

Syracuse University

SURFACE at Syracuse University

Dissertations - ALL

SURFACE at Syracuse University

Summer 7-1-2022

Saving This Honorable Court: Supreme Court Legitimacy and Support for Court Reform

Nathan Thomas Carrington
Syracuse University

Follow this and additional works at: <https://surface.syr.edu/etd>



Part of the [Law Commons](#), and the [Political Science Commons](#)

Recommended Citation

Carrington, Nathan Thomas, "Saving This Honorable Court: Supreme Court Legitimacy and Support for Court Reform" (2022). *Dissertations - ALL*. 1546.
<https://surface.syr.edu/etd/1546>

This Dissertation is brought to you for free and open access by the SURFACE at Syracuse University at SURFACE at Syracuse University. It has been accepted for inclusion in Dissertations - ALL by an authorized administrator of SURFACE at Syracuse University. For more information, please contact surface@syr.edu.

Abstract

For the first time in nearly a century, serious conversations are taking place involving reform of the Nation's highest court. Scholarly wisdom holds that such discussions indicate a decrease of the Court's legitimacy which will have detrimental effects on the rule of law and minority rights. Indeed, several generations of political science scholarship have examined the relationship between institutional support for the Supreme Court and its ability to exercise judicial power effectively, all finding a strong relationship. Do reform efforts actually signal a collapse in Court legitimacy and the death of the rule of law as we know it? Will groups have to appeal to popular majorities now that the Court is seemingly without legitimacy to validate and protect minority rights against the majority?

In this dissertation, I argue that, contrary to conventional wisdom, people can desire change for the Court while still ascribing it the legitimacy necessary to retain its place in the constitutional order. As such, efforts to reform the Court are not detrimental to the rule of law. In the process, I argue that how the field has traditionally conceptualized "legitimacy," which is thought of as a willingness to defend the Court (or, institutional diffuse support), has several shortcomings that make it a less-than-ideal measure of legitimacy. In its place, I argue that an internalized feeling of obligation is a more appropriate conceptualization of legitimacy, and that these two measures are only weakly correlated. Once we have a better understanding of legitimacy, it becomes clear that people can desire alterations to the Court for a variety of reasons, several of which have nothing to do with its legitimacy.

This project underscores the motivations and consequences of reform efforts and helps explain how they can coexist with a Supreme Court that has a robust, thriving legitimacy. For reform advocates, it affects how the issue is framed and debated by highlighting the distinction between legitimacy and reform. For opponents, the project provides reassurance that any efforts undertaken do not threaten the legitimacy of the institution or the rule of law by showing that the Court can maintain its place in the constitutional order amid reform attempts. Additionally, this project enables discussions of democratic accountability and representation by investigating the extent to which the public holds the Court accountable without threatening its place in the constitutional order. Democratic institutions rely on legitimacy for governance, courts rely on legitimacy for their decisions to be realized, and activists who turn to courts rely on legitimacy for rights-protection and implementation. By refining and improving our conceptualization of legitimacy, this dissertation advances our understanding of a critical concept while further exploring the way that society interacts with and understands the Supreme Court.

SAVING THIS HONORABLE COURT: SUPREME COURT LEGITIMACY AND
SUPPORT FOR COURT REFORM

by

Nathaniel Thomas Carrington

B.S., Southeast Missouri State University, 2016
M.A., Syracuse University, 2018

Dissertation

Submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy in Political Science.

Syracuse University
July 2022

Copyright © Nathaniel Thomas Carrington. 2022.
All rights reserved.

Acknowledgements

Though not always a sky full of stars, the past six years have certainly been the adventure of a lifetime. Many old friends contributed in various ways to making graduate school its own weird sort of paradise, and I want to take a moment to acknowledge these ‘Biutyful’ people who helped me feel like a champion of the world. Although the words on this page can never mirror the impact these folks have had on me, I hope that it signals at least a fraction of my gratitude.

First and foremost, my appreciation goes out to my advisor, Tom Keck, whose guidance, wisdom, and incisive questioning helped me immensely not just with the dissertation, but through my entire graduate career. It was also many semesters spent as Tom’s research assistant that allowed me to cultivate an appreciation of research and to explore the ideas found through this dissertation. Tom has truly been a model mentor and, for that, I am forever grateful.

I also want to thank the rest of my committee: Keith Bybee, Shana Gadarian, Emily Thorson, and Michael Nelson, all of whom helped in various ways along this journey. Sometimes it was as simple as assurance that the project would eventually get done and reminding me “don’t panic” in the face of trouble. Other times, the help came in more concrete form, such as how to interpret a mediation output which I thought was broken (thanks, Shana!), writing letters to accompany grant proposals and job applications, or being an ear when I needed to talk and vent (again, thanks Shana!). The seeds of this project were formed through conversations with Keith, and his encouragement was instrumental in helping me go from a head full of dreams into sparks that would form a full-fledged dissertation (something just like this). Emily helped multiple times along the way, especially when it came to designing the survey and experiments, which is work that always causes a rush of blood to the head. Although Michael officially joined as a committee member later in the process, his

advice over Zoom in the project's early stages helped reassure that it was something worthy of pursuit. Thank you to Mike Kalish for chairing my oral examination and for teaching me Bayesian statistics! At various points in time, all of the people on my committee have been instrumental in helping keep crippling imposter syndrome at bay by reminding me that I am in my place and, for that, I am thankful. When I wanted to cry, cry, cry, knowing that help is 'round the corner always kept me on the up&up.

Many of my colleagues in the political science department, in one way or another, contributed to this final project (though some might not realize it): Ugur Altundal, David Arceneaux, Rachael Beattie, Sam Call, Alice Cho Timken, Eduardo Cobian Aguayo, Ananda Collins, Nicholas D'Amico, Bess Davis (and Matt!), Curtis Edmonds, Laura Jenkins, Ana Jones, Sarah Jones, Rachel MacMaster, Angely Martinez, Michael McCall, Brandon Metroka, Amber Morris, Sobia Paracha, Ivy Raines, Raza Raja, Elise Roberts, Katharine Russell, Heidi Stallman, Kyungwon Suh, Josiah Van Egdom (and Angie!), Maria Laura Veramendi Garcia, and Kari Waters. Although the dissertation was always in my head, these folks helped me keep my sanity by responding to random text messages at the speed of sound asking to grab coffee and talk about everyday life. Often, they provided solid feedback about the project which helped strengthen it. When I need a friend, I have been blessed with many to call.

I am also grateful to many faculty members who, though not part of the official committee, contributed immensely to this project and my graduate school career: Matt Cleary, Elizabeth Cohen, Dan McDowell, Chris Faricy, Seth Jolly, Sarah Pralle, Brian Taylor, and Steven White. Additionally, were it not for the staff in the political science department and Campbell Public Affairs Institute, this project would have been impossible. I am especially thankful to Candy Brooks, Kelley Coleman, Sally Greenfield, Paul Mackanos, Jacquie Meyer, Jackie Nocevski, Grant Reeher, and Sunju Reybeck. Their help through the process has been indispensable. I'm also thankful for the financial support that I received from the

Maxwell School, Kissel Fund, and Sawyer Fund for Civil Liberties, all of which helped make it possible for me to become the scientist that I am today.

I also owe a huge thanks to Claire Sigsworth (and Jason!). Our regularly-scheduled lunches and movie nights were always a pleasure and helped sharpen my thinking while keeping me grounded in the important things in life. I will forever be grateful for your friendship. Vinessa Buckland, Emma Dreher (and Blake!), Colin French, and Aaron Lattanzi always challenged my thinking, offered support, and were willing to randomly grab dinner to chat. For that, I am thankful. I also have some of the best coauthors around, many of whom have already been mentioned, but also including Logan Strother and Stephan Stohler. Having multiple projects at the same time as the dissertation helped keep me sane (even if it was occasionally challenging to strike the right balance between the various responsibilities).

None of this would have ever happened were it not for two professors at Southeast Missouri State University who encouraged me to pursue higher education in the first place: Dr. Jeremy Walling and Dr. Laura Hatcher. Without those two, no telling what career path I would've chosen (probably one that pays better, if I'm being honest). I also owe a thanks to the TRIO-McNair Scholars Program at Southeast Missouri State. Although today the thought of starting a PhD program straight from undergraduate makes me want to shiver, the TRIO-McNair folks made the transition as painless as possible by giving me many of the skills I needed to succeed.

Although a bit unorthodox, I also want to thank Chris Martin, Johnny Buckland, Guy Berryman, Will Champion, and Phil Harvey (also known as Coldplay). Graduate school isn't easy and, although every teardrop is a waterfall, being able to repeatedly listen to the arpeggiation¹ in *Clocks* made the experience a little bit better (and sprinkling song titles throughout the acknowledgements section has added a dash of excitement).

¹Thank you to Sally Greenfield for confirming that I am using that word correctly!

Finally, I owe the most appreciation to my family. Although they have no idea what, how, when, or why I do any of this, their support has been unwavering. Whether helping me move across the country to a new city in a new state, or understanding why I was not able to spend all summer break in Illinois when studying for my comprehensive exams, they always had my back and I knew I could count on them. Unfortunately, my grandma, Norma Barger, saw the move to Syracuse but passed away last year before seeing me conclude my studies. I know that she would be over-the-moon at seeing how far I've come. The same can be said about my other grandma, Delores Carrington-Honey, who passed away while I was still in high school. I miss them both greatly and not a day goes by that I don't think about them. I hope this dissertation has made them both proud.

Lastly, this dissertation is dedicated to my little sister, Madison Carrington. Let this completed project be proof that surrounding yourself with people who support you and want you to succeed can truly allow you to accomplish anything—including becoming a doctor. I can't wait to read your dissertation some day.

Contents

Acknowledgements	iv
List of Figures	xii
List of Tables	xiv
1 Introduction	1
1.1 What is “Legitimacy,” Anyway?	7
1.2 Legitimacy within the Supreme Court Context	8
1.3 Shortcomings with Measuring Legitimacy as Institutional Support	10
1.3.1 Reconsidering Easton’s Relationship to Legitimacy	11
1.3.2 Public Support for Reform Across Time	12
1.3.3 Institutional Support’s Relationship to Court Efficacy	15
1.3.4 Determining Other Causes of Institutional Support	16
1.4 Felt Obligation: Legitimacy as a Sword	16
1.4.1 Benefits of Felt Obligation	17
1.4.2 How Felt Obligation Differs from Institutional Support	19
1.4.3 Legitimacy and Judicial Power	22
1.4.4 Legitimacy and Judicial Supremacy	24
1.5 Summary, Empirical Expectations, and Plan of the Dissertation	26

2	How Do we Measure Legitimacy?	29
2.1	Past Efforts at Measuring Legitimacy	33
2.2	Measuring Felt Obligations	38
2.2.1	Validating Through Cognitive Interviewing	39
2.2.2	Validation Through Numbers	43
2.3	What have we learned?	49
3	A Survey Investigating the Flexibility of Felt Obligation and Institutional Support	51
3.1	The Media Environment and the Supreme Court	56
3.1.1	A Hostile Court	58
3.1.2	Sensationalist Headlines: A Broken Court	60
3.2	Data and Methods	61
3.2.1	Results	63
3.3	Felt Obligation and Support for Reform	70
3.4	Discussion	71
4	Experiments Manipulating Perceived Court Hostility and Brokenness	73
4.1	Experiment 1: Preregistered Lucid Study	74
4.1.1	Outcomes of Interest	75
4.1.2	Manipulation: A Broken Court	75
4.1.3	Results: Broken Court	77
4.1.4	Manipulation: A Hostile Court	78
4.1.5	Results: Hostile Court (GOP)	80
4.1.6	Summary of Findings	86
4.2	Experiment 2: CloudResearch	88
4.2.1	Results of CloudResearch Experiment	91

4.2.2	CloudResearch Mediation and Sensitivity Analysis	94
4.3	Conclusion	98
4.3.1	What Explains the Findings?	99
5	Conclusion	102
5.1	The “Puzzle”	105
5.2	Findings	107
5.3	Broader Contributions	108
5.4	Project Shortcomings and Avenues for Future Research	110
	Appendices	115
A	Legitimacy Battery Design	115
A.1	Research Objectives	115
A.2	Research Design	115
B	Fall 2020 Lucid Survey	118
B.1	Descriptive Results	118
B.2	Regression Tables and Figures	118
C	Experiment Supplementary Materials	122
C.1	Experiment 1 Preregistration	122
C.2	Lucid Experiment—Broken Model Output	125
C.3	Lucid Experiment—Broken Model Output (Manipulation Check)	125
C.4	Lucid Experiment—Hostile Model Output	126
C.5	Cloud Research Experiment—Model Output	127
C.6	Cloud Research Experiment—Het. Model	127
	References	128

List of Figures

2.1	Example probe question during the cognitive interviewing.	41
3.1	Figure showing the output of an ordinary least squares regression on both legitimacy and institutional support (traditional and as support for Court curbing). Data are from the September 2020 Lucid Attitudes Study and are weighted to known population parameters.	64
3.2	Descriptive statistics showing how the two measures of legitimacy relate to each other among all respondents.	65
3.3	Descriptive statistics showing the partisan breakdown of each legitimacy measure.	66
3.4	Interaction effects between worry of what the Court will do in the future and obligation felt toward the Court on the traditional institutional support measure of legitimacy.	67
3.5	Interaction effects between worry of what the Court will do in the future and obligation felt toward the Court on measure of legitimacy consisting of specific reform questions.	69
3.6	Correlates between support for specific reform attempts, institutional support, and felt obligation.	70
4.1	Manipulation for Experiment 1: Broken wave, which consists of a variety of real-life headlines signaling that the Supreme Court is broken or in need of being fixed.	76
4.2	Average treatment effects of the ‘broken’ wave showing null effects across legitimacy measures when compared to the pure control condition.	78
4.3	Effects of modeling the ‘broken court’ manipulation check question directly on the legitimacy measures.	79

4.4	Manipulations for Experiment 1: Concern wave.	81
4.5	Comparing Republican respondents in the ‘hostile Court’ wave to those in the control condition showing null results across legitimacy measures.	82
4.6	Effects of modeling the ‘hostile court’ manipulation check question directly on the legitimacy measures.	83
4.7	Results of the sensitivity analysis for all three dependent variable batteries. .	87
4.8	Manipulation for Experiment 2 consisting of a variety of real-life headlines signaling that the U.S. Supreme Court needs to be saved or fixed.	90
4.9	Average treatment effects showing a significant increase in legitimacy compared to respondents in the control condition across all measures.	93
4.10	Results of the sensitivity analysis conducted on the CloudResearch experiment.	96
4.11	Predicted values for the interaction between partisanship and treatment, by legitimacy conceptualization. Leaners excluded.	97
B.1	Unabridged figure showing the results of the OLS regression presented and discussed in Chapter 2.	121
C.1	Preregistration for Experiment 1	124

List of Tables

1.2	Public opinion data showing support for various court reform efforts throughout the years. Source: Roper Center iPoll and the Voters Study Group	14
2.1	Table showing the variable names and their corresponding survey question. .	45
2.2	Traditional Battery Correlations	45
2.3	Felt Obligation Correlations	45
2.4	Combined Correlations	46
2.5	Results of a principal-component analysis of the legitimacy batteries.	48
2.6	Results of a principal-component analysis of the legitimacy batteries with orthogonal varimax rotation.	48
4.1	Results from mediation analysis conducted on the “hostile court” manipulation of the Lucid experiment.	85
4.2	Results from mediation analysis conducted on CloudResearch study.	94
B.1	Table presenting summary statistics of the Lucid Survey (Study 1) comparing both weighted and unweighted percentages. Weighting was conducted using the <code>ipfweight</code> command in Stata which uses an iterative proportional fitting (raking) method to construct the survey wights.	119
B.2	Predictors of Legitimacy (Fall 2020 Study)	120
C.1	Model Outputs from Experiment 1: Broken Wave	125
C.2	Model Outputs from Experiment 1: Broken Wave	125
C.3	Model Outputs from Experiment 1: Hostile Wave (GOP)	126

C.4	Model Outputs from Experiment 2	127
C.5	Model Outputs from Heterogeneous Effects Analysis	127

The court has no troops at its command, doesn't have the power of the purse, and yet time and again, when the courts say something, people accept it.... I thought [*Bush v. Gore*] was unwise. A lot of people disagreed with it. And yet the day after the court rendered its decision, there were no riots in the streets. People adjusted to it. And life went on.

Justice Ruth Bader Ginsburg, interview with *National Public Radio*, July 24, 2019

The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands... [T]he Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.

Justices O'Connor, Kennedy, and Souter
Planned Parenthood v. Casey,
505 U.S. 833 (1992)

The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be 'restructured in order to reduce the influence of politics.'

Senators Whitehouse, Hirono, Blumenthal, Durbin, and Gillibrand, *Brief of Amici Curiae*. United States Supreme Court, *New York State Rifle & Pistol Association, Inc. v. City of New York, New York*

Chapter 1

Introduction

“But they’ve ruled and we live with their decision. That’s what it’s all about. We live with the decision of the Supreme Court. Very powerful. A very powerful decision actually. But they have so ruled.”

President Donald J. Trump, June 15, 2020
(quoted in [Samuels 2020](#))

On the evening of September 18, 2020, the United States Supreme Court announced the death of Associate Justice Ruth Bader Ginsburg at the age of 87.¹ After having lived a long and inspirational life, her sudden death from metastatic pancreatic cancer a mere forty-five days before the November 2020 General Election meant that the ideological balance of the Supreme Court would be solidified as a 6-3 conservative supermajority for generations if President Donald Trump filled the seat. For many, this 6th conservative justice—and third Trump appointee to the High Bench—would be the final nail in the coffins of abortion, marriage, and voting rights, and have the potential to undo the late Justice Ginsburg’s lifework advancing equality under law.

Almost immediately upon her death, both Democrats and Republicans started dueling

¹United States Supreme Court Press Release, September 18, 2020.

about the fate of the late justice’s seat. Republicans argued that they had a mandate from the public to fill the seat,² while Democrats argued that the seat should be filled by the winner of the upcoming November election as was done when the Republican-controlled Senate refused a vote on President Obama’s nominee to replace the late Justice Antonin Scalia before the 2016 election.³

Once it became clear that Republicans would ignore their own precedent set in 2016, calls for court reform among Democrats began to multiply. Senator Ed Markey tweeted that, should Republicans fill Justice Ginsburg’s seat before the election, Democrats would “abolish the filibuster and expand the court” upon retaking the Senate.⁴ A couple weeks later, three Democratic representatives introduced a bill in Congress—aptly called “The Supreme Court Term Limits and Regular Appointments Act”—with the goal of reforming the Court. Under the plan, each president would get two appointments to the Court: one in their first year and one in their third, with all appointees limited to a single 18-year term. After that time, they would circle to a lower court until retirement, though could still return to the bench upon a sudden vacancy. Importantly, this bill would also increase the size of the Court temporarily.

These modern efforts to reform the Court are not new. For example, “Fix the Court,” a progressive organization devoted to this very issue, has promoted various reforms since its founding in 2014, and calls for reform have increased following President Trump’s packing of lower courts with ideological bedfellows (Millhiser, 2019; Levy, 2019; Keck, 2018). However, calls increased following Republicans’ refusal to hold a vote on Justice Scalia’s successor before the 2016 election, and have magnified precipitously following the death of Justice Ginsburg. For the first time in nearly a century, the idea of packing the U.S. Supreme Court is increasingly mainstream. The platform for a major political party going into the

²Press Release from Senate Majority Leader Mitch McConnell on the Passing of Justice Ginsburg (Link)

³Vice President Joe Biden Speech on the Passing of Justice Ginsburg (Link)

⁴Link to Tweet: @EdMarkey — 4:54PM on September 19, 2020.

2020 General Election said that they, “...recognize[] the need for structural court reforms to increase transparency and accountability” ([DNC, 2020](#), 58), and Democratic Candidate Joe Biden’s refusal to signal support or opposition to the idea of expanding the size of the Supreme Court was a common line of attack for Republicans leading up to the election. Once in office, President Biden created a commission with the task of studying the merits and demerits of various reforms for the Court.

Importantly, efforts to alter the Court are not solely Democratic or progressive. Steven Calabresis, the founder of the conservative Federalist Society, has advocated for term limits for the justices on the Court ([Calabresi and Lindgren, 2006](#)), and Senators Ted Cruz and John McCain held open the possibility of permanently refusing a vote on any Hillary Clinton nominee should she win the 2016 election (ostensibly shrinking the Court to eight justices) ([Totenberg, 2016](#)). Republicans have also shown a willingness to reform lower courts, such as when they attempted to shrink the size of the D.C. Circuit Court in an effort to prevent President Obama from filling three vacancies ([Shesol, 2013](#)).

