.04 (0.03)	0.00 (0.03)
Conservative	-0.01 (0.05)	0.02 (0.04)
Female	0.04 ^c (0.02)	0.02 (0.01)
Education	0.02 ^c (0.01)	-0.00 (0.01)
Income	-0.01 (0.01)	-0.00 (0.01)
Constant	0.47 ^a (0.08)	0.06 (0.04)
Observations	444	345
R-squared	0.07	0.68

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Model for Figure 7

Variables	SCOTUS legit Wave 2
SCOTUS political (W 2)	-0.37 ^a (0.03)
Wave 1 legitimacy	-0.01 (0.00)
Aggregate decision Agreement	0.20 ^a (0.05)
Republican	0.04 (0.02)
Conservative	-0.03 (0.03)
Female	0.01 (0.01)
Education	0.00 (0.01)
Income	-0.00 (0.01)
Constant	0.80 ^a (0.06)
Observations	684
R-squared	0.27

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Full Models for Figure 8

Variables	SCOTUS Legitimacy full mod	SCOTUS Legitimacy mod 2
Wave 2 SCOTUS political	-0.31 ^a (0.03)	-0.32 ^a (0.03)
Agg. Decision disagreement	-0.05 ^a (0.01)	
Wave 1 legitimacy	-0.01 (0.00)	-0.01 (0.00)
Wave 1 SCOTUS political	-0.11 ^a (0.03)	-0.12 ^a (0.03)

(continued)

Variables	SCOTUS Legitimacy full mod	SCOTUS Legitimacy mod 2
Republican	0.04 (0.02)	0.04 (0.02)
Conservative	-0.02 (0.04)	-0.02 (0.04)
Female	0.01 (0.01)	0.01 (0.01)
Education	0.00 (0.01)	0.00 (0.01)
Income	-0.00 (0.01)	-0.00 (0.01)
Constant	1.03 ^a (0.05)	0.98 ^a (0.05)
Observations	684	684
R-squared	0.28	0.26

Model specification: OLS. Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$.

Appendix D: Supplementary Analysis

Directionality of Key Relationship of Interest

Some might be concerned that, contra our theory, that those who view the Court to be more political also view unliked decisions to be politically-driven. Here, we present evidence that causality runs in a direction that is only consistent with our theory.

A key strength of the panel design of study 3 is that it mitigates such concerns. In addition to the fundamental virtue of analysis at the within-respondent level, the panel provides multiple measures of the same concept over time. Figure 8 in the main text, for example, shows a strong, highly significant effect of viewing the Court as “political”, and of decision disagreement, on SCOTUS legitimacy after treatment *net of views about how “political” the Court is at wave one*. For the full table, see the full models for Figure 8 in Appendix C, above. This shows that the effects we discuss are net of pre-existing views about the Court’s political nature.

As discussed in the text and in Appendix A, respondents in the panel survey answered questions about their attitudes on a series of issues pre-treatment (i.e. in wave one)—some of which were the subject of the treatments they would