Further, reform efforts are not solely an elite endeavor. As discussed in more detail in the subsequent chapters, a sizable portion of the public has expressed a willingness to support reform of the Court at various points throughout polling history. Although the level of support varies by the reform being polled, the idea that the public holds the Supreme Court in high regard and zealously defends it from alterations seems unsupported in public opinion data. To put it another way, we have reached a point where the idea of altering the Court is increasingly mainstream and much less outlandish than it was even as recently as a decade ago. Elites of both parties, and the mass public, all support reform to some extent, whether term limits, alterations in size, or mandatory retirement ages.

Setting aside normative considerations that may or may not justify reform⁵, generations

⁵Normative discussions surrounding legitimacy and court reform are beyond the scope of the present project.

of research on the legitimacy of the high court suggests that efforts to fundamentally alter the institution are grounds for worry. This alarm derives from decades of research arguing that legitimacy exists up until an individual is willing “to accept, make, or countenance major changes in the fundamental attributes of how the High Bench functions or fits into the U.S. constitutional system” (Caldeira and Gibson, 1992, 638). It seems uncontroversial to say that the entire field of judicial legitimacy is premised on this assumption that an individual will defend an institution they view as being legitimate from being changed. (Gibson, Caldeira and Baird, 1998; Gibson, Caldeira and Spence, 2003; Gibson, 2011; Badas, 2019).

As a result, the current political environment where several groups tolerate or actively promote reform signals that the Court’s legitimacy has plummeted. An institution once regarded as the most legitimate among the three branches is now, it would seem, nothing more than a paper tiger, relegated to the whims of the other two branches of government in that it is unable to compel the realization of its judgements independently.

A court that loses its legitimacy would become a court in name only and be unable to fulfil its institutional or normative duties, resulting in a deterioration in the rule of law and minority rights. Since the Court famously lacks a sword or purse by design,⁶ it relies entirely on goodwill—from elected officials and the public at large—for the efficacy of its rulings (Clark, 2011). Gibson and Nelson (2014, 202) put it best when they said that, “The particular problem for the US Supreme Court is that it is heavily dependent upon legitimacy for its efficacy and survival.” Legitimacy is what enables the Court to declare legislation enacted by the people’s representatives invalid, permitting it to overcome what Bickel (1986) identifies as the “countermajoritarian difficulty” of an unelected judiciary invalidating legislation enacted through the democratically-elected process. A Court without legitimacy runs the risk of becoming socially, politically, and institutionally insignificant. A Court without legitimacy would also find it challenging to protect the rights of vulnerable minority groups.

⁶Publius. *Federalist No. 78*. (Linked).

As Zilis (2018, 272) notes, if the Court’s legitimacy deteriorates each time it protects an unpopular minority group, for example, “this may affect the institution’s willingness to protect minority rights in the future” (Zilis, 2021).⁷

Given the Court’s dependence on public goodwill for the efficacy of its decisions and maintaining its place as a co-equal branch of government, it is unsurprising that several decades of scholarship is concerned with understanding the etiology, contours, and limitations of that public goodwill. As noted by Nelson and Gibson (2018, 132), no topic within the field of law and courts has received as much scholarly attention except perhaps that of judicial decision making. Although this research has a long tradition, it has only recently seen a resurgence, with questions long considered settled receiving renewed scrutiny. This research points in one direction: reform attempts signal a sharp decrease in legitimacy which will have detrimental effects on the rule of law.

This project both builds on existing research and challenges some of its foundational assumptions. First, this dissertation takes as the point of departure the assertion in existing research that people will defend a legitimate institution from changes. The positive association between legitimacy and protecting the Court is foundational to the utility of using institutional support as an indicator for legitimacy. If, in contrast, legitimacy and institutional support were to be negative correlated, for example, the latter becomes a less-than-ideal measure of legitimacy.

Instead of institutional support, this dissertation returns to the theoretical underpinnings of legitimacy theory to advance a new indicator of legitimacy; namely, internalized felt obligation toward the institution. Shifting our measure means that legitimacy exists up

⁷One potential objection to the argument that a court depends on legitimacy for its survival is that it could still exercise a countermajoritarian function in ways that benefit certain important elites. In other words, the Court has other institutional tools beyond its legitimacy to function. However, at some point, such action on behalf of the Court ceases to be “countermajoritarian” in the Bicklean sense. More fundamentally, however, it is legitimacy which would allow the Court to focus on a select important constituency without significant institutional repercussions. In other words, appealing to a select group of well-positioned elites is likely to provoke backlash if not for a widespread sense of legitimacy in the Court.

until an individual begins to view a court’s pronouncements as optional, not when they begin to tolerate or promote changes to the status quo. Moreover, thinking of legitimacy in terms of the widespread obligation felt in the institution allows for legitimacy to motivate reform attempts. In other words, people can desire to reform the institution precisely because they recognize that its legitimacy acts much like a sword to achieve policy objectives.

High levels of obligation felt toward the Court is what allows it to not just function effectively, but to exercise any of its normative or institutional duties. Among the mass public, these attitudes represent the legitimizing of the Court, conferring on the Court and society a mandate that its decisions are to be respected, followed, and implemented, even if they are decided incorrectly. They also allow the public to warn and hold accountable public officials who seek to ignore the Court and go astray. For public officials, these attitudes represent the extent to which they are willing to go along with the Court before openly thwarting or questioning its authority. Institutionally, it is these attitudes that give the Court its teeth: without which, the Supreme Court has no power and is politically, legally, and socially insignificant. The Court loses its ability to decide cases efficaciously, resolve conflicts, or structure society, effectively being a court in name only ([Shapiro, 1981](#)). The “countermajoritarian” institution loses its ability to be countermajoritarian, and the rights of minorities can only be realized through conventional majoritarian venues leaving minorities to appeal to the better angels of majorities ([Zilis, 2021](#)).

The next section will better define legitimacy and specifically illustrate how scholars traditionally have measured the concept. Attention then turns to highlighting several flaws in the existing account, and introducing the idea of felt obligation as a superior measure of legitimacy. The subsequent section explains what this reconceptualization means for existing research. The final section in this chapter outlines the plan of the dissertation.

1.1 What is “Legitimacy,” Anyway?

Conceptually, few dispute that legitimacy is psychological in nature, consisting of an ascription on behalf of an individual to some authority. In a widely-accepted definition, [Tyler \(2006a, 375\)](#) argues that, “Legitimacy is a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation of reward” (also quoted in [Gibson and Nelson \(2018, 6\)](#) and [Nelson and Gibson \(2018, 133\)](#)).

This conceptualization of legitimacy is consistent with work in other domains, such as organizational and political theory. [French and Raven \(1959, 323\)](#), for example, argue that, “legitimate power of O/P is here defined as that power which stems from internalized values in P which dictate that O has a legitimate right to influence P and that P has an obligation to accept this influence,” and [Tyler \(1997, 323\)](#) notes that, “Political theorists have similarly defined legitimacy as the belief within the members of society that there are adequate reasons to voluntarily obey the commands of authorities.” Decades (indeed, centuries) of research and theorizing point to the same conclusion: legitimacy exists in the eyes of the beholder and involves an internalized feeling of obligation and compulsion to some external actor, institution, or norm.

Legitimacy is critical for governing institutions because, without it, these institutions find their authority contested ([Gibson and Nelson, 2018, 7](#)). Legitimacy permits institutions to effectively govern and structure society without having to resort to the use—or threat—of enforcement action costly to the government. A governing institution without legitimacy requires a complex surveillance apparatus to identify those who challenge its authority, an impressive system of correcting the behavior (through policing, for example), all while hoping

that such corrective action did not further deteriorate the institution’s legitimacy in the eyes of the public (Tyler, 2006b).

Consequently, governments attempt to inculcate legitimacy values and feelings of obligation early in life through a process of legal socialization in an attempt to curtail the need for costly oversight and enforcement (Tyler and Trinkner, 2017; Trinkner and Tyler, 2016). Because of its function and purpose, then, legitimacy has been referred to as the “...endorphin of the democratic body politic...” in that it “...reduc[es] the friction that inevitably arises when people are not able to get everything they want from politics” (Gibson, 2004).

1.2 Legitimacy within the Supreme Court Context

When it comes to evaluations of institutions, Easton (1965) posits the existence of two types of support: specific and diffuse (Easton, 1975). Specific support refers to immediate and concrete satisfaction with how the institution is doing. Within the context of the Supreme Court, this can include satisfaction with policy outputs, but has also been conceptualized to... “...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” (Gibson and Nelson, 2015, 164). Gibson and Nelson go on to say, “Perhaps, for some, dissatisfaction with the 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” (164). Thus, for some scholars, specific support is quite encompassing.

Researchers interested in the legitimacy of the U.S. Supreme Court have found home within this Eastonian tradition and continue to understand legitimacy as diffuse support,

which Easton defines as “a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (Easton, 1965, 273). For the Court, this version of support refers to a “reservoir of goodwill” upon which the institution can draw when making controversial decisions. It is this type of support that is widely implicated in discussions of “legitimacy” within the field of law and courts, both in the United States and elsewhere. Here, support is not completely independent of performance satisfaction—in fact, Easton (1975) acknowledges that an institution producing multiple unfavorable outputs might eventually lose even diffuse support.

The connection between specific and diffuse support is of great interest to scholars, as this relationship is what permits the Court to overcome the “countermajoritarian difficulty” (Bickel, 1986) and maintain its independence. Were legitimacy contingent upon immediate satisfaction with outputs, courts in democratic systems would need to appeal to majorities in an effort to retain their authority. Such courts would be unable to defend the rights of vulnerable minorities or prevent majorities from trampling on fundamental rights, resulting in a quick deterioration in the rule of law. Courts would simply be ignored when they had the audacity to act in a countermajoritarian manner. This is a hotly debated area in the literature, with Gibson and Nelson (2014, 208) arguing that, “although specific support may have some direct relationship with diffuse support, that relationship is, at best, a small one.”

To operationalize diffuse support with regards to the U.S. Supreme Court, past scholarship has drawn inspiration from historic efforts to curb the Court, especially President Roosevelt’s “Court Packing Plan of 1937.” Gibson, Caldeira and Spence (2003, 363) operationalize legitimacy as institutional commitment, defined as an “unwillingness to make or accept fundamental changes in the functions of the institution,” which echoes some of their earlier work (Caldeira and Gibson, 1992; Gibson, Caldeira and Baird, 1998).

The logic of operationalizing legitimacy as institutional commitment⁸ is that, to the extent that people view an institution as legitimate, they should be willing to defend it from serious, meaningful alterations even if they disagree with its immediate outputs. [Gibson and Caldeira \(2009a, 45\)](#) argue that, “[t]o the extent people support fundamental structural changes in an institution, are willing to punish the institution for its policy outputs, and generally distrust it, they are extending little legitimacy to that institution.”

Importantly, researchers have evolved from using institutional support as an indicator of legitimacy to equating it to legitimacy. In recent scholarship, legitimacy exists up until an individual is willing to promote or tolerate changes in the institution, and a repudiation of reform attempts is viewed as a sign of legitimacy ([Bartels and Johnston, 2020, 52](#)).

Understanding legitimacy as institutional loyalty—and assuming people will defend an institution they view as being legitimate from being changed—has become the dominant view of studies of judicial legitimacy, both in the United States and elsewhere

1.3 Shortcomings with Measuring Legitimacy as Institutional Support

While the field has been advanced significantly over the decades by conceptualizing legitimacy as institutional support, there are a few shortcomings with this approach that make it a less-than-ideal measure for legitimacy. This section seeks to highlight some shortcomings with the current ubiquitous approach, beginning first with the relationship between diffuse support and legitimacy outlined in Easton’s seminal work that serves as the foundation of the literature. Next, the section highlights a few other shortcomings with the current approach in preparation for offering up an alternative in the subsequent section.

⁸Also called diffuse or institutional support.

1.3.1 Reconsidering Easton's Relationship to Legitimacy

As recounted, The Eastonian tradition argues for the existence of two types of support—diffuse and specific—with Supreme Court researchers equating the former with legitimacy. However, Easton himself did not view them as synonymous, and even argued that they might be unrelated. This often overlooked insight has important implications for whether institutional support is an ideal measure of legitimacy.

Joining other scholars, Easton emphasizes the importance of legitimacy to the stability and efficacy of many different types of regimes. Specifically [Easton \(1965, 279\)](#) notes that,

If a system is to convert inputs into outputs, it must provide means for committing the resources of the system to the attainment of the goals and to rallying the energies of the members for the associated tasks. In most systems, as the occasion demands it, the authorities rely to some extent on persuasion, appeals to self-interest or tradition, or on force to obtain acceptance of or acquiescence in their outputs and the structures through which they are produced. But in most systems, the effectiveness of outputs cannot be left either exclusively or largely to chance, the accident of coincidence of interest between system goals and individual goals, or the diseconomies and indeterminacy of force. Especially in the case of large-scale systems, it is important to stabilize the relationship between those who are responsible for the day-to-day activities in the name of the system, that is, the authorities, and the general membership. If the constant threat of living on a precipice of disorder is to be avoided, at the minimum the authorities require some assurance that within the limits set forth in the political system, limits that I have been calling the regime, they can expect regularly to obtain compliance with respect to the adoption and implementation of outputs and the performance of necessary tasks. The belief in the legitimacy of authorities and

regime provides such a stable connection.

Like those before him, Easton underscores the importance of legitimacy for regimes to exist, and focuses in on peoples’ internalized feelings of obligation toward the regime. Specifically, he goes on to note that, “Regardless of what the members may feel about the wisdom of the actions of authorities, obedience may flow from some rudimentary convictions about the appropriateness of the political order of things. *One simply ought to obey the authorities and abide by the basic political rules; no alternative is conceivable since it is the right thing to do. They are legitimate*” (Easton, 1965, 279-280).⁹ This is similar to the understanding of legitimacy offered earlier and incorporates psychological perspectives on legitimacy (Tyler, 2006a) and those found throughout organizational theory (French and Raven, 1959).

Critically, for Easton, legitimacy and diffuse support might be correlated with the former potentially facilitating the latter, but they are not required to be. Easton (1965, 282) notes that, “...although legitimacy is a major source of diffuse support in most systems we know about, it is certainly not the case in all.” As a result, it is critical to remember that institutional diffuse support and legitimacy are two distinct concepts, even within the Eastonian framework, and the literature has evolved to equate the two over time. Recognizing these two concepts as distinct provides the opportunity to evaluate whether diffuse support is the ideal indicator of legitimacy.

1.3.2 Public Support for Reform Across Time

Empirically, there is a stark disconnect between scholarship—which finds robust legitimacy for the Court when measuring institutional support—and public support for various types of court reform. At the same time scholars posit that the Court’s legitimacy is high because the public is willing to defend it from meaningful alterations, a not-insignificant portion of

⁹Emphasis added

the public supports some types of Court reform.

Table 1.2 summarizes support among the public for a variety of possible reforms to the Supreme Court over the years, taken from a (non-exhaustive) search of the Roper Center for Public Opinion Polling at Cornell University supplemented with additional data discovered outside of the Roper Center archive. Entries in bold indicate plurality support for the polled reform. The results show a similar pattern: through the decades, a significant portion of the public has favored reform to the Court at one point or another, with the support shown depending heavily on the type of reform. Questions asking about term limits or mandatory retirement ages receive the greatest support, for example, while questions asking about adding justices or creating an oversight board with the authority to reverse the Court receive the least support.

According to the data, a large portion of the public seems willing to accept some reforms to both the structure and function of the Court for some time now. This public support for reform has gone unaddressed by existing scholarship which argues that the Court's legitimacy is high despite large swaths of the public being willing to tolerate pretty substantial alterations to the institution, all of which would have significant implications for its functioning. If the proper conceptualization of legitimacy is a willingness to defend the Court from meaningful alterations (institutional support), that a large portion of the public supports various alterations seems to be a problem for the Court's legitimacy and, subsequently, the rule of law.

[Bartels and Johnston \(2020\)](#) come to a similar conclusion, though from a different route. Using data from court curbing bills introduced in Congress, [Bartels and Johnston](#) argue that we would not expect single-minded seekers of re-election ([Mayhew, 2004](#)) to attempt reform of the Court so long as the public was willing to defend the Court (as conventional legitimacy research argues). Empirically, they find over 700 "court curbing" bills have been introduced since Reconstruction and take this as evidence that Members of Congress are picking up an

Year	Reform	% Support	% Oppose	Source
2020	Increase Num. of Justices	46	53	Marquette University Law School
2020	Fixed Terms	75	25	Marquette University Law School
2020	Limit Judicial Review	41	58	Marquette University Law School
2019	Increase Num. of Justices	43	57	Marquette University Law School
2019	Fixed Terms	72	28	Marquette University Law School
2019	Limit Judicial Review	38	62	Marquette University Law School
2019	15-Year Term Limits	54	32	Voters Study Group
2019	Increase Num. of Justices	20	55	Voters Study Group
2019	Increase Num. of Justices	37	51	Fox News
2019	Increase Num. of Justices	24	49	Winston Group
2015	Term Limits (Vague)	72	25	Fox News
2015	Vote Justices Off Court	62	34	Fox News
2014	Term Limits (Wording A)	74	22	Democracy Corps
2014	Term Limits (Wording B)	71	27	Democracy Corps
2010	Televised Hearings*	45	31	Fairleigh Dickinson University
2010	Fixed 18 Year Terms	56	35	Fairleigh Dickinson University
2005	Mandatory Retirement Age	66	28	Opinion Dynamics
2004	Mandatory Retirement Age	60	39	Associated Press
1991	Term Limits*	70	21	Los Angeles Times
1991	Direct Election of Justices	54	41	Los Angeles Times
1987	Justices Serve for Set Years	80	16	CBS News and New York Times
1986	Term Limits	68	28	Hearst Corporation
1965	Mandatory Retirement at 72	76	17	Gallup Organization
1963	Oversight Court with Overtake Authority	19	53	Gallup Organization
1938	Mandatory Retirement	70	30	Gallup Organization
1938	Constitutional Amend. Fixing Number of Justices at Nine	61	39	Gallup Organization
1937	Forced Retirement Between 70 and 75	64	36	Gallup Organization
1937	Roosevelt's Court-Packing Plan (Liberal Priming)	41	44	Gallup Organization
1937	Roosevelt's Court-Packing Plan	44	46	Gallup Organization
1937	Roosevelt's Court-Packing Plan	49	51	Gallup Organization
1937	Roosevelt's Court-Packing Plan	44	43	Gallup Organization
1937	Roosevelt's Court-Packing Plan	48	42	Gallup Organization
1937	Roosevelt's Court-Packing Plan	46	45	Gallup Organization
1937	Roosevelt's Court-Packing Plan	47	53	Gallup Organization
1937	Roosevelt's Court-Packing Plan	42	46	Gallup Organization
1937	Roosevelt's Court-Packing Plan	47	53	(Gallup Organization, 1937d)

Table 1.2: Public opinion data showing support for various court reform efforts throughout the years.

Source: Roper Center iPoll and the Voters Study Group

incentive from their constituents to attempt to change the Court.

1.3.3 Institutional Support's Relationship to Court Efficacy

An additional limitation with the existing conceptualization of legitimacy is that it is only tangentially related to why scholars are interested in legitimacy in the first place, namely, the ability of the institution to exist as a co-equal branch of government and fulfil its duties effectively. [Gibson and Caldeira \(2009b, 40\)](#) argue that "...the most politically significant attitudes are best thought of as a form of institutional loyalty," operationalized as a willingness to defend the institution from changes.

Although defending an institution from changes is undoubtedly an important political attitude, it is only indirectly related to the ability of the court to function as an institution. In other words, it is conceivable that people can be unwilling to defend the institution from changes while not impacting its ability to function as a Court or harming its standing as a co-equal branch of government. Scholars interested in legitimacy broadly, and of legitimacy of the Court particularly, are interested in the concept given its consequences should legitimacy decrease. Conceptualizing and measuring legitimacy as institutional support does not capture an important dimension of legitimacy that would allow the Court to function even in the face of decreased institutional support.

In contrast, understanding legitimacy as obligation felt toward the institution forefronts a significant source of the Court's power: namely, that a large portion of the public views their determinations worthy of being obeyed, not just by the parties directly before the Court but, instead, by the body politic more generally. Such widespread perceptions raise the social and political costs for noncompliance which speaks directly to the ability of the Court to fulfil its duties.

1.3.4 Determining Other Causes of Institutional Support

Equating legitimacy and institutional support makes it impossible to determine other factors influencing institutional support that have nothing to do with legitimacy; for example, believing you or your social group currently benefits from the institutional status quo ([Bartels and Johnston, 2020](#)). In this case, defending the Court from alterations has nothing to do with legitimacy but, instead, has everything to do with a cost-benefit analysis and a belief that the institution currently benefits you or members of your social group. If, for example, you expect the Court to produce policies in the future consistent with your visions, you are unlikely to support reforms ([Braman, 2022](#)). However, if you worry about what the Court might do in the future, you might support efforts at reform while, nevertheless, believing the Court is legitimate. Indeed, to foreshadow results presented in later chapters, this possibility becomes clear once we alter our understanding of legitimacy.

1.4 Felt Obligation: Legitimacy as a Sword

This dissertation offers an alternative while attempting to address the questions identified earlier. While literature on the U.S. Supreme Court focuses on institutional support, scholars in other areas of law and society underscore the psychological motivations that relate to compliance (not institutional support), especially as they relate to policing and the law more generally ([Tyler, 2001, 2006a,b](#); [Tyler and Jackson, 2014](#); [Tyler and Trinkner, 2017](#)).

To put it another way, rather than focus on whether people are willing to defend an institution from alterations (as the traditional institutional support measure argues), these studies focus on whether an individual has internalized a feeling of obligation towards an authority. In doing so, they offer inspiration for how the judicial legitimacy scholarship can move beyond the current discussions of institutional support ([Nelson and Gibson, 2020](#)). In

the process, the new conceptualization promotes collaboration across subfields and literatures while addressing several of the other concerns previously identified. Because even the Eastonian tradition emphasizes an internalized feeling of obligation for the importance of legitimacy, this could be a useful avenue to explore for measuring legitimacy.

Although most of these studies focus on the specific act of compliance (for example, did an individual stop at the stop sign, abide by their probation restrictions, or obey police commands), the underlying psychological motivation is transferable to the context of the U.S. Supreme Court. While it is true that very few individuals are in a position to directly comply with a decision by the U.S. Supreme Court¹⁰, an internalized feeling of obligation to the institution nevertheless exists and shape public attitudes toward the Court, elected officials, and fellow citizens. Felt obligation relates to the social pressure felt to do as the institution demands, which is an important source of power for the Court.

1.4.1 Benefits of Felt Obligation

In contrast to existing research, I argue that, for courts, the most politically significant attitudes relate to the ability to command obedience. A court without this power becomes a court in name only and runs the risk of becoming politically, socially, and institutionally insignificant. In other words, what matters is less loyalty to the makeup of the institution and more loyalty to the demands of the institution. Indeed, the Court’s power lies in the fact that the public views their determinations worthy of being obeyed.

Without a deep-seated sense of obligation felt toward the Court through society, elected officials are free to disregard inconvenient judicial outputs, as was the case when county clerk Kim Davis refused to issue a marriage license to a same-sex couple in spite of the U.S. Supreme Court’s decision in *Obergefell v. Hodges*. Additionally, people would be free to

¹⁰It is worth noting that the public is never in a position to “abolish” the Court or limit its jurisdiction, both of which comprise the existing ubiquitous institutional support conceptualization.

disregard the institution without facing social costs, and powerless minorities must appeal to majorities for vindication of rights since court decisions can easily be ignored. In such a situation, the Court truly becomes a “hollow hope” ([Rosenberg, 2008](#)).

It is an internalized feeling of obligation by the public that enforces the Court’s decisions on the relevant elected officials, demanding they follow a particular ruling. These attitudes promote acquiescence to the Court’s judgements by those who are before the Court and those unrelated to the immediate proceedings, raise social and political costs for noncompliance among all members of the public, encourage social groups to turn to the courts for recognition and vindication of basic rights and liberties, constrain the institution itself, and promote hijacking or entrenchment into the institution for political gain ([Hart, 1961](#); [Vanberg, 2001](#)).

Because much of the public feels obligated to obey the Court, it makes the institution a useful venue through which to try to advance policy goals. If this were not the case, policy “losers” could simply ignore the Court’s pronouncements with impunity. For this reason, the Court’s reverence helps to explain partisan entrenchment: if you control the Court, you control the policy that the Court makes, and legitimacy is what gives judicially-created policy its teeth.

Very little, if any, obligation felt toward the Court is captured when conceptualizing legitimacy as institutional support. Because the widely agreed upon definition of legitimacy relates to a psychological property where an institution is deemed worthy of obedience, an ideal measure of legitimacy is not a willingness to defend the Court from meaningful alterations, but instead, one which captures the extent to which people feel obligated toward the institution. This feeling obligated to a court is not the same thing as supporting the institution and, in fact, may be uncorrelated or negatively correlated. That is, it is possible that as an internalized feeling of obligation increases, a willingness to support the institution decreases. Findings presented below suggest that, when understood as felt obligation, legitimacy is compatible with support for Court reform and, in fact, might require it.

1.4.2 How Felt Obligation Differs from Institutional Support

What does framing our understanding of legitimacy around felt obligation and not institutional support entail? This section highlights a few ways that the two understandings differ with the goal of informing future debates and discussions in the field.

One way in which this new conceptualization does *not* differ is that it leaves untouched the finding that attitudes formed in response to immediate outputs (whether called performance satisfaction or “specific support”) are distinct from legitimacy. To put this another way, specific outputs are still different than legitimacy.¹¹ Instead, the new framework challenges the other side of the coin: rather than “diffuse” or “institutional support,” this project argues that felt obligation is a more appropriate indicator of legitimacy. The Court’s legitimacy derives not from its institutional makeup or jurisdiction but, instead, from the fact that when the Court yells “jump!” much of the public says, “how high?”, even if they are still willing to increase the number of justices who yell.

This insight has important implications for research in this domain, partly because it lowers the stakes regarding the connectedness between institutional support and policy outputs. Even if there were a perfect one-to-one relationship between a judicial output and a decrease in institutional support, the Court’s place in the constitutional order could remain intact.¹² Such a situation would have significant other normative implications related to democratic responsiveness and accountability, but it would not necessarily result in the demise of the rule of law and pummeling of minority rights as is often feared.

Even so, a conceptualization of legitimacy as felt obligation differs from diffuse support

¹¹Importantly, the relationship between specific support and felt obligation is an empirical question. It should not be assumed, though, that the conventional wisdom on the relationship between specific and diffuse support applies to felt obligation.

¹²There is still a discussion to be had about how a Court which loses institutional support can ensure stability in the law. For example, if there were a one-to-one relationship between outputs and institutional support such that the institution gets altered every few years to reverse unfavorable decisions, that would make continuity in the law impossible and have serious normative implications. However, such discussions are beyond the scope of this dissertation.

in a variety of important ways and, as a result, shapes the path of research going forward. Conceptualizing legitimacy as a feeling of obligation moves the focus away from external evaluations of an institution itself and towards the individual's internal psychological motivations. Instead of asking questions about whether the Court should "be done away with" or if it "gets too mixed up in politics," and "favors some groups more than others," as with the current attempts to gauge legitimacy, this re-conceptualization focuses on whether people should "comply with decisions by the Court" and "pressure politicians to comply." In this regard, re-conceptualization of legitimacy as an "internalized feeling of obligation" differs from "institutional loyalty" to the extent that the latter refers primarily to a willingness to defend the institution. Importantly, rather than measuring peoples' support for the institutional makeup of the Court, measures of obligation can tell researchers a lot about how the public understands the demands of the institution, how they feel towards those demands, and how they evaluate elected officials and fellow citizens who disregard those demands.

As noted earlier, another important way these approaches differ is their manifestation. Conceptualizing legitimacy as felt obligation means that people can—and do—desire to alter the structure or function of the institution while not threatening the Court's legitimacy. Legitimacy exists in the new framework up until people begin to lose their internalized feeling of obligation toward the Court and start viewing its decisions as optional, not when they desire to alter the structure or function of the Court. In fact, the reason some exhibit concern with the makeup Supreme Court or its jurisdiction is precisely because they recognize the legitimacy that it holds and are concerned with how the Court will wield it.

As shown in subsequent chapters, much of the current support for reform is motivated by a worry of how the Court will decide future cases involving issues such as same-sex marriage and abortion. This concern is partly the result of a recognition that the Court's legitimacy is high enough that one's preferred policy objectives can be thwarted. The opinions of a court with less legitimacy can be treated as suggestive; however, the Supreme Court has enough

legitimacy that a decision invalidating the Voting Rights Act (for example) cannot be ignored. For some, this motivates a desire to alter the Court in an effort to steer the Court’s legitimacy away from less desirable outcomes to more favorable outcomes. It is partly in this way that conceptualizing legitimacy as felt obligation can open judicial legitimacy scholarship to other areas within the subfield, such as legal mobilization. Relatedly, studies demonstrating a strong connection between “specific” and “diffuse” support do not necessarily indicate a “crisis of legitimacy” for the Court. This insight has important implications for normative democratic theory, as the public can seek to hold the Supreme Court accountable for its decisions (by supporting or revoking support for institutional reform) without threatening the legitimacy of the institution itself and its ability to perform its normative and constitutional duties.

Another way in which the new conceptualization of legitimacy differs from institutional support is the degree to which policy dissatisfaction and institutional support are related is likely to be influenced by an individual’s internalized feeling of obligation: that is, the extent to which negative decisions influence support for reform is likely moderated by the obligation felt toward the Court. Related, institutional support can be affected by things unrelated to legitimacy, such as a belief that the institution is broken or hostile to group interests. Both of these possibilities are explored further in subsequent chapters.

Finally, reconceptualizing legitimacy as felt obligation will also bring the judicial legitimacy scholarship in line with how the justices themselves understand the nature of their own legitimacy. While researchers have concerned themselves with a focus on a willingness to defend the Court from meaningful alterations in the Court’s structure or function, the justices themselves appear to have a very different understanding of legitimacy that more closely aligns with felt obligation than institutional loyalty. During a talk with NPR, Justice Ginsburg noted that “...when the courts say something, *people accept it*” (emphasis added) (Totenberg, 2019). In *Planned Parenthood v. Casey*, the Court stated that, “[T]he Court’s

legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be *accepted by the nation*,” (emphasis added).

The justices, thus, appear to conceptualize legitimacy not as a dependent upon the makeup of the Court or the range of its jurisdiction but, instead, on the willingness of the public to accept the Court’s decisions as authoritative and to follow what is demanded. Indeed, the Court goes to great pain to justify their decisions in terms of legal jargon in the hopes that this will lessen the optics of partisanship on the Court and preserve its legitimacy. [Glennon and Strother \(2019\)](#) argue that, “Supreme Court justices are cognizant of the legitimacy issue that the Court faces and actively work to reinforce the Court’s advantaged position when they most directly interface with the public....” While justices probably care about institutional support, their primary focus from an institutional perspective seems to be on demand compliance: for without the latter, the former is irrelevant. Thus, another way that felt obligation is different than institutional support is that it is more closely related to what the justices, themselves, appear to mean when they talk about “legitimacy.”

1.4.3 Legitimacy and Judicial Power

Central to this literature on judicial power is the extent to which courts can affect social change: that is, are courts capable of structuring society and resolving conflicts on their own, or must they rely on the political branches. Perhaps the most widely-known research in this domain is that found in [Rosenberg \(2008\)](#) who argues that, except for when several challenging conditions are met, the U.S. Supreme Court is incapable of bringing about social change. For [Rosenberg](#), history and data show that the Supreme Court only responds once the political branches signal their willingness to enforce decisions and, when the Court does wander astray and attempt to enact social policy on its own, its efforts are often in vain until the political branches get in line (as with school integration following *Brown v. Board of Education* in the American south).

This controversial and provocative thesis has not gone unchallenged. [Hall \(2011\)](#), for example, argues that the Supreme Court can—and does—enact social change, often relying on Rosenberg’s own data to support his thesis. [Hall](#) finds that the Supreme Court can exert significant power when it relies solely on lower courts for enforcement, a situation that he calls “vertical” enforcement. For example, when invalidating the “Gun Free School Zone Act” passed by Congress, a highly unpopular decision, the Court only needed to rely on lower Courts for enforcement (i.e., “do not put people in jail for breaking this law.”) The Court’s power is significantly constrained, though, when it relies on other, non-judicial actors to enforce its rulings. For example, prohibiting school-led prayer, another unpopular decision at the time, is much more difficult for the Court to enforce. For Hall, in these situations of horizontal (as opposed to vertical) enforcement, public opinion helps determine the strength of the Court’s power: if the public supports the decision, the pressure on elected officials should enhance the Court’s power. Conversely, an unpopular decision by the Court among the public would seem to give elected officials a pass, thus curbing the Court’s power and efficacy. Although Hall is primarily focused on public support of the specific judicial decision, the insights provided can offer clues to the relationship between how the public feels toward the institution and the institution’s efficacy.

As this conversation makes clear, legitimacy plays an important role in the discussion of judicial power. Even so, there are important differences that distinguish the two. First, judicial power is not itself indicative of legitimacy. In fact, the Court can be very effective for reasons unrelated to legitimacy, such as instrumental compliance or vertical enforcement, just to name two ([Hall, 2011](#); [Tyler, 2006b](#)). To make judicial efficacy a sole indicator of legitimacy would make it impossible to investigate the determinants of power that have nothing to do with legitimacy, as discussed earlier.

That said, legitimacy should still support judicial power, even in instances where the Court’s decisions are viewed unfavorably. In other words, even when people disagree with

a decision (which Hall argues should curb horizontal judicial power), legitimacy should still promote acquiescence. When individuals with high legitimacy view a decision as unfavorable, their response should be to work within the existing legitimacy framework to get the decision changed, not to completely dismiss the decision itself.

Perhaps the best example of working within existing framework to change a disagreeable policy output is the effort undertaken by several Republican-led states to criminalize abortion in following *Roe v. Wade*. Although examples exist of people disregarding the opinion entirely, more than 20 states have so-called “trigger laws” that will immediately go into effect should the Supreme Court reverse its previous decision in *Roe* (McCammon, 2021). Instead of simply shrugging off the decision¹³, opponents of the law are leveraging a sustained, decades-long effort to get the Court to reverse its earlier decision rather than ignoring the decision outright.

Finally, the literature on judicial power looks at instrumental indicators of legitimacy, such as: Did access to abortion increase following *Roe v. Wade* and did schools integrate following *Brown*? These questions, although important in our understanding of the Court’s power and role in society, are distinct from the concept of *legitimacy*, which pertains to a psychological ascription. Though these concepts are related, there are important differences between the two that preclude their interchangeability.

1.4.4 Legitimacy and Judicial Supremacy

In addition to judicial power, there is another line of research tangentially pertaining to legitimacy, though differing in important respects: the scholarship on judicial supremacy. Whittington (2007, 6) defines judicial supremacy as, “the obligation of coordinate officials not only to obey [a judicial] ruling but to follow its reasoning in future deliberations.” Under

¹³To be sure, there are those advocating such approaches.

this view of the constitutional framework, to quote John Marshall, “it is emphatically the province and duty of the judicial department to say what the law is.”¹⁴ Tracing the doctrine of judicial supremacy throughout the Country’s history, [Whittington \(2007\)](#) demonstrates how both the presidency and the Congress have elevated the Court to such a role in the constitutional order (see also [Graber 1993](#)).

Judicial supremacy is related to legitimacy in its deferring of individuals to the demands of an institution (here, the Supreme Court). Though judicial supremacy is focusing on the role of other political institutions and actors (Congress and the presidency) vis-à-vis the Court, legitimacy, as discussed herein, pertains primarily to the relationship between the public and the Court.

Much like with judicial power, legitimacy can support judicial supremacy, but it does not require it. Instead, it relies on the internalized feeling of obligation to the demands of the institution in whatever context the institution attempts to exert authority. In the United Kingdom, for example, in which parliament is supreme, the Supreme Court is still legitimate.¹⁵ However, what differs between the U.K. and the U.S. Supreme Courts is the role that they are expected to play in the governing system. As shown by [Whittington \(2007\)](#), the United States Supreme Court has been thrust on a pedestal making it the supreme interpreter of the Constitution. This national commitment to judicial supremacy means that legitimacy manifests in its relationship to that role. In other countries, however, expectations of courts likely differ. In countries where high courts play a more advisory role, legitimacy is likely to require opinions to be considered by those to whom they relate. Legitimacy will manifest differently depending on the expected role of the Court in the governing system and, importantly, judicial legitimacy exists in countries that do not subscribe to the theory of judicial supremacy.

¹⁴*Marbury v. Madison*

¹⁵See [Carrington and Sigsworth \(2022\)](#)

1.5 Summary, Empirical Expectations, and Plan of the Dissertation

In this chapter, I have introduced the puzzle that this dissertation seeks to address. Namely, considerable research argues that legitimacy exists up until people are willing to support or tolerate institutional change and reform. In the current political climate (and, going back decades), a sizable amount of the public is willing to tolerate and support these changes. For the first time in nearly a century, the idea of court packing is mainstream. Court reform is included in a major party platform, legislation has been introduced to enact term limits and expand the size of the Court, and the President of the United States created a commission to study the merits of Court reform. According to extant scholarship, these efforts at reform signal that the legitimacy of the institution has plummeted. If true, a court without legitimacy will be unable to conduct its normative business and, having lost its independence, would become politically, socially, and institutionally irrelevant, all of which has a detrimental effect on the rule of law and minority rights.

This dissertation takes an alternative approach. Specifically, I argue that this is not the case and, instead, results from an understanding of legitimacy flawed in several respects: first, it is not closely connected with the definition of legitimacy that is widely accepted; second, as noted, it leads to a divergence between empirical reality and theory; third, it precludes investigating the determinants of legitimacy that have nothing to do with legitimacy; fourth, it results in scholars focusing attention on determinants of institutional support rather than determinants of legitimacy; and finally, it prevents scholarly communities that are related and working on similar questions from engaging with one another.

In contrast to this past scholarship, I argue that an internalized feeling of obligation is a superior indicator of legitimacy for a variety of reasons, not the least of which is that these attitudes are what allows the Court to fulfil its normative and institutional mandate.

Without a widespread feeling of obligation, elected officials, litigants, and the public more broadly are able to easily disregard judicial demands with impunity. When this happens, the rule of law will suffer. Most importantly, felt obligation is more closely related to the widely-used understanding of legitimacy, which emphasizes a psychological state of mind.

When we reshape our understanding of legitimacy, it becomes clear that efforts to reform the institution do not, in fact, threaten its legitimacy. Indeed, there might be a positive relationship between legitimacy and support for reform. As a result, the current climate does not signal the collapse of the rule of law and minority rights as we know it but, instead, shows how thriving the legitimacy of the Supreme Court truly is.

The discussion to this point leads to the following empirical expectations (which will be better defined in subsequent chapters):

- H1:** Feeling obligated toward the Court will be positively correlated with support for concrete reform efforts.
- H2:** Feeling obligated toward the institution will be unrelated to some considerations that impact institutional support.
- H3:** Obligation felt toward the institution has an moderating effect on the relationship between specific support and institutional support.

Now that the puzzle has been presented and the empirical expectations outlined, chapter two turns attention to measurement. Specifically, I introduce how scholars have conventionally measured institutional support and how it has varied over the decades. Next, the chapter constructs and validates the questions used to measure obligation felt toward the Supreme Court. Chapter two concludes by empirically comparing the two batteries of questions statistically. Chapters three and four contain the empirical heart of the project by evaluating the above expectations using observational and experimental data, respectively.

Chapter three presents the results of an original, nationally-representative survey whereas chapter four presents the results from survey experiments.

Finally, chapter five summarizes the dissertation by restating the puzzle, explaining the findings, further situating the research presented into the existing literature, and discusses the normative implications of the project in terms of both democratic responsiveness, accountability, minority rights, and the rule of law. Ultimately, this dissertation suggests that people can attempt to hold the Supreme Court accountable for its decisions without threatening its legitimacy and without harming the rule of law in society. The Supreme Court's legitimacy is vast, robust, and thriving, and it is reasonable to expect modest reforms to make the Court more accountable to the public without it harming its overall legitimacy. Indeed, changing how we think about legitimacy indicates that it is this treasured attribute of the Court that is motivating calls for reform.

Overall, this dissertation investigates how judicial legitimacy can exist in an era marked by calls for court reform and, in doing so, challenges the field of judicial legitimacy by calling into question the uncritically accepted assumption that to view the Court legitimately is to support it. This does not mean that past scholarship is not valuable—in fact, without that scholarship, this dissertation would not be possible. Decades of scholars have devoted their time, attention, and resources on this important topic because of the impressive normative stakes for the rule of law, democracy, and minority rights. There is a reason that [Gibson, Caldeira and Baird \(1998, 344\)](#) call the question of origin and deterioration of institutional legitimacy “the most important question in legitimacy research.” This dissertation stands on the shoulders of these giants by attempting to bring their insights into line with our current empirical reality.

Chapter 2

How Do we Measure Legitimacy?

On March 20, 1977, the Skokie, Illinois police department received a letter from Frank Collin informing them that the National Socialist Party—also known as the Nazi Party—would be marching through town on May 1st. In sending the letter, Collin kicked off a pivotal case in free expression jurisprudence ultimately culminating in a U.S. Supreme Court decision¹ affirming the constitutional rights of Nazis to march through the streets of a small Illinois village (Strum, 1999). In addition, the public response to this controversy offers a glimpse into how judicial legitimacy might manifest in the real world and, related, how it should be measured.