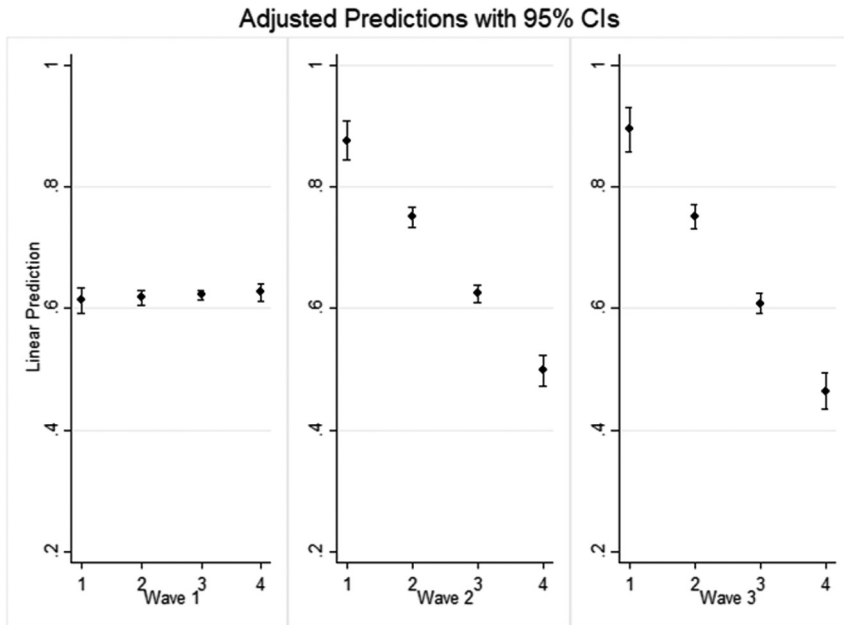


Figure D1: Relationship between Court outputs and view that Court is “political.”

ultimately see in wave two. Figure D1 depicts the (bivariate) correlation between SCOTUS legitimacy (y) and SCOTUS political (x), subset on the number of decisions the respondent agreed with/would agree with (measured at wave two), for each wave. In other words, Figure D1 shows that respondents’ pre-existing attitudes on these issues do not correlate with views that the Court is political pre-treatment (wave one, panel at left), but that they do strongly correlate post-treatment (waves two and three).

Robustness of Findings Across Measures

We use multiple measures of perceptions of how political the Supreme Court is and how political Supreme Court decisions are across the three studies. Our findings are robust to these different question wordings.

Robustness of Key Finding Across Measures of Court’s Political Nature

Variables	SCOTUS Legitimacy (study 1)	SCOTUS Legitimacy (study 2)	SCOTUS Legitimacy (study 3)
SCOTUS political	-0.33 ^a	-0.35 ^a	-0.31 ^a
	(0.04)	(0.05)	(0.03)
{SCOTUS political measure}	“In general, how well does the word political describe the Supreme court?” -6 pt Likert	“In general, how well does the word political describe the Supreme court?” -6 pt Likert	“How well does the word political describe the Supreme court?” -4 pt Likert

Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$. Estimates presented here are from the full models presented in Appendix C.

Robustness of Court Political Across Measures of Decision Being Political.

Variables	SCOTUS Political (study 1)	SCOTUS Political (study 2)	SCOTUS Legitimacy (study 3)
Decision political	0.26 ^a	0.51 ^a	
	(0.05)	(0.06)	N/A
{Decision political measure}	“Some people think Supreme court decisions are based on law, some think Supreme court decisions are based on politics, and some people think the decisions are based on both law and politics. Use the sliders below to tell us how much you think the decision was based on law, and how much it was based on politics. The totals must add to 100.” Decision was based on law. [Slider 0–100] Decision was based on politics. [Slider 0–100]	“Do you think this decision was based on the law, based on politics, or some of both?” -Completely on law -Mostly on law -Both on law and politics -Mostly on politics -Completely on politics	(Not measured in this study)

Robust standard errors in parentheses. ^a $p < 0.001$, ^b $p < 0.01$, ^c $p < 0.05$. Estimates presented here are from the full models presented in Appendix C.

Accumulation of “Wins” and “Losses” and the Relevance of Polarization

As discussed in the main text, not all respondents change their views of the Court’s legitimacy in the wake of new information about Court outputs. The panel study allows us to probe this directly, as all respondents (in the treatment condition) were treated with information about four separate cases.

There are certainly some respondents—those about in the middle of the graphed range—for whom legitimacy was a push. This is depicted in Figure D2 just below. The panel at left shows that those who agreed with two decisions and disagreed with two did not change their legitimacy assessments; those who agreed with all four increased their views of legitimacy; those who disagreed with all four reduced their views of Court legitimacy. The panel at right shows that these effects persist out to wave three.