Although Collin proudly wore the label of Nazi and revered Adolf Hitler, he claimed not to advocate for the death of Jews. Strum (1999, 1) recounts that Collin “believed that Jews and African Americans were biologically inferior and that the only way the United States could remain strong was to deprive Jews of citizenship and send all black Americans back to Africa.” In his letter to Skokie, Collin claimed that the Nazis would gather in front of Village Hall at 3pm and protest on the sidewalk carrying signs displaying “White Free Speech,” “Free Speech For White Americans,” and “Free Speech for the White Man.”

¹*National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977).

Moreover, although the Nazis would be marching in uniforms—including a swastika emblem on the armband—Collin made it a point in his letter to underscore that demonstrators would make no derogatory remarks toward any religious group (Neier, 1979, 47).

Unsurprisingly, the threat of a Nazi march in a suburb heavily populated by survivors of the Holocaust, and subsequent court decisions clearing the way for the march to proceed², provoked a backlash. The Illinois chapter of the American Civil Liberties Union (ACLU) took up the case on behalf of Frank Collin, which resulted in the organization facing severe financial consequences as its membership dropped significantly. As told by Neier (1979, 90-91), although the ACLU board of directors was unanimous in its decision to take up the Skokie case, this decision “probably cost the ACLU about 30,000 members,” which, at the time, was about 15 percent of its total membership.

People also responded negatively to the courts getting involved and affirming the rights of the Nazis, and many let their displeasure be known. “It’s a shame! and a disgrace!” a constituent wrote to Illinois Governor James Thompson, “the Courts have agreed to permit Swastika-bearing Nazis to march through Skokie.”³ They went on to say that,

This offensive march will only cause discord, ill-feelings, and eventual violence, so the courts don’t honestly believe in law and order, they believe in mob assembly. These marching Nazi ni***rs⁴ should be put in their place now, otherwise force will be used to stop their nasty demonstrations. Jews don’t march through their towns, how come these undesirable instigators have the guts to “disturb the peace” of Skokie. It’s your responsibility to cancel this march; because the courts are not reliable. Didn’t these same courts allow integration and bussing by Blacks etc. ruin our cities; so please stop violence from occuring [sic] and save

²The march never actually took place even after judicial review.

³Excerpts from constituent letters are from the Illinois State Archives, Springfield, Illinois. Visited in January 2018. Photocopies available.

⁴Censorship added.

your face, as a good governor.

Another constituent wrote the governor saying that, “Despite the Supreme Court ruling on the Nazi march, scheduled for July 4th, I urge you to use your good office to postpone indefinitely this demonstration.” Another called for Governor Thompson to “do all you can to limit the activities of the American Nazi Party in Skokie.” Yet another concerned constituent wrote the governor to express her feeling “that our system of government is faltering. Judges say, not to allow the Nazi’s to march in Skokie would be denying them their constitutional rights. I say if the Nazi group wants to march to honor Adolph Hitler..let them, but only in Germany.”

Not all letters wanted to throw the court decisions to the wind, however, choosing, instead, to recognize the courts’ legitimacy and work within its confines. The River Grove Post of The American Legion adopted a resolution, dated May 11, 1978, “petition[ing] the 9th District, as well as the Department of Illinois in their convention assembled to adopt a firm Resolution and demand upon the United State Supreme Court to reconsider their earlier matter wherein the so-called American Nazi Party has the benefit of honest citizens notwithstanding its avowed purpose of discrimination, segregation and genocide of unwanted persons; they being the judge as to who are unwanted persons.” Another constituent wrote that they were “saddened to read that the Nazis will be permitted to march in Skokie in accordance with the First Amendment—a “right” which they would deprive other citizens of.” This innovative constituent went on to propose that the “state of Illinois force, either in or out of uniforms, should accompany the marchers from their head quarters.” The same constituent went on to suggest “hav[ing] these “invaders” accompanied by scores of ambulances—to act as a sobering element to all concerned.”⁵

These letters offer a unique perspective into the contours and manifestations of judicial legitimacy. While writing their letters, several constituents urged the governor to cast aside

⁵Underline in original letter.

the recent judicial decisions protecting the rights of the Nazi Party and to continue to prevent a demonstration from taking place. This is not too surprising given the extensive research on tolerance which shows that people often oppose extending rights to their least favored group even when they might support “tolerance” in the abstract (Nelson, Clausen and Oxley, 1997). However, while some letter writers challenged the court decisions and urged the governor to cast them aside, others took a more legitimacy-affirming route by calling on the courts to reconsider their earlier decisions in the hope that doing so would result in a different outcome. Some even went so far as to accept that a march would take place, but to offer alternatives to dampen the effects that such a demonstration would have.

Why did some constituents directly urge the casting aside of a court opinion while others advocated for working within the existing structure of legitimacy? I argue that these disparate responses underscore the importance of felt obligation toward the courts. More importantly, they highlight the conditions under which courts become normatively, politically, and socially insignificant and when they can still function. Courts that are conferred enough legitimacy to be offered the chance to reconsider an earlier decision—as opposed to simply being ignored or being viewed as merely suggesting outcomes—can still effectively function as a court.

Having introduced the puzzle of the dissertation and some of the expectations from the new framework in Chapter 1, the purpose of this chapter is to dive into the empirics. Specifically, I will discuss the measurement of legitimacy, both how it has historically been measured and how it should be measured as felt obligation. This chapter will also construct and validate a felt obligation battery to be used throughout the remainder of the dissertation. I will also empirically compare the two batteries to see how they relate to each other. Ultimately, this chapter lays the empirical foundation by explaining and constructing what are to be the dependent variables for what follows.

2.1 Past Efforts at Measuring Legitimacy

Ever since the publication of Easton’s seminal work on support of political systems, and as recounted at length in Chapter 1, researchers interested in legitimacy of the Supreme Court have adopted his view that there are two types of support: specific and diffuse (Easton, 1965, 1975). Even so, the way researchers have understood and characterized each of the types of support has varied greatly, as has the line distinguishing the two. As a result, the way these concepts are measured varies greatly, too. Indeed, it is quite striking how the concept has evolved over the decades.

Drawing on Easton’s work, Murphy and Tanenhaus (1968, 370) first define specific support as, “the extent to which people praise or or criticize particular decisions and the performance of individual justices.” Conversely, diffuse support is understood to be “...the degree to which the Supreme Court is thought to carry out its overall responsibilities in an impartial and competent fashion” (Murphy and Tanenhaus, 1968, 373). Using early time-series of the American National Election Survey, the authors measure diffuse support using at least one of two questions⁶:

“Some people think that the Supreme Court gets too mixed up in politics. Others don’t feel that way. How about you? Do you think the Supreme Court gets too mixed up in politics or not?” and “How well do you think the Supreme Court does this job; very well or not very well?” (referring to a question asked earlier in the survey)

Years later, the authors measured⁷ diffuse support using a battery of four questions measuring: “(1) how well the Court had been doing its job; (2) whether the Court was too

⁶From the article: “Each person who answered at least one of these questions was positioned on a five-point scale...” (Murphy and Tanenhaus, 1968, 373).

⁷This article does not discuss their conceptualization of diffuse support, only its measurement.

much involved in partisan politics; (3) whether it was basically fair in its decisions; and (4) the relative degree of trust in Congress as opposed to the Court” (Tanenhaus and Murphy, 1981, 27).⁸ In the same article, specific support is conceptualized as “..evaluations of the Court’s particular decisions and politics” (Tanenhaus and Murphy, 1981, 31).

The subsequent decade resulted in yet another understanding of institutional support; one which would take hold. Caldeira and Gibson (1992, 637) argue that specific support comprises “...a set of attitudes toward an institution based upon the fulfillment of demands for particular policies or actions.” Diffuse support, on the other hand, is “a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (quoting Easton (1965, 273)).

Taking issue with the previous efforts at measuring diffuse support, such as past attempts inadvertently including indicators of specific support, Caldeira and Gibson (1992, 638) argue that, “To capture the enduring components of public evaluations of the Court, we need to pose respondents with tough questions about their willingness to accept, make, or countenance major changes in fundamental attributes of how the high bench functions or fits into the U.S. Constitutional system.”⁹ The authors go on to note that, instead of focusing on the ability of the Supreme Court to legitimize unpopular policies, “we spotlight the ability of the Court to maintain itself in the face of its own unpopular rulings” (Caldeira and Gibson, 1992, 638).

To quantify such attitudes, Caldeira and Gibson (1992) measure “willingness to support elemental changes in the powers, process, and structures of the high bench” (639). Specifically, respondents were asked:

⁸The last question was later disavowed by the authors as a measure of diffuse support.

⁹They also turn to the history of FDR’s Court packing plan to substantiate the need to focus on institutional maintenance (Caldeira and Gibson, 1992; Caldeira, 1987).

1) The power of the Supreme Court to declare acts of Congress unconstitutional should be eliminated; 2) If the Supreme Court continually makes decisions that the people disagree with, it might be better to do away with the Court altogether; 3) It would not make much difference to me if the U.S. Constitution was rewritten so as to reduce the powers of the Supreme Court; 4) The right of the Supreme Court to decide certain types of controversial issues should be limited by the Congress; 5) People should be willing to do everything they can to make sure that any proposal to abolish the Supreme Court is defeated.

Although how scholars convey the distinction between the types of support has changed through the years¹⁰, the understanding of diffuse support as being institutional maintenance took root in the literature and remains the conventional approach to this day, and has been applied to non-U.S. Supreme Court contexts, as well ([Gibson, Caldeira and Baird, 1998](#); [Gibson and Caldeira, 1998](#); [Caldeira and Gibson, 1995](#)).

While the understanding of legitimacy as institutional support/maintenance remains unchanged, the specific battery of questions used to quantify support has changed slightly from the initial understanding elucidated in the early 1990s. The most widely-used battery is found in [Gibson, Caldeira and Spence \(2003\)](#), which offered up a six-question approach:

- 1) 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;
- 2) The right of the Supreme Court to decide certain types of controversial issues

¹⁰A few years later, [Gibson and Nelson \(2015, 164\)](#) would define the distinction between specific and diffuse support differently, with specific support encompassing a lot more than earlier explications. While specific support is concerned with satisfaction with policy outputs, it also, "...reflect[s] 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" ([Gibson and Nelson, 2015, 164](#)). They go on to say that "Perhaps, for some, dissatisfaction with the 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" (164).

should be reduced; 3) The Supreme Court can usually be trusted to make decisions that are right for the country as a whole; 4) The decisions of the U.S. Supreme Court favor some groups more than others; 5) The U.S. Supreme Court gets too mixed up in politics; 6) The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision.”

While offering up this battery of questions as a measure of diffuse support for the Court, [Gibson, Caldeira and Spence](#) importantly distinguish institutional support from confidence in the institution. Past scholars would occasionally use confidence in the Court as a measure of legitimacy, in large part, due to its ubiquity in surveys. For example, the General Social Survey (GSS) includes the confidence question for each cross-section since 1974 with one exception (1985). Even so, [Gibson, Caldeira and Spence \(2003\)](#) taught us that this measure is more closely related to immediate satisfaction with outputs than long-term evaluations as legitimacy theory requires ([Carrington and Sigsworth, 2022](#), 6). They further note that the confidence questions often strongly correlate across institutions, indicating that the questions tap into more general confidence in institutions rather than institution-specific attitudes ([Gibson, Caldeira and Spence, 2003](#), 354-355).

The battery of questions offered in [Gibson, Caldeira and Spence \(2003\)](#) was later modified to exclude the “Court can be trusted” question, which was argued to be an indicator of specific support and not institutional support ([Gibson, 2011](#)). Indeed, [Gibson and Nelson \(2015\)](#) argue that a primary reason that [Bartels and Johnson \(2013\)](#) find a strong relationship between policy outputs and diffuse support is because their legitimacy battery included questions gauging “trust” in the Court. Even with these modifications, using batteries of questions designed to quantify institutional support—a defense of the Court—has become commonplace in the literature.

But our story doesn’t end there! Recently, some concern has been raised about the level

of abstractness of the ubiquitous battery of questions. [Badas \(2019\)](#) argues, for example, that the existing battery of questions is too abstract for the average survey respondent and, as a result, previous studies relying on such measures overstate public support for the Court while simultaneously understating the extent to which the public is willing to hold the Court accountable for unpopular decisions. In contrast to the traditional battery of questions, Badas advocates for the use of an “applied legitimacy index,” which is designed to tap into respondents support of concrete efforts at reform of the Court (such as term limits, mandatory retirement ages, and Court expansion). While Badas challenges the questions used to measure legitimacy, he nevertheless accepts that institutional (diffuse) support—understood as a willingness to resist altering the Court—is the proper understanding of legitimacy, following in the Easton tradition outlined earlier.

The level of abstractness in survey questions can have serious implications for the conclusions drawn from studies ([Carrington and French, 2022](#)). Looking at whether the Kavanaugh confirmation affected support for the Court, for example, [Krewson and Schroedel \(2020\)](#) find little meaningful effect using a variation of the traditional institutional support battery. However, using questions more aligned with the applied legitimacy index, [Carrington and French \(2021\)](#) find a significant effect of Kavanaugh favorability on respondents’ willingness to defend the Court from term limits and mandatory retirement ages.

To summarize to this point, the only debate within the literature when it comes to quantifying legitimacy for the U.S. Supreme Court revolves around the level of abstractness in the questions. No debate currently exists about whether legitimacy is best understood as institutional (diffuse) support, or whether this is best understood to be a willingness to defend the Court from meaningful alterations. However, as noted in Chapter 1, even the Eastonian framework understands legitimacy as distinct from diffuse support, with the former potentially—but not necessarily—being a cause of the latter ([Easton, 1965](#), 282).

This point of departure allows us to reconsider whether legitimacy is best understood as

diffuse support. As I have argued, it is not. Instead, the better measure is felt obligation, as several years of theorizing about the function of legitimacy draws attention to this fundamental attribute and its usefulness to the efficacy of governing regimes.¹¹ The next section explains how this felt obligation is quantified in the chapters to come.

2.2 Measuring Felt Obligations

Like the existing approach, the best way to measure how obligated an individual feels toward the Supreme Court is by using a battery of questions. Measuring the same underlying phenomenon using a variety of questions helps reduce measurement error. To begin this process, I first identified a series of questions from the existing literature. These questions were altered when necessary and paired with original questions, all of which were designed to measure people's internalized obligation felt toward the Supreme Court. In total, eight questions were identified which measured various dimensions of peoples' internalized feeling of obligation felt toward the Supreme Court. Importantly, these questions were selected with an eye toward the various contours and manifestations of felt obligation, including how an individual perceives themselves vis-à-vis the Court, what they feel is their responsibility when an elected official thwarts the Court, and how they perceive those who advocate for outright ignoring of the Court.

Next, these questions were then analyzed with the hope of validating their psychometric properties and also to identify the most effective questions with the goal of reducing the total number of questions in the battery. More information on this process is presented below.

¹¹To quote Easton (1965, 279-280) "Regardless of what the members may feel about the wisdom of the actions of authorities, obedience may flow from some rudimentary convictions about the appropriateness of the political order of things. One simply ought to obey the authorities and abide by the basic political rules; no alternative is conceivable since it is the right thing to do. They are legitimate"

2.2.1 Validating Through Cognitive Interviewing

Before any of the eight questions could be included in a battery measuring felt obligation, it was necessary to ensure their internal validity by investigating the mental processes taking place when people read the question. To this end, I fielded a study to determine how well the questions fit together and the mental processes undertaken by respondents when they read the question. This process is also referred to as “cognitive interviewing.”

Cognitive interviewing is, “the administration of draft survey questions while collecting additional verbal information about survey responses, which is used to evaluate the quality of the response or to help determine whether the question is generating the information that its author intends” (Beatty and Willis, 2007, 287). The purpose, then, is to get a glimpse into the mind of respondents as they answer questions in an effort to ensure the internal validity of questions that could eventually construct the felt obligation battery. Given the ubiquity of the existing “institutional support” battery of questions measuring legitimacy and the resulting status quo bias, it is critical to ensure that respondents are understanding any new questions in the appropriate manner and to ensure the internal and measurement validity of any proposed battery.

Ordinarily, cognitive interviewing takes place in small (5-15 person) groups in a face-to-face laboratory setting (Willis, 2005). However, because of the COVID-19 pandemic, such a focus group was impossible. Fortunately, recent scholarship demonstrates that online cognitive interviewing techniques (occasionally referred to as “online probing”) can be equally effective at identifying problematic questions and suggested revisions (Meitinger and Behr, 2016; Lenzner and Neuert, 2017).

Online cognitive pretesting has several advantages to its face-to-face counterpart: first, the cost and time commitment is significantly less online than in a laboratory. While traditional cognitive interviewing can take an hour or longer to complete, online probing can

be done in a matter of minutes from the comfort of a participant’s own home. This reduced time commitment results in a reduced compensation for participants allowing the researcher to collect additional data than if the study were done face-to-face. Second, and importantly, online cognitive interviewing helps reduce the prevalence of “false positives,” where respondents being interviewed spot issues with survey questions because they feel that the researcher observing them wants them to.¹² Finally, online cognitive probing also expands the geographic distribution of respondents. While traditional face-to-face interviews are limited to the immediate geographical region, online probing is not similarly confined.

One large downside to online cognitive pretesting when compared to the traditional method is the inability to engage in live probing of respondents. Traditionally, when a respondent offers an answer that is vague or incomplete, the (trained) interviewer can probe the respondent for further information to better get at their thoughts (Willis, 2005). Questions like “what did you mean by that?” and “how does that make you feel?” allow for the collection of more data and a stronger confidence in the validity of the survey item.

In an online format, this feature is not readily available. Instead, all probes must be anticipated in advanced and programmed into the survey software. The need to anticipate in advance, however, has the advantage of systematizing all interviews. While face-to-face methods allow for live probing, the practice of live probing by its very nature opens the door for interviewer effects and bias. These concerns are not as prevalent in an online environment which does not allow live probing.

In the study, each of the 8 potential multiple choice legitimacy questions were followed by anywhere between 3 to 5 probing questions.¹³ These probes were designed to measure the four primary considerations of survey questions: comprehension, retrieval, estimation, and response (Boeije and Willis, 2013). Each question and its subsequent probes comprises a

¹²This might also be called a type-one or type-two error, but, because I believe in being the change you want to see in the world, I will simply call this a “false positive.”

¹³A special thanks to Emily Thorson who offered advice on the probing questions.

On the last question, you said that you **Strongly agree** with the statement:

"Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court."

What comes to mind when you read the word "comply?"

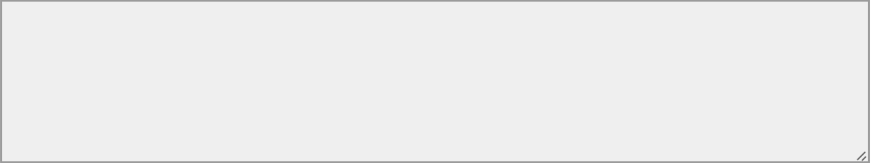


Figure 2.1: Example probe question during the cognitive interviewing.

“set,” and each respondent in the study answered two (2) sets. As a result, respondents could have answered anywhere between six to ten questions in total, not counting demographic questions included in the study. An example of a probe question is shown in Figure 2.1, and a full list of questions and probes can be found in the appendix. Importantly, Neuert and Lenzner (2019) find no relationship between the number of open-ended probe questions and quality of respondents’ answers on a range of indicators, such as respondent nonresponse, dropouts, word counts, response times, and themes identified in the responses. In total, 412 respondents participated in the cognitive interview study which took place on the Lucid surveying platform (Coppock and McClellan, 2019). Upon completion, open-ended responses to the probe questions were organized by educational attainment to verify consistency in survey interpretation across education groups.¹⁴

¹⁴These data will not be published, though the categorizing spreadsheet with answers is available for viewing upon request.

Analyzing the Cognitive Interviews

As noted above, the goal of cognitive interviewing is to make sure respondents are interpreting survey items in a similar manner and in a way that is consistent with how the researcher believes them to interpret. To analyze the open-ended responses, I sorted responses by educational attainment and conducted a “medium-n” qualitative analysis by looking for patterns and anomalies across respondent groups.¹⁵ Special attention was paid to making sure that the comprehension, retrieval, estimation, and response of respondents was similar at various levels of educational attainment (Boeije and Willis, 2013). Additionally, respondents were provided with an open-ended question asking if they had any doubts about their responses to the question, and responses to this question factored heavily into the design of the final battery.

Based on the results from the cognitive interviewing and the results of the quantitative factor analysis (next section), the following questions were selected to comprise the battery:

1. “Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court.”
2. “Decisions by the United States Supreme Court should be considered final and authoritative.”
3. “If necessary, people have an obligation to pressure politicians to comply with decisions by the United States Supreme Court.”
4. “People should obey the Supreme Court even if it goes against what they think is right.”

¹⁵Because of the small number of respondents in each proposed question, analysis by other group identities (such as race) was not permitted. Future research should expand the size of the interviews and over-sample minority respondents to ensure that they interpret the survey items similarly.

5. “People who openly advocate for ignoring a Supreme Court ruling are a threat to the rule of law in our country.”

Among the questions that were discarded, serious questions emerged about the consistency of responses across educational attainment and concerns with vagueness. For example, the question asking whether it is okay for politicians to ignore decisions by the Court if they are doing what they think is best for the country elicited different responses among higher-educated respondents. Those with a high school degree often mentioned doing what is in the politicians’ best interest and mentioned power or pandering. In contrast, higher educated respondents often mentioned the common good, best interest of the country as a whole, and the like. On the same question, many respondents discussed how their response to the question would vary if they had additional facts and how the question was vague.

The question asking, “Sometimes elected officials need to ignore decisions by the Supreme Court, and that is okay” was discarded as being poorly worded. Its focus on “elected officials” omitted appointed government officials, which was made apparent during the cognitive interviewing. Finally, the question asking ““Sometimes, the Supreme Court is wrong and, when this happens, it is okay to ignore its decision” elicited vastly different conceptualizations of what it means for the Court to be “wrong.” Many respondents focused on policy, while others focused on morality and ethics. On the same question, several respondents interpreted “ignore” to mean “to protest openly and disagree with” the decision (to use a representative example). Finally, some respondents complained that the question was poorly worded.

2.2.2 Validation Through Numbers

Following the cognitive interviewing, a second study was conducted in which the felt obligation questions were presented to 490 new respondents along with the traditional institutional

support questions. The purpose of this second study was to statistically validate the battery and see how the proposed battery relates to the traditional measure.¹⁶ All questions were recoded such that higher values indicate greater legitimacy and were rescaled to range from zero to one.

Correlations

First, to see how well the questions correlate with each other, a correlation matrix was constructed for both batteries of questions, individually and combined. The results of the traditional battery of questions is presented below in Table 2.2. Due to space constraints, variable names in the tables refer to the questions in the Table 2.1.

Interesting enough, the fifth question “The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision” is negatively correlated with the other questions. The correlations for the felt obligation battery is presented below in Table 2.3. The correlation matrix below indicates that each of the questions is positively correlated with the other, and this correlation ranges from .30 to .51.

Finally, to see how the questions comprising each battery relate to each other, all of the questions were included together, producing the correlation matrix shown below in Table 2.4.

¹⁶Because respondents need to respond to all eight proposed questions and all of the traditional questions, and because the cognitive interviewing only asked respondents about two questions, it was impossible to do these in a single study. Asking the traditional questions before the new questions risks priming respondents and altering the results. Likewise, asking about all eight proposed questions before circling back to probe on two of those questions might bias the results. Consequently, two studies were necessary: one aimed at probing, the other aimed at quantifying.

Variable Name	Question Wording
DS1	“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.”
DS2	“The right of the Supreme Court to decide certain types of controversial issues should be reduced.”
DS3	“The decisions of the U.S. Supreme Court favor some groups more than others.”
DS4	“”The U.S. Supreme Court gets too mixed up in politics.”
DS5	“The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision.”
Comp1	“Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court.”
Comp2	“Decisions by the United States Supreme Court should be considered final and authoritative.”
Comp3	“If necessary, people have an obligation to pressure politicians to comply with decisions by the United States Supreme Court.”
Comp4	“People should obey the Supreme Court even if it goes against what they think is right.”
Comp5	“People who openly advocate for ignoring a Supreme Court ruling are a threat to the rule of law in our country.”

Table 2.1: Table showing the variable names and their corresponding survey question.

Table 2.2: Traditional Battery Correlations

Variables	DS1	DS2	DS3	DS4	DS5
DS1	1.00				
DS2	0.57	1.00			
DS3	0.38	0.44	1.00		
DS4	0.32	0.42	0.40	1.00	
DS5	-0.02	0.01	-0.06	-0.07	1.00

Table 2.3: Felt Obligation Correlations

Variables	Comp1	Comp2	Comp3	Comp4	Comp5
Comp1	1.00				
Comp2	0.52	1.00			
Comp3	0.36	0.33	1.00		
Comp4	0.49	0.46	0.34	1.00	
Comp5	0.47	0.41	0.30	0.36	1.00

Table 2.4: Combined Correlations

Variables	DS1	DS2	DS3	DS4	DS5	Comp1	Comp2	Comp3	Comp4	Comp5
DS1	1.00									
DS2	0.57	1.00								
DS3	0.38	0.44	1.00							
DS4	0.32	0.42	0.40	1.00						
DS5	-0.02	0.01	-0.06	-0.07	1.00					
Comp1	-0.06	-0.02	-0.00	-0.06	0.48	1.00				
Comp2	-0.13	-0.03	-0.04	-0.02	0.47	0.52	1.00			
Comp3	-0.08	-0.02	-0.01	-0.12	0.38	0.36	0.33	1.00		
Comp4	-0.10	-0.05	-0.01	-0.07	0.37	0.49	0.46	0.34	1.00	
Comp5	-0.09	-0.07	-0.03	-0.06	0.37	0.47	0.41	0.30	0.36	1.00

A few things stand out from the combined correlation matrix. First, with the exception of the fifth institutional support question, the questions comprising the traditional battery are *negatively* correlated with the questions comprising the new felt obligation battery. This suggests that as the obligation people feel toward the Court increase, their willingness to defend the Court from changes decreases. Second, the fifth institutional support question (quote above) is *positively* correlated with the proposed felt obligation questions. This indicates that felt obligation is at least partially encapsulated in the existing battery, though it runs in the opposite direction of the other questions in the battery.

Exploratory Factor Analysis

While the correlations offer rudimentary support for the theory espoused in Chapter 1, further analysis is necessary to investigate the structure of these questions. Specifically, the two batteries of questions were analyzed using an exploratory factor analysis. More information on this is presented below.

First, an unrotated principal-component factor analysis returns two latent factors, with the Eigenvalues: 3.12, 2.20, and 0.81, respectively. Analyzing the question loadings confirms the results of the correlation matrices above: first, each of the questions load into their respective factor with the exception of the fifth institutional support question, which loads onto the felt obligation dimension. The factor loadings are reproduced below in Table 2.5.

After an orthogonal varimax rotation, however, the questions load even better onto their respective batteries, again with the exception of the fifth traditional question. The results after rotating are presented in Table 2.6.

Variable	Factor 1	Factor 2	Uniqueness
DS1	-0.28	0.71	0.42
DS2	-0.22	0.79	0.32
DS3	-0.19	0.71	0.47
DS4	-0.24	0.64	0.53
DS5	0.69	0.20	0.37
Comp1	0.76	0.20	0.37
Comp2	0.74	0.16	0.43
Comp3	0.60	0.11	0.63
Comp4	0.70	0.14	0.50
Comp5	0.67	0.12	0.54

Table 2.5: Results of a principal-component analysis of the legitimacy batteries.

Variable	Factor 1	Factor 2	Uniqueness
DS1	-0.08	0.76	0.42
DS2	0.00	0.82	0.32
DS3	0.01	0.73	0.47
DS4	-0.06	0.69	0.53
DS5	0.72	0.01	0.48
Comp1	0.79	-0.01	0.37
Comp2	0.75	-0.04	0.43
Comp3	0.61	-0.06	0.63
Comp4	0.71	-0.05	0.50
Comp5	0.67	-0.06	0.54

Table 2.6: Results of a principal-component analysis of the legitimacy batteries with orthogonal varimax rotation.

2.3 What have we learned?

This chapter begins the empirical component of the dissertation and offers several contributions. The chapter begins by tracing the measurement of legitimacy through the ages, focusing on how scholars have historically characterized the distinction between “specific” and “diffuse” support highlighting the various ways that each has evolved over time. This chapter also lays the foundation for the empirical work in the chapters to come. Specifically, it constructs and validates a new battery of questions designed to measure how obligated people feel toward the Supreme Court which, as argued in Chapter 1, is a more preferred indicator of legitimacy. After tracing the history of efforts to measure legitimacy, and offering a new measure, the chapter then compares how the new battery relates to the historical measures.

Several important findings stand out from the statistical comparison between the two batteries. First, one of the questions used in the historical institutional support battery is negatively correlated with the others in the battery. Second, this question loads onto the felt obligation factor in a principle component analysis. Aside from this one exception, the other questions load nicely into their respective batteries, and the felt obligation battery is *negatively* correlated to the institutional support battery. Finally, because an orthogonal varimax rotation causes the questions to load even better on their respective batteries, it suggests that the latent structures between the two batteries is orthogonal.

The following chapters put this new measure of legitimacy to the test, first by using a nationally-representative survey and then with a series of experiments. These upcoming chapters focus on the role that elite signals play in shaping public support for the Court, with a focus on comparing the legitimacy measures. The next chapter begins my highlighting the importance of signals for the Supreme Court’s legitimacy and focuses on two ubiquitous-but-understudied signals: that the Court is hostile to group interests, and that it is in need

of being fixed. Ultimately, although the results of the observational data support the theory that institutional support is influenced by factors that do not influence felt obligation, the experimental results do not. The concluding chapter of the dissertation contextualizes these findings and discusses potential explanations for these contradictory findings, what they mean for the theory, and expectations going forward.

Chapter 3

A Survey Investigating the Flexibility of Felt Obligation and Institutional Support

The information environment surrounding the Supreme Court is saturated with various elite signals. On March 27, 2021, for example, Vox correspondent Ian Millhiser published an article entitled, “The Supreme Court’s Coming War with Joe Biden, Explained” ([Millhiser, 2021](#)). The article argues that enough conservative justices have signaled their willingness to embrace a relatively new legal concept known as “nondelegation” that some of the more ambitious parts of President Biden’s agenda could be dead on arrival at the Court. Although earlier conservative movements embraced the administrative state as a tool for deregulation, Millhiser notes that an embracing of the nondelegation doctrine by the Supreme Court would dismantle most of the modern regulatory state as unconstitutional. As if the article’s subtitle was ineffective at getting the point across (“The Supreme Court is poised to give itself a veto power over much of the Biden administration’s authority”), he drives the nail home in the text, noting, “...no matter what issue you care about, there is likely a federal regulation that

shapes the nation’s approach to that issue. If the Supreme Court strips the government of much of its power to promulgate these regulations, it could effectively grind down the Biden presidency — not to mention dismantle much of American law” (Millhiser, 2021).

Millhiser is not alone in signaling the damage that a conservative Supreme Court can do to a Democratic president’s agenda. Writing in the Washington Post and drawing on the history of partisan justices thwarting the ability of elected representatives to respond to the electorate’s wishes, Thomas Keck argues that the justices themselves are ultimately responsible should Court reform ever actually happen. As he argues, “if the justices want to safeguard their independence, the court must give the elected branches the room to respond to the popular will” (Keck, 2018). In a chapter-length version of a similar argument, Keck (2022) argues that the contemporary Supreme Court’s willingness to serve as agents of democratic backsliding (by striking down key provisions of the Voting Rights Act, for example) means that efforts at reform in service of democratic preservation might be the “least-bad” option to restoring the Court.

Elected officials also signal about what the Court might do in the future, such as when then-President Elect Joe Biden warned the country that the Supreme Court might strip healthcare away from millions of people.¹ Raising the salience of what the Court might do in the future is not solely a Democratic or liberal endeavor, either. Following a series of losses at the Court, then-President Donald Trump expressed his anger in no-longer-available tweets arguing that everything Conservatives hold near-and-dear was in danger. “The recent Supreme Court decisions, not only on DACA, Sanctuary Cities, Census, and others, tell you one thing, we need NEW JUSTICES of the Supreme Court.” A follow-up tweet stated, “If the Radical Left Democrats assume power, your Second Amendment, Right to Life, Secure Borders, and Religious Liberty, among other things, are OVER and GONE!” (Shaw, 2020). Nor are the signals about future Court decisions necessarily all negative, at least among

¹ “Biden Defends Obamacare as Top Court Hears Case.” BBC. 10 November 2020.

Republicans. Senator Josh Hawley, for example, has said that he will only vote to confirm justices to the Court who agree that *Roe v. Wade* was wrongly decided, echoing a promise made by President Trump in the 2016 election in which he promised to appoint justices to the Court that will overturn *Roe* ([Mangan, 2016](#)).

Beyond signaling that the Court might do something noteworthy in the future, another prevalent signal is found in sensationalist headlines declaring the Court “broken” or in need of being “fixed.” Writing in *Vox*, for example, Dan Epps and Ganesh Sitaraman proclaim their idea on “How to Save the Supreme Court” ([Epps and Sitaraman, 2018](#)). A few years later, Dan Epps argues that “The Supreme Court is Leaking. That’s a good thing” ([Epps, 2020](#)). Garrett Epps, writing in *The Atlantic* and quoting an amicus brief filed by Democratic senators, proclaims that “The Supreme Court is Not Well. And the People Know It” ([Epps, 2019](#)). Writing an *amicus* brief to the Court in a gun rights case, these Senators warned the Court that “The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be ‘restructured in order to reduce the influence of politics’” ([Whitehouse et al., 2019](#)). As if that’s not enough, David Litt proclaims his version of “How to Fix the Supreme Court,” arguing that it would not require a constitutional amendment ([Litt, 2020](#)).

Perhaps the highest-profile signal yet that something is remiss with the Supreme Court came from President Biden when he established a presidential commission to study Court reform. In their final report, the Commission discussed term lengths, the Court’s emergency docket, Court expansion, and other issues surrounding the Court. On the other end of Pennsylvania Avenue, several Democratic members of Congress introduced legislation to expand the size of the Supreme Court.² All of these signals indicate to the mass public—especially fellow Democratic partisans—that the Court is damaged and could benefit from some sort of reform.

²Press Release: [Expand the Supreme Court](#). April 15, 2021.

The information environment surrounding the Court is arguably more important than with any other branch of the federal government, particularly because the Court, unlike Congress and the White House, rarely engages in public relations campaigns (Strother, 2017). Justices are not going on Sunday morning talk shows with regularity to tout their latest opinions to the masses, explain the reasoning underlying their most recent decision, or to correct the record when people, perhaps intentionally, misrepresent or malign the Court. Instead, they prefer to rely on elites, whether media, partisan, or activists, to convey the day-to-day happenings at the Court. To be sure, the justices do give speeches and appear in public. But, when they do, such speeches attempt to reinforce the Court's legitimacy in the eyes of their audience (Glennon and Strother, 2019). Additionally, the reach of their public appearances is limited since the justices most often speak at exclusive events with specialized audiences, such as law school commencements or legal organization events. In fact, when justices speak to such audiences, the media are sometimes barred from attending, as was the case when Justice Gorsuch spoke to the Federalist Society in 2022.

The Court's reliance on the information environment offers an interesting opportunity to evaluate the expectations discussed in Chapter 1 about the nature of felt obligation. Consequently, this chapter has two goals. First, because of the importance of the information environment to the Court, it is imperative to understand how these understudied signals matter for public perceptions of, and support for, the institution. While significant research has been conducted on the relationship between the media environment and perceptions of the Court, most of these studies focus on the environment *after* a judgement has been handed down. Consequently, this chapter moves the magnifying glass to see how these signals (which exist independent of the context of a specific Court decision) affect public attitudes toward the Court. In other words, it is important to understand how both a belief that the Court is broken and hostile to one's interests affect support for the institution and the obligation afforded thereto.

Second, a primary theoretical argument of this dissertation is that institutional support for the Supreme Court is influenced by factors beyond (and unrelated to) felt obligation. This insight has important downstream consequences when it comes to whether reform attempts necessarily impale the Court's ability to function effectively. Specifically, I expect that both a belief that the Court is broken and that it is hostile to group interests will affect institutional diffuse support but not the extent to which people feel obligated to the Court. In other words, concern for what the Court might do in the future, and a worry that the Court is broken, affect people's willingness to defend the Court from changes (institutional support) while leaving the obligation felt toward the Court unchanged.

This chapter begins by recounting the literature on media effects and the Supreme Court. Special attention is given to the importance of the information environment for the Court along with how most of the existing studies focus on media effects after a decision has been rendered while ignoring the two signals identified earlier. Next, I turn to the methods and present the results of a nationally-representative survey investigating how each of the legitimacy batteries correlates to a belief that the Court is broken or hostile. Finally, the chapter concludes by contextualizing the findings into the broader literature and project while setting the stage for the remainder of the dissertation. Ultimately, this chapter underscores the challenges of equating legitimacy with institutional support by arguing that two understudied factors present in the information environment influence one but not the other. As a result, supporting reform should not be taken in itself as a sign that legitimacy has deteriorated. In the process of making this contribution, I evaluate how two previously understudied but ubiquitous signals influence legitimacy for the Supreme Court.

3.1 The Media Environment and the Supreme Court

Most people, most of the time, do not care about politics ([Carpini and Keeter, 1997](#); [Lupia, 2015](#)). Consumed with the complexities of life, people rely, instead, on signals from trusted sources to help them form their attitudes and opinions, particularly when asked to respond in a survey context ([Zaller and Feldman, 1992](#)). For the most part, the public is pretty good at it, too, being able to act as-if fully informed ([Lupia, 1994](#)) and responding in aggregate to shifts in the political world ([Page and Shapiro, 1992](#); [Stimson, MacKuen and Erickson, 2002](#)).

Because of their centrality to opinion and attitude formation, characteristics of the signals have also been shown to influence how people respond beyond simply providing information. For example, framing topics a certain way ([Nelson, Clausen and Oxley, 1997](#)) or priming certain considerations among the audience ([Krosnick and Kinder, 1990](#); [Druckman, 2001b](#)) all influence how the public responds. Signaling effects have important limitations, however. Specifically, the credibility of the source matters ([Druckman, 2001a](#)), and attitudes that are more crystalized are more resistant to such priming and framing considerations.

Although the information environment is important for the government more broadly and for all institutions, it is of utmost importance for the Supreme Court, as discussed above. As a result, decades of scholarship has evaluated how media coverage of the Court influences public perceptions. Recent research in this vein has shown that the increasing “gamed” coverage of Supreme Court decisions—in terms of which groups “win” and “lose” at the Court—decreases the legitimacy afforded to the institution ([Hitt and Searles, 2018](#)). [Johnston and Bartels \(2010\)](#) find differential effects in how the media covers the Court and that these effects influence how the public understands the Court. More generally, [Strother \(2017\)](#) puts forth a theory of how expected legal and political impact affects how the media decide which cases to cover. Media coverage has also been shown to be influenced by battles

among justices and between the Court and other institutions ([Johnson and Socker, 2012](#)).

Although the field has been advanced considerably by existing research on the relationship between the media and the Supreme Court, additional research is needed. Foremost, existing studies of media and the Court are biased in they almost exclusively focus on the end result while hardly ever (if ever) mentioning the process used to arrive at such outcome. This leaves our knowledge about the Court's interaction with the information environment incomplete by only showing us what happens once a decision has been rendered.

This emphasis on what transpires once a decision has been reached by the Court leaves a dearth in what we know about how the media influences public perceptions of the institution, as many signals existing within the information environment outside of an opinion context that can potentially shape how the public understands the Court. Recognizing the important of elite signals outside of the case-specific context, [Nelson and Gibson \(2019\)](#) find that attacks by then-President Donald Trump on the Supreme Court reduced its legitimacy, though any effects were heavily moderated by perceived source credibility. Despite this important study, most scholarship on the Court and media effects tend to ignore the broader information environment around the Court that exists outside of an opinion context.³

This chapter looks at whether, and to what extent, legitimacy for the Supreme Court is influenced by sensationalist headlines declaring the Court “broken” or in need of being “fixed,” as well as a belief that the Court is hostile to group interests. Both of these signals are ubiquitous within the information environment surrounding the Court, but we know nothing about their influence on public perceptions of the institution. In the process, this research contributes to the broader dissertation by investigating the malleability of the differing conceptualizations of legitimacy and underscoring the importance of not linking institutional support to legitimacy.

³This lack of research is changing, however, with recent studies looking at how public attitudes toward the Court are influenced by the Chief Justice's appearance at Trump's impeachment ([Armaly and Enders, 2021](#)) and partisan fighting that takes place upon a vacancy on the Court ([Armaly and Lane, 2022](#)).

3.1.1 A Hostile Court

Because past research has often equated legitimacy with a willingness to support an institution, it has been impossible to determine what predicts support of an institution that is unrelated to legitimacy. One major factor that may influence institutional support but *not* how obligated people feel toward the Court is an anticipation of what the Court will likely do in the future, what I call court hostility.