In sum, this alternative analysis (alternative specification of analyses from Figure 6 in the main text) reinforces our contention that updating ones’ views on the Court is an iterative process. “Wins” and “losses” before the Court can cancel each other out, and leave legitimacy unchanged—but wins and losses can also accumulate, and seriously harm (or reinforce) legitimacy. The prospective of

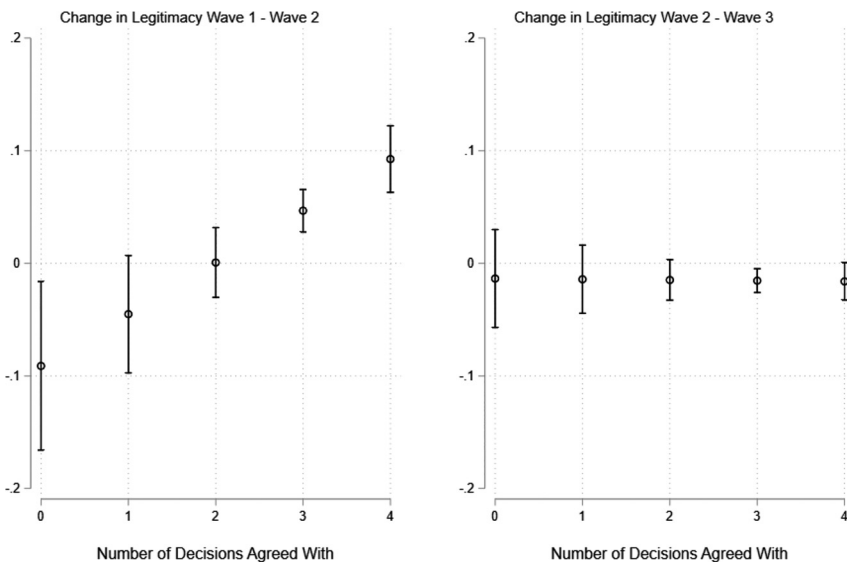


Figure D2: Alternative specification of agreement from panel study (study 3).

consistent losses in a polarized era creates the threat for serious, if one-sided, erosion of Court legitimacy.

Democratic Values

Because some prior studies have found a correlation between Court legitimacy and “democratic values” (e.g. toleration, support for the rule of law, etc.), some might think that democratic values should necessarily be measured and included in any model of legitimacy.

We first note that the study 3—the panel study—directly mitigates this concern. The panel approach, by examining within-respondent effects, by its nature controls for time invariant omitted variables (e.g. Allison 2009). Democratic values, such as support for the rule of law, political tolerance, and the like, are widely recognized both inside and outside the legitimacy literature to be quite durable (Gibson 2007; Gibson and Caldeira, 2009a, 2009b). As Nelson and Tucker put it, “Because these democratic values are themselves unchanging and rooted in childhood socialization into the political process, exposure to displeasing actions by an institution is not enough to change one’s fundamental commitment to the institution,” (n.d.: 9; see also Easton 1965). Thus our panel study *does* control for democratic values, thereby mitigating this general omitted-variable concern.

With this said, it is of course true that some democratic values can be moved at the margins in times of crisis—so one might be concerned that democratic values are not sufficiently time invariant to be controlled for in the panel study. We disagree with this view, but recognize that some may have this concern. Even if one holds this concern, it should be noted that the importance of democratic values in models of judicial legitimacy has been the subject of considerable empirical debate. Many recent studies have found that democratic values do not meaningfully moderate the relationship between political attitudes (partisanship, ideology, policy agreement, etc.) and legitimacy (see Bartels and Johnston 2013; Christenson and Glick 2015a, 2015b, 2019)—and building on the discussion in the previous paragraph, this is likely the case, at least in part, precisely because democratic values are quite durable.

Legitimacy may well correlate with democratic values, but there is no good reason to think that democratic values, being strongly durable, moderate or mediate the relationship between Court outputs and Court legitimacy.

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