The information environment surrounding the Supreme Court is replete with examples of elites signaling to partisans what the Supreme Court might do in the future. For example, one Democratic line of attack against Amy Coney-Barrett—whom President Trump nominated to replace the late Justice Ginsburg—was that the Court was scheduled to hear a challenge to the Affordable Care Act the week following the 2020 General Election. According to Democrats, Republicans were forcing through Coney-Barrett’s nomination because she could provide the pivotal vote to strike down the Affordable Care Act, not to mention the influence her judicial philosophy would have on all other cases before a Court split 6–3. Additionally, concern was raised over how her ascension would affect the outcome of election-related litigation surrounding the 2020 General Election. As such, I predict that concern with what the Court might do in the future is likely to reduce support for the institution.

Even so, I anticipate that how obligated people feel toward the Court will be unaffected by a concern for what it will do in the future. In other words, a belief that the Court could be hostile to group goals justifies altering the institution (so as to achieve preferred policy goals), but it should not go so far as to reduce the obligation felt to the Court. This follows, I argue, from the crystallized nature of legitimacy: people view changing the Court as a way to achieve their policy objectives but, nevertheless, feel obligated to the Court until it is successfully changed.⁴ Consequently, desiring a change to the Court is not, in itself,

⁴See Carrington and Sigsworth (2022, 470) for a discussion of this dynamic as pertains to international courts.

indicative of a decrease in legitimacy.

Why might anticipated future decisions matter for supporting reform of the Supreme Court? One potential pathway is through “prospect theory.” When people are asked to make decisions involving uncertainty—that is, to make “decisions under risk”—they are not objective. Instead, whether people expect to receive a gain or loss is important to how they make decisions when under risk. When in a “domain of losses,” people are more risk accepting; when in a “domain of gains,” people are more risk averse. This idea is summarized by [Mercer \(2005, 3\)](#) who notes that “people hate to lose more than they love to win.” This insight helps explain a range of human attitudes and behaviors, such as why some poor people will spend their last dollar on a scratch-off lottery ticket while Warren Buffet and Bill Gates are unlikely to play the lottery.⁵

Within political science, the ideas of prospect theory have most regularly applied to the international relations subfield.⁶ Applying prospect theory to the context of the Supreme Court via an experiment embedded in the CCES, [Braman \(2022\)](#) finds strong support for the idea that those who have received past benefits from the Court, and those who anticipate future benefits, are more resistant to changing the institution, though the findings are most significant for the future benefits treatments. Consequently, when people feel that the Court is hostile (placing them in a domain of losses), they are less likely to defend the Court from changes.

However, it is not clear the extent to which prospect theory applies to how obligated people feel toward the Court, as [Braman \(2022\)](#) only includes questions about institutional change and not felt obligation. I argue that felt obligation should be unaffected by perceived future benefits as, compared to altering the institution, it is a less-risky option and the nature of legitimacy (consistent with legitimacy theory) means it should be more robust to

⁵Purely speculating here.

⁶See work by Rose McDermott, for example.

changes. I theorize that losing the obligation felt toward the Court is more psychologically challenging than supporting reform efforts.

H1: As perceptions that the Supreme Court is hostile increase, willingness to defend the Court will decrease.

H2: Obligation felt toward the Supreme Court will be uncorrelated with perceived hostility of the Court.

Finally, I do expect an important interactive effect between how obligated people feel toward the Court, on one hand, and perceived hostility of the Court, on the other hand, such that the more obligated one feels toward the Court, the more they are willing to reduce institutional support in light of perceived Court hostility. This expectation is the result of the idea that legitimacy can actually compel support for altering the institution. If this argument is true, it would be supported by an interactive effect.

H3: Those high in obligation felt toward the Court will withhold greater institutional support when they perceive the Court to be hostile than those who feel low obligation toward the Court.

3.1.2 Sensationalist Headlines: A Broken Court

As discussed earlier, it is also possible that people worry the Court is on the verge of becoming broken, damaged, or in other ways in need of being “fixed” or “repaired” as a result of sensationalist media headlines. Such belief in the Court’s impending doom should affect institutional support but not felt obligation. To put this another way, when citizens are being told that the Supreme Court is broken and needs to be fixed, and when a presidential commission is created to study reform of the Court, they are likely to support institutional

changes to fix the institution while nevertheless feeling obligated to the demands of the institution. Like the saying goes, “if it ain’t broke, don’t fix it. But if it is broke, just fix it.”

H4: As a perception that the Court is broken increases, willingness to defend the Court from changes decreases.

H5: Obligation felt toward the Supreme Court will be uncorrelated with perceived brokenness of the Court.

Finally, another implication of the theory underlying the dissertation is that support for reform should be uncorrelated with the obligation felt toward the Court or, potentially, even positively correlated. In other words, if legitimacy can serve as a catalyst for reform, and if legitimacy is best measured using felt obligation (as I argue in [Chapter 1](#) and [Chapter 2](#)), then we should expect to see a positive relationship between felt obligation and support for reform.

H6: Obligation felt toward the Supreme Court will be positively correlated with support for reform attempts.

3.2 Data and Methods

Having outlined the theory and expectations, this section outlines the results from a non-probability nationally representative survey that was conducted using the Lucid Theorem platform. This is the same platform discussed in the previous chapter, and so I will simply remind readers that Lucid quota-samples to match U.S. Census benchmarks ([Coppock and McClellan, 2019](#)).

The study included two attention checks to enhance data quality and, in addition to the quota sampling provided by Lucid on gender, age, ethnicity, and region, the data are further

weighted in the analysis to known population parameters on age, race, and education.⁷ Full demographic information for both the weighted and unweighted samples can be found in Table B.1 in the appendix. In total, 2,453 respondents made their way into the survey, producing 982 completed valid responses.

The dependent variables of interest—institutional support and felt obligation—are measured using their respective batteries. Institutional support was measured as using the Gibson et al. battery (Gibson, Caldeira and Spence, 2003; Gibson, 2011) and in relation to concrete reform attempts (Badas, 2019). Felt obligation is measured using the battery validated in Chapter 2.

The key independent variables of interest—perceived Court hostility and brokenness—were measured using batteries comprised of no fewer than two questions.⁸ To measure concern for how the Court will rule in the future (Court hostility), respondents were asked how much they agreed with the statements, “The thought of how the Supreme Court will decide future cases frightens me,” and “I am concerned with how the U.S. Supreme Court will decide future cases.”⁹

For perceived brokenness, respondents were asked their agreement with the statements, “The U.S. Supreme Court is at risk of having its decisions being viewed as optional rather than required,” “Because of how it has decided recent cases, the Supreme Court is at risk of becoming obsolete,” and “The Supreme Court is on the verge of becoming irrelevant.”¹⁰ To investigate the theorized interaction effect between concern for future decisions and legitimacy, respondents were asked how much they were concerned that the Supreme Court will abolish (or get rid of) the right to abortion, same-sex marriage, free speech, and the right to own guns.

⁷Weighting was conducted using iterative proportional fitting, or raking, using the `ipfweight` package on Stata. Data were weighted to match U.S. Census information from the 2019 Current Population Survey.

⁸To enhance precision while reducing measurement error.

⁹ $\alpha = .86$

¹⁰ $\alpha = .86$

It is worth noting that “brokenness” is both a vague term and hard to define. Additionally, the concept is likely to mean different things to different people. For some, the Court might be broken because it rules against their preferred policies. For others, it is broken because news headlines and senators tell them so. Given the range of possible interpretations, the questions comprising the brokenness battery are intentionally broad and encompassing.¹¹

Response options were all re-coded to range from zero to one, with greater values on the dependent variables corresponding to greater legitimacy. To evaluate the hypotheses, the legitimacy batteries were modeled on the above predictors using a standard linear OLS model. The model included a variety of control variables shown to influence legitimacy, such as age, race, commitment to democratic values¹², Court-specific knowledge (identify the current Chief Justice and how many justices sit on the Court), and ideology. The full question wording can be found in the supplementary materials.

3.2.1 Results

Abridged results are presented graphically in Figure 3.1, with the full regression model presented in Figure B.1 and Table B.2, respectively, in the supplementary materials.

First, some descriptive information. The distribution of both legitimacy measures is presented in Figure 3.2 and shows that the mean level of felt obligation toward the Court is higher than peoples’ willingness to resist reform. The obligation measure also appears to be skewed, with more respondents on the upper-end of the distribution than the lower end.

Figure 3.3 shows the partisan breakdown of each legitimacy measure. Consistent with the theory to this point, Democratic respondents express less willingness to resist reforms than Republican respondents, however the obligation felt toward the Court is similar among

¹¹In future work, I hope to conduct cognitive interviewing to see what “brokenness” means to different groups of people. This important insight was not possible in this dissertation due to resource constraints.

¹²Using an ungodly 15-question battery

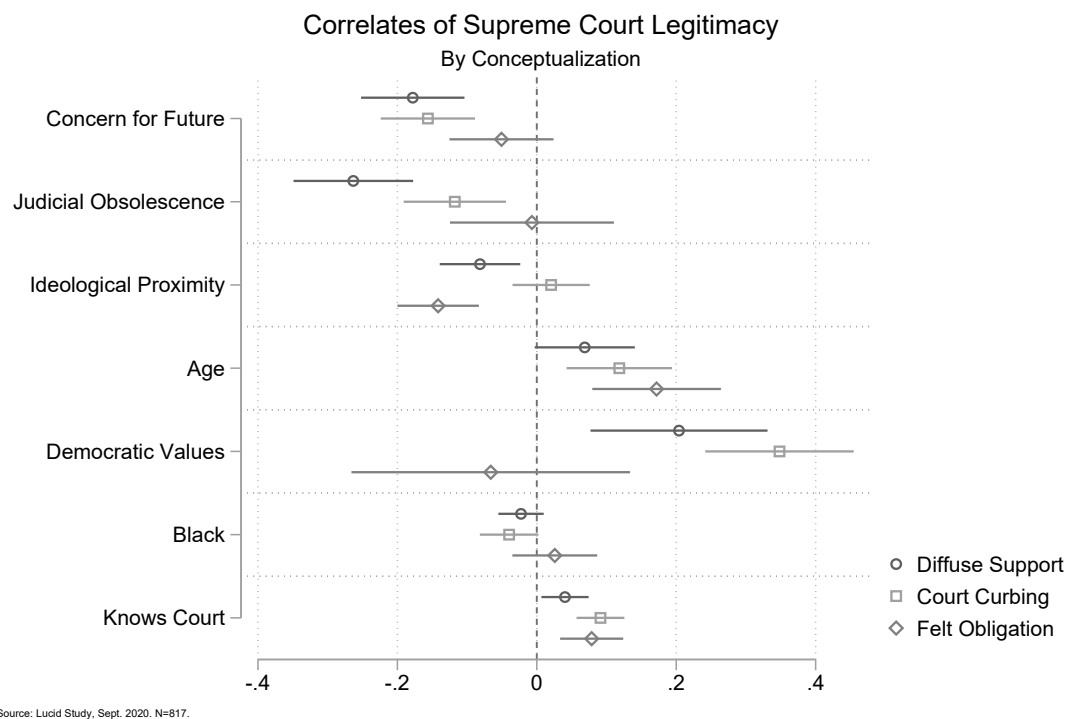


Figure 3.1: Figure showing the output of an ordinary least squares regression on both legitimacy and institutional support (traditional and as support for Court curbing). Data are from the September 2020 Lucid Attitudes Study and are weighted to known population parameters.

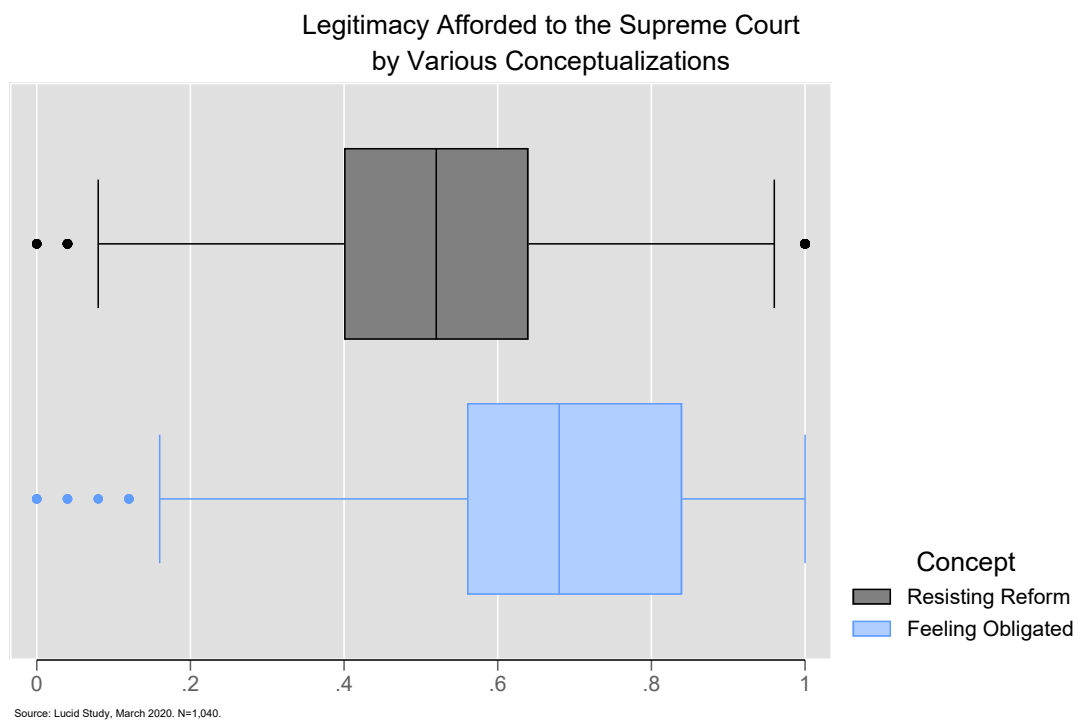


Figure 3.2: Descriptive statistics showing how the two measures of legitimacy relate to each other among all respondents.

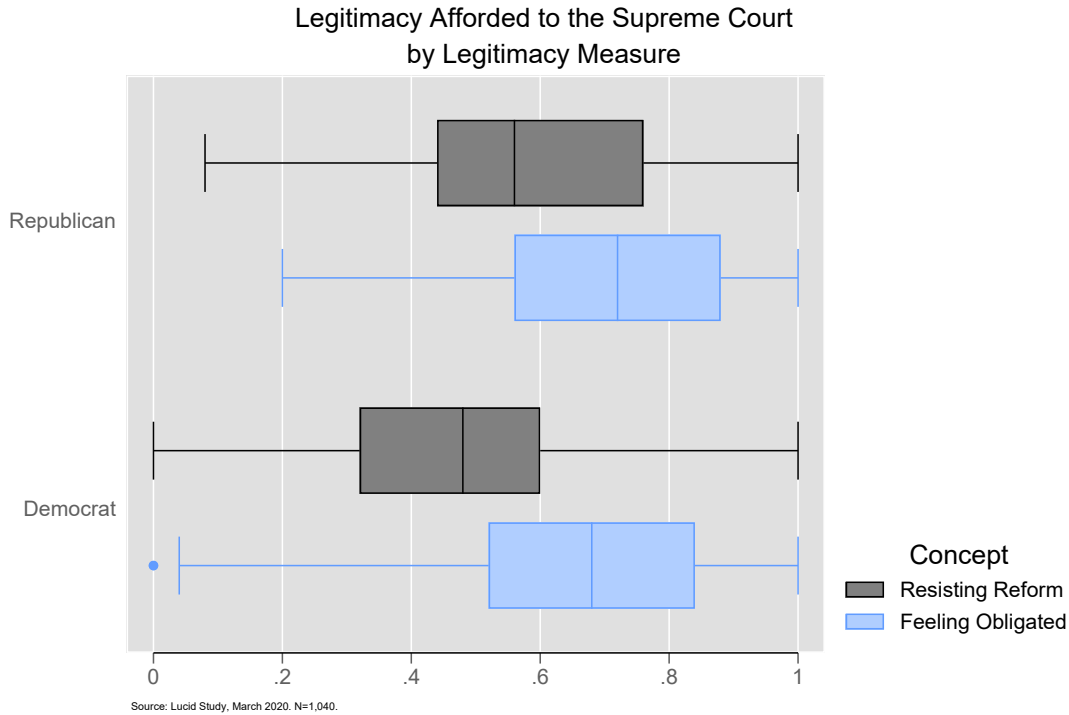
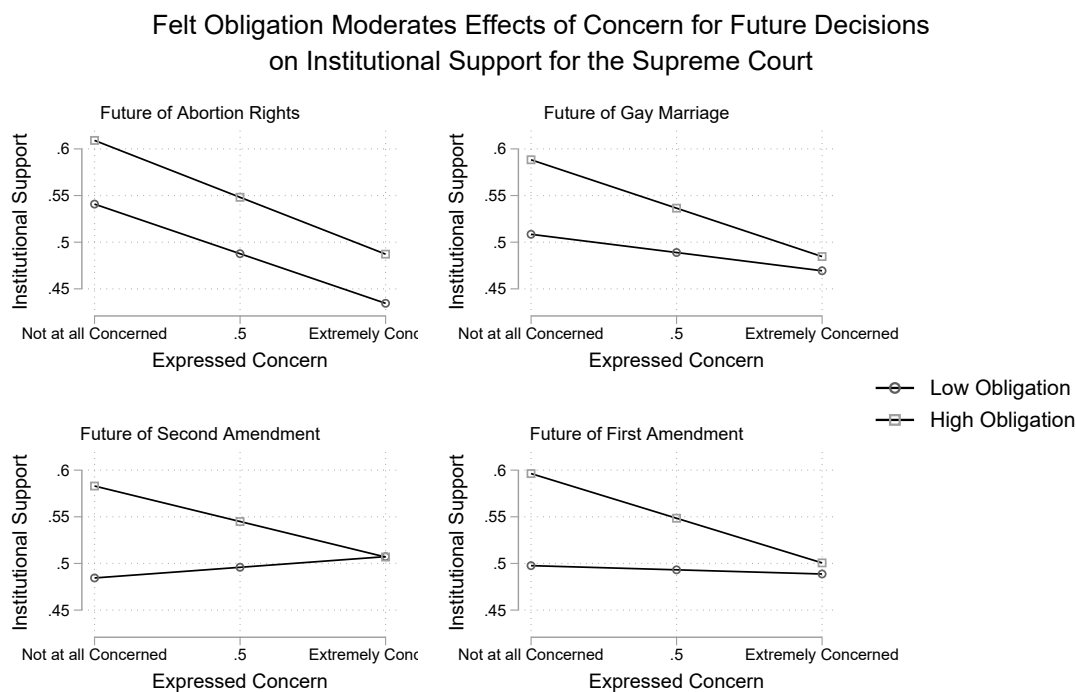


Figure 3.3: Descriptive statistics showing the partisan breakdown of each legitimacy measure.

both Democratic and Republican respondents. The overall pattern that obligation felt is greater than institutional support is similar when looking at these two groups, as well.

Turning to the analysis, the results of the observational analysis widely support the hypotheses. Specifically, as perceptions that the Court is hostile increase, a willingness to defend the Court from alterations decreases, which is similar for a perception that the Court is broken as expected from Hypotheses 1 and 4. This is true for both of the institutional support measures. Further, consistent with Hypotheses 2 and 5, obligation felt toward the Court remains unchanged.

When it comes to the interaction effect predicted in Hypothesis 3, the results might or might not support the theory depending on which institutional support battery one prefers and how one views p-values. Specifically, Figure 3.4 shows the interaction between how obligated people feel toward the Court and how concerned people are about the future of



Source: Lucid Study, Sept. 2020. Dependent variable is traditional legitimacy index.

Figure 3.4: Interaction effects between worry of what the Court will do in the future and obligation felt toward the Court on the traditional institutional support measure of legitimacy.

a variety of rights on the traditional legitimacy battery. The only interaction that reaches traditional levels of significance is a concern for the future of free speech. A concern about Second Amendment rights is marginally insignificant ($p = 0.066$) while the other two are insignificant.

However, when replacing the traditional battery of questions with an index of responses to the specific Court-curbing questions as in Figure 3.5, we get significant results across the board with one exception. The abortion interaction is a p-value of 0.07.¹³ Importantly, this applied battery is similar to that advocated by [Badas \(2019\)](#) who argues that the traditional measure underestimates the extent to which the public holds the Supreme Court accountable. If this is true, then the results in Figure 3.5 are more in line with how the

¹³Close enough.

public would respond to the Court. As a result, I am calling this a win for the theory.¹⁴

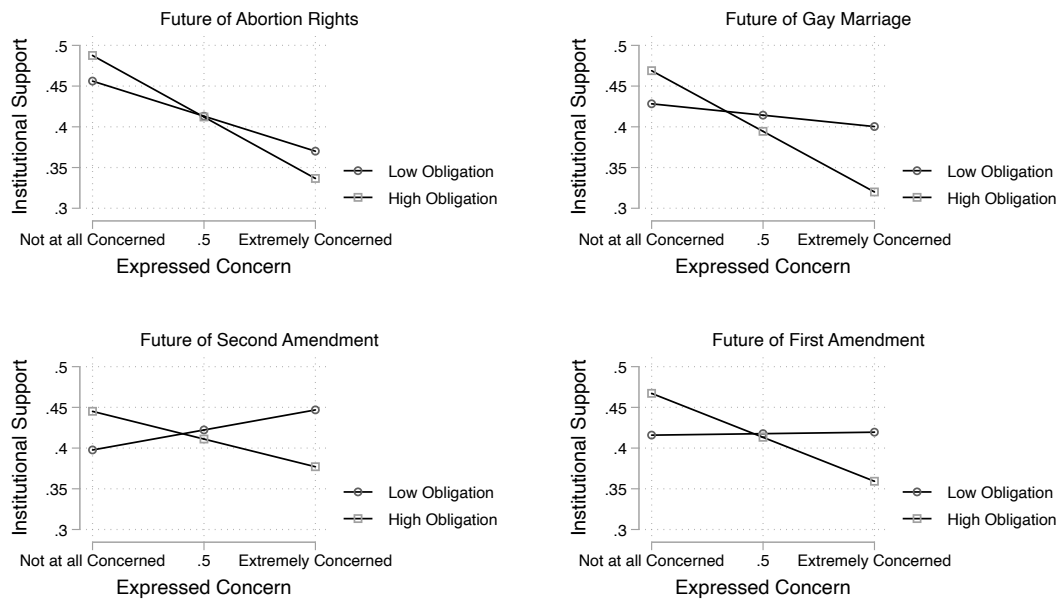
Although we should be cautious when interpreting the control variables¹⁵ included in the model, they offer some interesting insights into the correlates of obligation felt toward the Court and how these predictors correspond to known predictors of the institutional support battery. First, consistent with mountains of existing literature, institutional support is positively correlated with democratic values, age, and knowledge about the Court. In contrast to existing literature, being Black does not reach statistical significance in this sample but does trend in the direction which is consistent with existing scholarship that Black Americans exhibit less legitimacy for the Court than whites (Gibson and Caldeira, 1992; Gibson and Nelson, 2018). Unfortunately, the small number of Black respondents does not allow much analysis of this important subpopulation.

When it comes to obligation felt toward the Court, the results point to both similarities and key differences between this measure and institutional support. First, similar to existing literature, legitimacy is correlated strongly with age and knowledge of the Court. Indeed, the relationship between age and legitimacy appears stronger than between age and institutional support. Democratic values, on the other hand, do not correlate with legitimacy. The effects of subjective ideological disagreement seem similar between the two measures: that is, the greater the difference between reported self-ideology and perceived Court ideology, the less institutional support is afforded to the Court and the less people report feeling obligated. This is an important area for future scholarship.

¹⁴Hello motivated reasoning, thy name is Nathan.

¹⁵I actually think you're not supposed to do this, but not completely sure.

Felt Obligation Moderates Effects of Concern for Future Decisions on Institutional Support for the Supreme Court



Source: Lucid Study, Sept. 2020. Dependent variable is applied legitimacy index.

Figure 3.5: Interaction effects between worry of what the Court will do in the future and obligation felt toward the Court on measure of legitimacy consisting of specific reform questions.

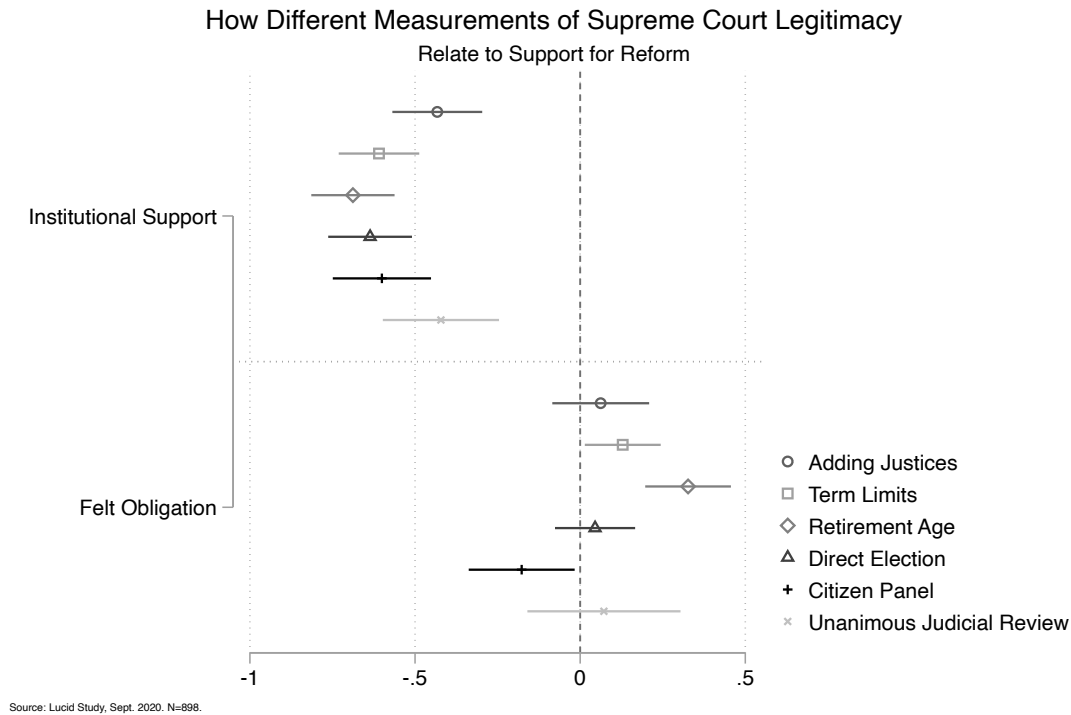


Figure 3.6: Correlates between support for specific reform attempts, institutional support, and felt obligation.

3.3 Felt Obligation and Support for Reform

Next, to investigate Hypothesis 6 and evaluate the relationship between felt obligation and support for concrete efforts at reform, each of the questions that comprise the applied legitimacy (Court-curbing) battery was individually modeled on both the traditional institutional support battery and the new felt obligation battery. The results are presented in Figure 3.6

Unsurprisingly and in a testament to its external validity, the traditional institutional support battery does a phenomenal job correlating (negatively!) with support for the polled reforms. For Hypothesis 6, however, the results are not supportive: felt obligation is only positively related to some of the reforms while being uncorrelated with others.¹⁶ Even

¹⁶The single negative correlation involves a question asking about a bipartisan citizen panel to overturn Supreme Court decisions. This is a poorly-designed and unrealistic reform and is abandoned in future studies. In its place, future studies ask about Congress having the authority to overturn Supreme Court decisions.

though the results here do not support Hypothesis 6, the fact that only one (unrealistic) measure is *negatively* correlated with felt obligation and the rest are *uncorrelated* nevertheless lends support to the broader argument of the dissertation that supporting reform does not undermine the Court's place in the constitutional order by reducing the obligation felt toward the institution.

3.4 Discussion

Consistent with the theory that people can afford and withhold support for an institution independent of legitimacy, this chapter introduces two new considerations to the calculus that have not previously been explored in the literature: concern that the institution is broken and a belief that the Court is hostile to group interests. These factors are important because they are ubiquitous in the information environment surrounding the Court. Elites in both parties often signal to their co-partisans about what the Court might do in the future, and news headlines occasionally signal that the Court is broken or in need of fixing. Even so, we know surprisingly little about how these messages affect support for the Court. As clear here, these signals do matter for the extent to which the public is willing to defend the Court from alterations. But, the upshot is that they do not seem to affect the extent to which people feel obligated to the Court.

Moreover, these new considerations underscore important differences between the measures of legitimacy while simultaneously highlighting the perils of equating legitimacy with institutional support. First, concern with what the Court will do in the future is negatively correlated with institutional support (both using the traditional measures and the applied index) but is unrelated to felt obligation. Similarly, worry that the Court is on the verge of becoming obsolete is associated with a reduction in institutional support but, likewise, is unrelated to the obligation felt toward the Court. Finally, support for concrete efforts at

reform is mostly uncorrelated with obligation felt.

Taken together, these findings should offer some solace to those concerned that efforts at reform automatically signal that the Court is in danger of losing its place in the Constitutional order. Just because people are willing to tolerate or even support institutional reform, they do not automatically lose the obligation that they feel to the Court. And, as I argue in Chapters 1 and 2, it is this internalized feeling of obligation, not institutional support, which allows the Court to function normatively and institutionally. Consequently, a Court without institutional support can still protect the rights of minorities from overzealous majorities even though the public is willing to change the makeup of the institution.

Even so, the cross-sectional nature of the data presented here means that it is impossible to determine causality and the direction of the relationship. Moreover, although all attempts have been made to include relevant predictors in the models, omitted variables likely exist. Consequently, the next chapter supplements the observational data presented here with experimental data in an attempt to triangulate around the overall theory of the dissertation.

Chapter 4

Experiments Manipulating Perceived Court Hostility and Brokenness

The previous chapter offered observational evidence to support several of the expectations outlined in Chapter 1. Specifically, people’s willingness to defend the Supreme Court from changes seems to be impacted by a worry about what the Court will do in the future and a belief that the Court is broken, but neither seem to correlate with how obligated a person feels toward the institution. Likewise, concrete efforts at reform (such as term limits, mandatory retirement ages, and the like), are not negatively correlated with felt obligation, and some are positively correlated in line with expectations.

Even so, several shortcomings of the observational data persists. Primarily, issues with endogeneity and the direction of the relationship. Because of the cross-sectional nature of the data in Chapter 3, it is not possible to determine causality or the direction of any relationship. Additionally, there is the very real change of omitted variables that would otherwise impact the observed relationship, both in terms of its direction and magnitude.

The purpose of this chapter, then, is to triangulate around the theory by supplement-

ing the observational data with experimental data. Specifically, I present the results from two original experiments conducted via online surveying platforms. The first experiment is complex and uses a blocking mechanism to manipulate both a worry of future decisions and a concern that the Court is broken. The second experiment is a standard between-subjects design seeking to manipulate *only* the belief that the Court is broken. The results offer mixed support for the observational results in the previous chapter and the overarching theory.

4.1 Experiment 1: Preregistered Lucid Study

Experiment number one was conducted on the Lucid Theorem platform much like the observational results presented in Chapter 3. Because Lucid is discussed at length in the previous chapter, I will only remind readers that it offers a non-probability based sample of respondents that have been quota sampled to match U.S. Census demographic benchmarks (Coppock and McClellan, 2019). Unlike the previous chapter which presents weighted observational data, however, the data presented here are unweighted since weighting experimental data risks introducing bias (Miratrix et al., 2018). This project was preregistered on AsPredicted during data collection (#82551), and the full preregistration plan can be found in the supplementary material (see, Figure C.1).

As noted in the introduction, the Lucid experiment is a complex between-subjects design using blocking on partisan identity to manipulate perceptions that the Court is hostile to policy goals and that it is broken. After consenting to participate in the study, respondents were immediately asked their partisanship using the traditional two-step ANES procedure. Next, respondents were randomly assigned (behind the scenes) into one of three study waves: control, concern, and broken, with the latter two manipulating concern about future decisions and a belief that the Court is broken, respectively. After being randomized (but before any treatment), respondents were presented with an attention check and those who fail the check

were removed. In total, 776 respondents successfully participated in the study, producing 250 in the control wave, 269 in the concern wave, and 257 in the broken wave.

4.1.1 Outcomes of Interest

After being treated (if applicable), respondents in all of the waves were asked the three batteries of questions that should be familiar by this point: the traditional institutional support battery ([Gibson, 2011](#)), a battery measuring concrete reform efforts ([Badas, 2019](#)), and the battery of questions designed and validated in Chapter 2. The first two batteries measure institutional support in two separate ways. The third battery is designed to measure how obligated respondents feel toward the Court and its demands. The scale reliability coefficients for the traditional diffuse support, applied legitimacy, and the felt obligation batteries are .74, .84, and .85, respectively. The dependent variable batteries were presented in random order, and the questions within each battery were presented randomly, as well. Respondents were also asked a series of questions designed to gauge their perceptions of the Court’s ideology, as well as how much they know about the Supreme Court. The study concluded with a series of demographic questions and a debriefing for those in the “concern” wave.

4.1.2 Manipulation: A Broken Court

Respondents randomized into the “broken” wave, and who passed the attention check, were exposed to a treatment consisting of a series of recent headlines noting that the Supreme Court is broken or in need of being fixed. The treatment for the “broken” wave is shown in Figure 4.1. Respondents were allowed to progress in the survey only after five seconds had elapsed.

These treatments were chosen with an eye toward maximizing external validity. Each of

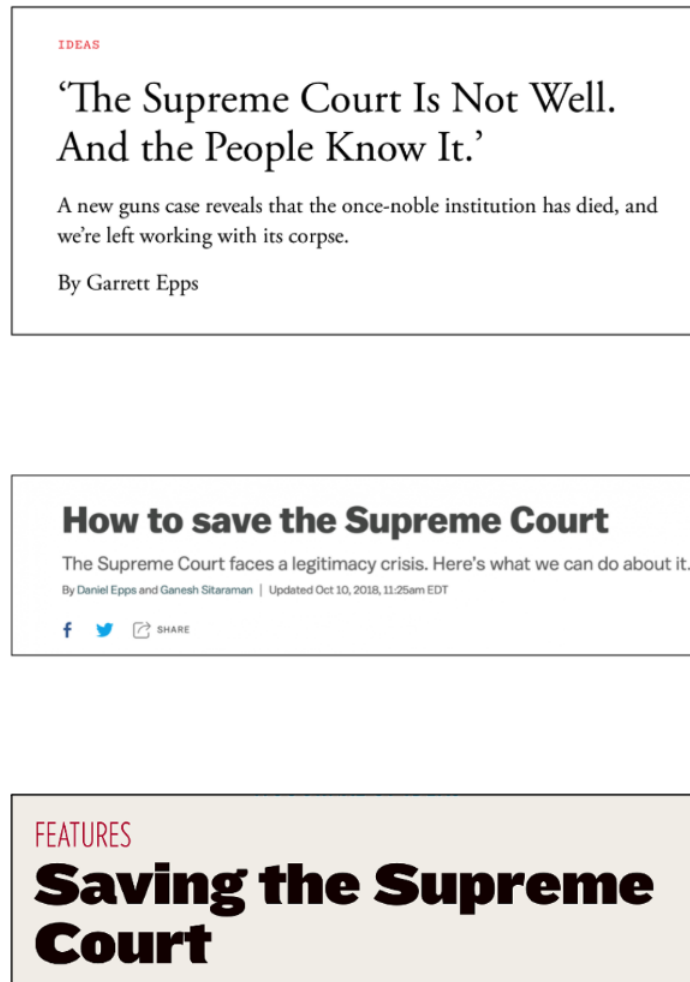


Figure 4.1: Manipulation for Experiment 1: Broken wave, which consists of a variety of real-life headlines signaling that the Supreme Court is broken or in need of being fixed.

these headlines has appeared in a reputable news source at one point or another, meaning that study participants are exposed to a treatment that exists outside of the experimental context. Such an approach has the added benefit of reducing the deception necessary in the study. However, it must be acknowledged that, for theory testing purposes, the treatments are less than perfect, and future studies should use artificial headlines that have been successfully pretested.

4.1.3 Results: Broken Court

The first step in analyzing the treatment effects is to ensure that the treatment successfully manipulated perceptions that the Supreme Court was broken. As a manipulation check, respondents in both the control wave and the treated wave were asked “How much do you agree with the following statement: the Supreme Court is broken?” Responses were transformed such that values closer to 1 indicated greater support for the statement. Regressing the manipulation check on the treatment indicator returns a p-value of $p = 0.069$, which is confirmed with a two-tailed t-test (mean of .56 in the control group and .60 in the treated group). Although this does not meet the traditional statistical threshold of $p < .05$, it is close enough.¹

Now that the manipulation has been verified, we can progress to the main analysis: did manipulating the belief that the Court is broken affect support for the Court? More importantly, did it affect respondents’ willingness to defend the Court but *not* how obligated they feel (as the theory predicts)? Not quite, as indicated in Figure 4.2. The average treatment effects across all of the conditions is not significantly different from zero, suggesting that none of the batteries are influenced by manipulating perceptions that the Court is broken. The full regression output can be found in Table C.1 in the appendix.

¹Accepting this p-value is a departure from the preregistration plan, which says, “The null hypotheses will be rejected using the traditional cutoff for significance of $p < .05$.”

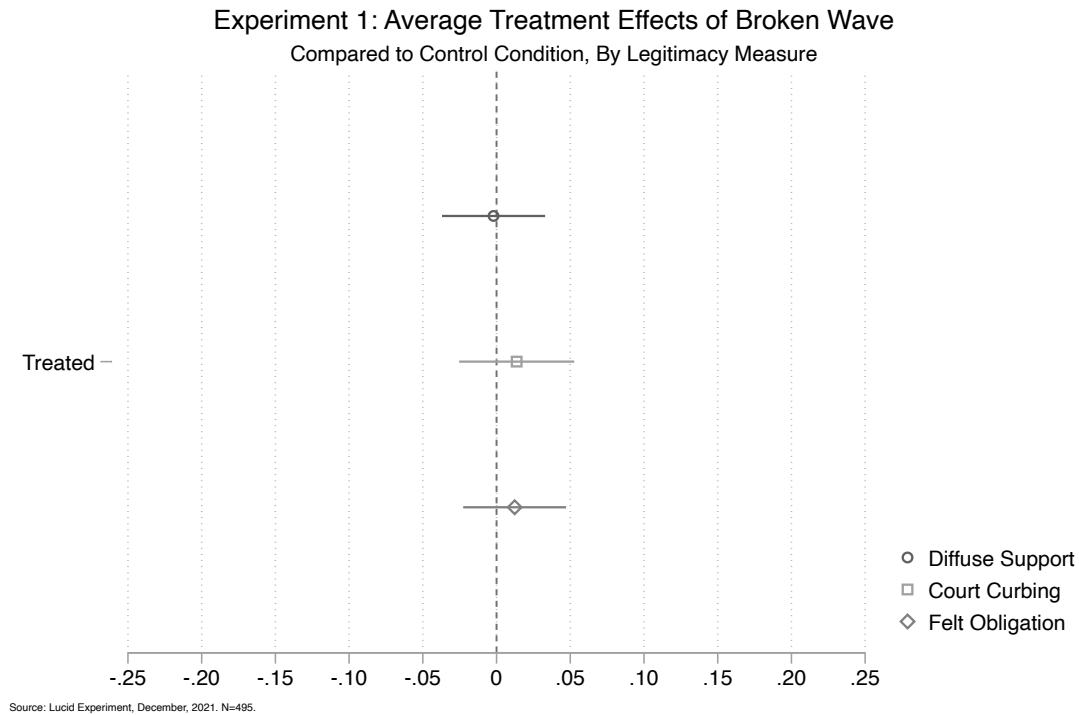


Figure 4.2: Average treatment effects of the ‘broken’ wave showing null effects across legitimacy measures when compared to the pure control condition.

To further explore the relationship, I regressed each battery directly on the manipulation check (consistent with the preregistration plan [see question 8]). The results are presented in Figure 4.3. Consistent with the observational data in the previous chapter, these results show a strong correlation between a belief that the Court is broken and the institutional support batteries. Unlike the observational data, however, obligation felt toward the Court is also correlated, though to a lesser degree. Full regression model can be found in Table C.2 in the appendix.

4.1.4 Manipulation: A Hostile Court

The previous section lends little support to the idea that manipulating belief that the Supreme Court is broken affects legitimacy of the Court. This section investigates the

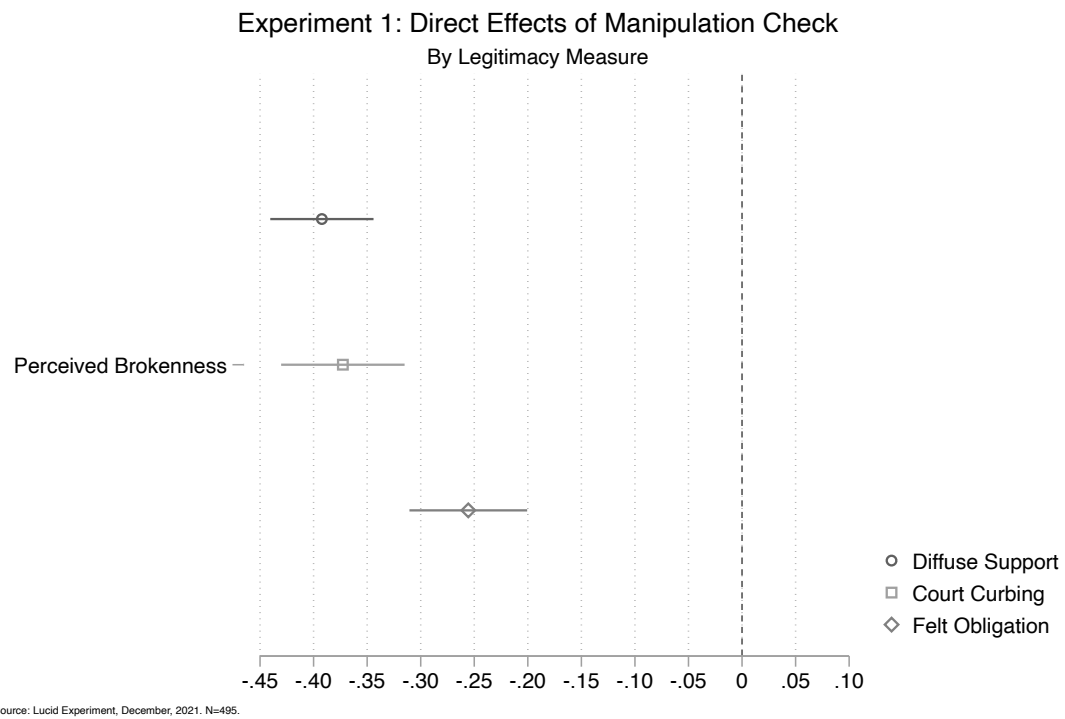


Figure 4.3: Effects of modeling the ‘broken court’ manipulation check question directly on the legitimacy measures.

second manipulation: that the Court is hostile to in-group interests.

Those who passed the attention check and who were randomly assigned to the “concern” wave were subsequently blocked based on their political partisanship and treated on the basis of their co-party affiliation. Specifically, Republicans (both strong and lean) were exposed to a treatment indicating that “top Republicans” expressed concern about how the Supreme Court will harm GOP party goals in the future and how these concerns were echoed by former-President Donald Trump. Conversely, those who identified as strong or lean Democrats were exposed to the same treatment, but with President Biden expressing worry about how the Court will harm Democratic Party goals.² The treatments are presented below in Figure 4.4. After being treated, respondents were asked a manipulation check question and then progressed to the dependent variables. The comparison group are respondents randomized into the “control” wave.

4.1.5 Results: Hostile Court (GOP)

Before continuing, an important note about the study design: because of a coding error on the back-end of Qualtrics in the survey flow, the Democratic blocking was unsuccessful. To be more precise, an “and” instead of an “or” on the display logic means that no Democrats were treated. Unfortunately, (expensive) mistakes happen, and this is one of those times.

Republicans, on the other hand, appear to be successfully treated, as shown in the manipulation check. Respondents were asked, “How much do you agree with the following statement: ‘In the future, the Supreme Court is likely to strike down Republican Party goals?’” As with the previous section, this variable was transformed such that values closer to one (1) indicate stronger agreement with the statement. The mean of GOP respondents in the treatment condition (N=93) is .58 with a mean of .44 among all respondents in the

²Respondents randomized into the “concern” wave, passed the attention check, but who identify as a pure independent were booted from the study.

Top Democrats Express Concern About Future Supreme Court Decisions

-

Washington D.C. – Top Democrats in Washington are expressing concern about how the U.S. Supreme Court could decide future cases on issues important to the party. According to the Democrats, **the Court’s ideological makeup and recent decisions signal that it could block party goals**. Although the group would only speak on the condition of anonymity, their concerns echo earlier fears expressed by President Joe Biden, who previously warned that the Court could strike down Democratic policy goals.

Top Republicans Express Concern About Future Supreme Court Decisions

Washington D.C. – Top Republicans in Washington are expressing concern about how the U.S. Supreme Court could decide future cases on issues important to the party. According to the Republicans, **the Court’s ideological makeup and recent decisions signal that it could block party goals**. Although the group would only speak on the condition of anonymity, their concerns echo earlier fears expressed by former President Donald Trump, who previously warned that the Court could strike down Republican policy goals.

Figure 4.4: Manipulations for Experiment 1: Concern wave.

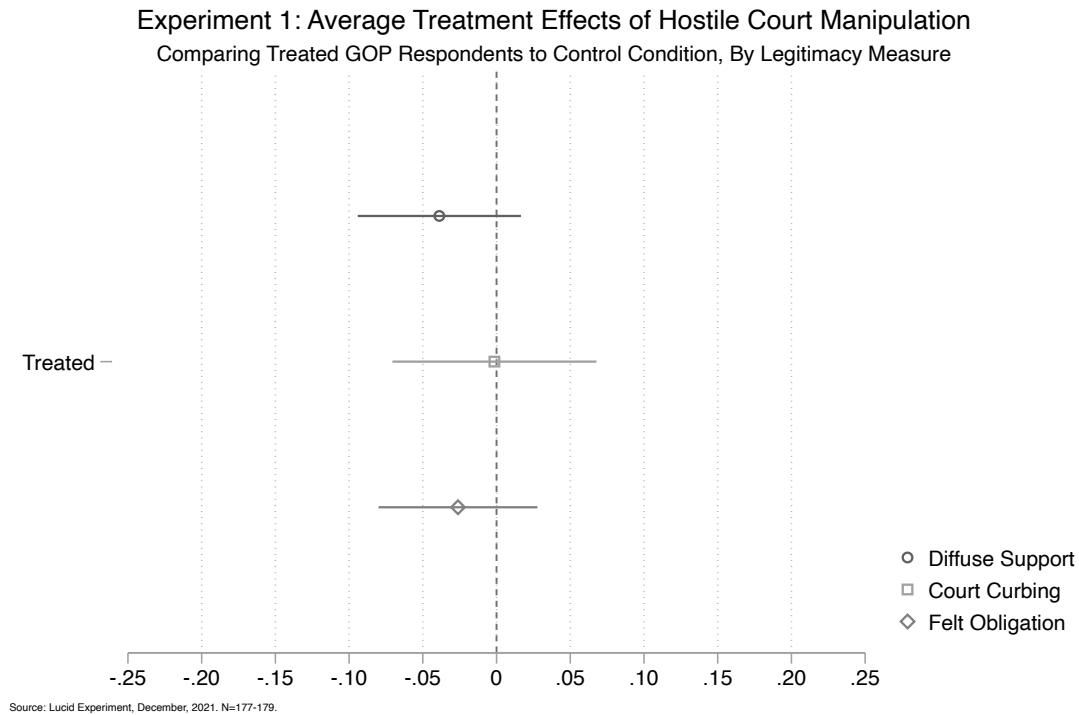


Figure 4.5: Comparing Republican respondents in the ‘hostile Court’ wave to those in the control condition showing null results across legitimacy measures.

control condition (N=246). Compared to Republicans in the control condition, the treatment increases perceptions that the Court is hostile by 8%. The full regression model can be found in Table C.3 in the appendix.

Average treatment effects for the concern wave among the GOP are shown in Figure 4.5. None of the models reach conventional levels of statistical significance. When regressing the dependent variables on the manipulation check, however, a significant negative relationship exists such that greater belief that the Court is hostile is correlated with a reduced willingness to support the Court, but felt obligation is uncorrelated. This is shown in Figure 4.6. This is an interesting finding and does lend support to the argument that institutional support can vary while obligation felt toward the Court remains. Nevertheless, this finding is not borne out in the analysis of the average treatment effects shown above and is worthy of further scrutiny.

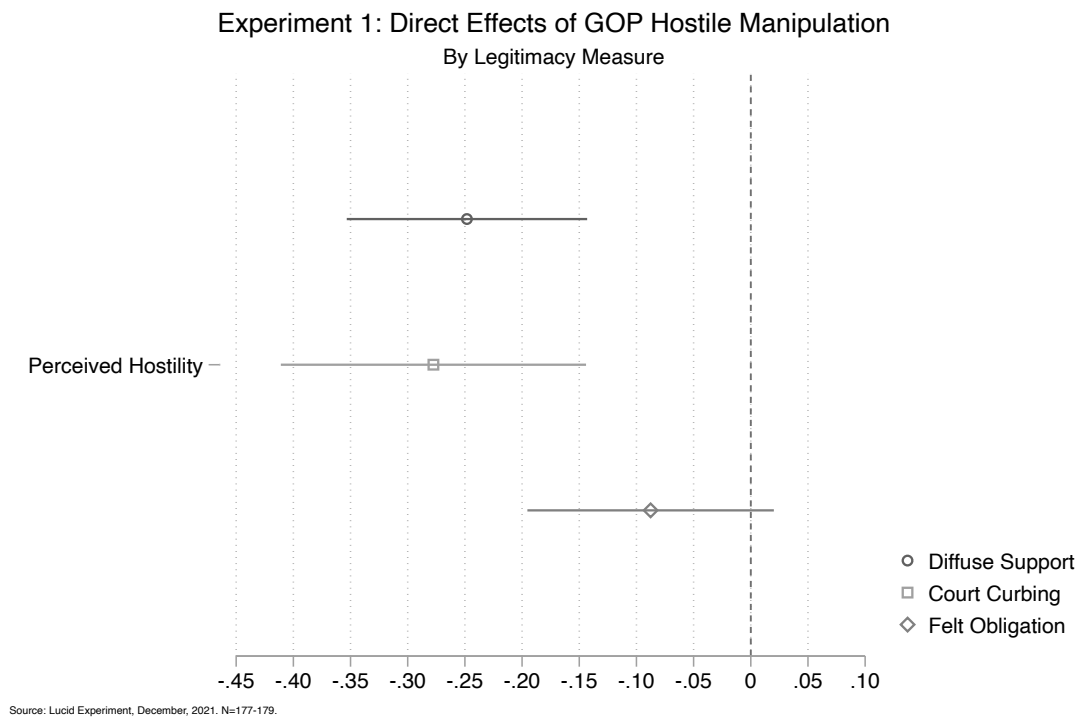


Figure 4.6: Effects of modeling the ‘hostile court’ manipulation check question directly on the legitimacy measures.

Mediation and Sensitivity Analysis

Next, I conducted a mediation and sensitivity analysis. Mediation analysis is a way to see how much of the effects of a treatment travel through a particular identified mechanism under a few sets of limited assumptions. For any given treatment, there are a plethora of pathways (observed and not) through which it might influence outcomes of interest. For example, [Keele, Tingley and Yamamoto \(2015\)](#) focus on the Perry Preschool Project (PPP), a famous randomized experiment manipulating pre-k attendance. Numerous studies using the PPP data show that pre-k exposure has important downstream consequences for everything from higher lifetime earnings, incarceration rates, and, importantly for the present purposes, high school graduation rates. Though studies show that the treatment (going to pre-k) has a positive influence on the outcome (graduating high school), more sophisticated statistical techniques are needed to discover *why* this relationship exists. It could be that attending pre-k enhances emotional maturity or results in greater friendship networks. Maybe pre-k enhances cognitive ability. The question of why pre-k affects graduation rates is where mediation analysis is helpful: by breaking down the average treatment effects into direct and indirect components, we can peek into the black box of causal interpretation. As [Keele, Tingley and Yamamoto \(2015, 938\)](#) underscores, “...the indirect effect reflects one possible explanation for why the treatment works, and the direct effects all other possible explanations.”³

To conduct the mediation analysis under sequential ignorability assumptions⁴, I used the *mediation* package in Stata ([Hicks and Tingley, 2011](#)). The results are presented in the Table 4.1 along with 95% confidence intervals. ATE refers to the average treatment effects. ACME is the “average causal mediated effects” and refers to the portion of the average total effects that is transmitted through the manipulation check question asking respondents how

³Why conduct a mediation analysis when the average treatment effect is zero? [Imai, Keele and Tingley \(2010, 312\)](#) note that even when the average treatment effects are zero, there is the potential for various mechanisms to offset each other.

⁴More on this below

	Traditional Battery	95% C.I.
ACME	-0.02	-0.03 to -0.004
ADE	0.07	0.02 to 0.12
ATE	0.05	0.01 to 0.10
% of ATE Mediated	-0.29	-1.50 to -0.14
	Court Curbing	95% C.I.
ACME	-0.02	-0.03 to -0.00
ADE	0.13	0.07 to 0.18
ATE	0.11	0.05 to 0.17
% of ATE Mediated	-0.16	-0.32 to -0.11
	Felt Obligation	95% C.I.
ACME	0.01	0.00 to 0.03
ADE	0.01	-0.04 to 0.06
ATE	0.02	-0.03 to 0.07
% of ATE Mediated	0.37	-4.70 to 4.79

Table 4.1: Results from mediation analysis conducted on the “hostile court” manipulation of the Lucid experiment.

hostile they perceive the Court to be. ADE (average direct effects) refers to everything else within the ATE that is *not* being transmitted through the mediator (Keele, Tingley and Yamamoto, 2015, 952).

Although not shown from the standard model regression above (presented in Figure 4.5, the total effects (ATE) produced in the mediation analysis show that the treatment had a significant effect on both institutional support measures, increasing support for the Court by 5% for the traditional battery and 11% for the Court curbing measure. The ATE for felt obligation, however, is not significantly affected by the treatment. For the traditional legitimacy battery, the ACME is -0.02, meaning that treatment-induced changes in perceived hostility by the Court accounts for about 2% of the total effect (in the opposite direction), which is similar for the Court curbing battery. For the felt obligation battery, the effect is estimated to be 1%.

To this point, the analysis has assumed that there are no unmeasured confounding variables that influence both the mediator and the outcome variable (the sequential ignorability

assumption that was referenced earlier). Even in the context of a randomized experiment, this assumption is not guaranteed. To return to the pre-k study mentioned earlier, one potential confounding variable is depression, which could influence both cognitive ability and graduation rates, *irrespective of treatment condition* (Keele, Tingley and Yamamoto, 2015, 953). In our current context, a plethora of (both known and unknown) factors influence the relationship between perceived hostility and legitimacy but be unrelated to treatment assignment (since it is random). For example, emotions like anxiety or anger, identities like race and partisanship, just to name a few, could conceivably relate to a belief that the Court is hostile *and* legitimacy afforded to the Court.

To see the extent to which the results of the mediation analysis are dependent upon this (unprovable) assumption, a sensitivity analysis is required. The sensitivity analysis uses the correlation between the error terms in the mediation and outcome models. If the sequential ignorability assumption holds, the correlation between the terms should be zero.⁵ The results are graphically presented in Figure 4.7. These figures depict the correlation between the error terms in the mediator and outcome regression models, ρ , against the true ACME.

For the traditional battery, the ACME will be equal to zero when ρ is equal to -0.14. This value is -0.13 for the court curbing battery, and 0.09 for the felt obligation battery. The sensitivity analysis indicates that both institutional support batteries are more robust to unobserved pretreatment confounders than is the felt obligation battery.

4.1.6 Summary of Findings

The results of the Lucid experiment decidedly do not support the argument that institutional support can vary while leaving obligation felt toward the institution untouched. First, increasing the belief that the Supreme Court is broken does not affect institutional support

⁵Don't ask me what this means. It's what is said in Keele, Tingley and Yamamoto (2015, 953).

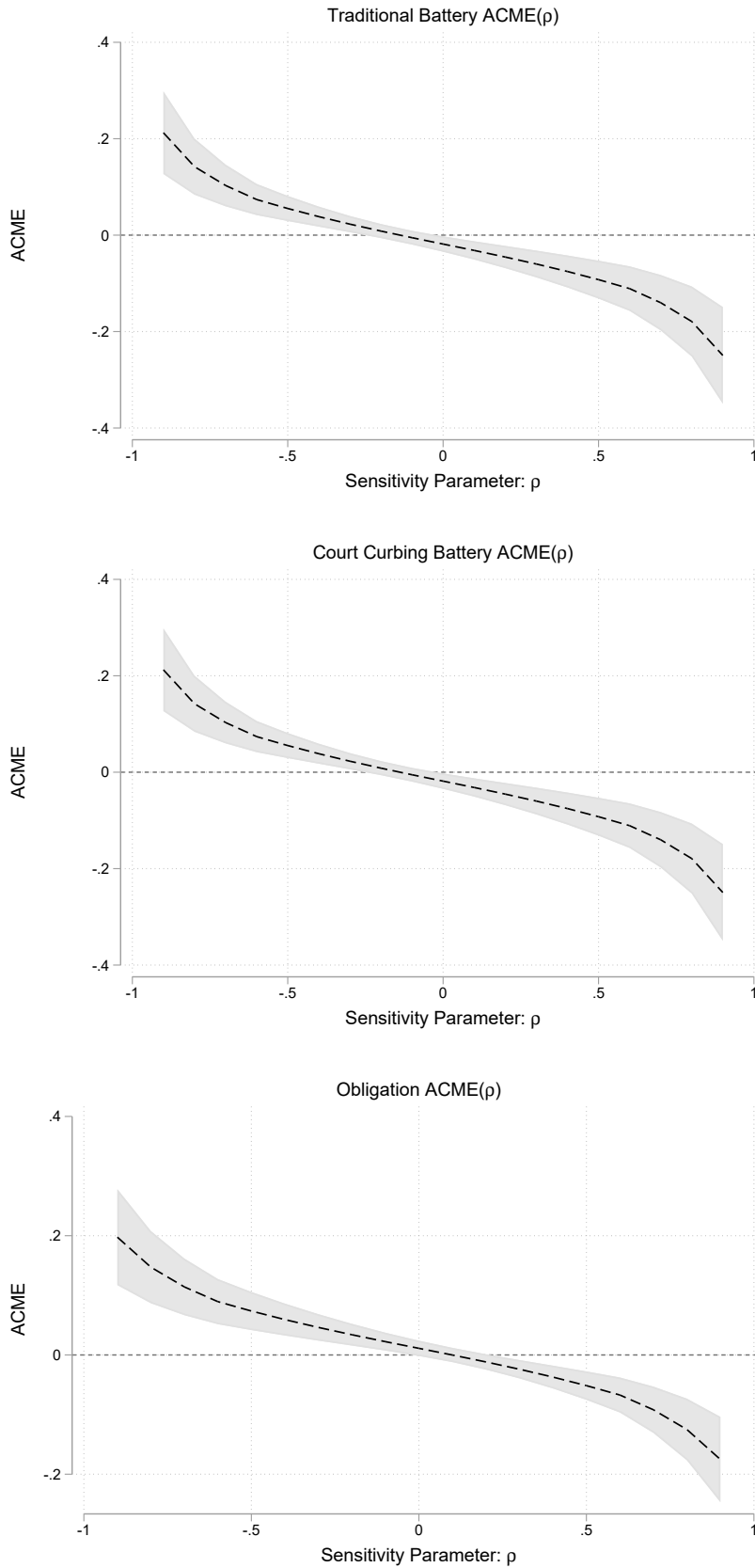


Figure 4.7: Results of the sensitivity analysis for all three dependent variable batteries.

(measured as both the traditional and applied legitimacy/court curbing batteries), nor does it affect how obligated people feel toward the institution (demonstrated in Figure 4.2). When modeling perceived brokenness of the Court on the batteries, however, they are all negatively correlated, albeit felt obligation is less correlated than the others (see Figure 4.3). When it comes to a Court perceived to be hostile to partisan interests, however, average treatment effects similarly zero: there are no effects on legitimacy when manipulating the belief that the Court is hostile (at least among Republicans). However, when directly regressing the mechanism on the batteries, a similar story to that above emerges: all are negatively correlated, though obligation felt is correlated to a lesser degree. Finally, a mediation analysis shows that, to the extent that the identified mechanism (a perception that the Court is broken) affected the underlying dependent variables, it did so more for the institutional support batteries than the felt obligation battery. But, upon closer inspection with a sensitivity analysis, the ACME for the felt obligation battery is less robust to violations of the sequential ignorability assumption than the institutional support batteries. More data are needed to further investigate the mediation effects.

4.2 Experiment 2: CloudResearch

Because of the weird⁶ findings of experiment 1, the improperly specified Qualtrics survey flow resulting in the failure of Democrats to be treated, and in light of some concerns about Lucid survey quality in 2021 (Peyton, Huber and Coppock, 2020), a second experiment was conducted on a separate platform. This second study, conducted on CloudResearch (formerly known as TurkPrime), offers an alternative sample on which to compare the results of the Lucid experiment. Past experience has also suggested that attentiveness is greater on MTurk than on Lucid.

⁶A totally valid scientific term.

The second experiment, fielded in March of 2022, sought to manipulate a belief that the Court is broken using a standard between-subjects design. After consenting to participate and finishing the first part of the study⁷, respondents were informed that the survey would switch gears and ask about American political institutions for the remainder of the study. After continuing in the study, respondents were asked their attitudes toward Judge Ketanji Brown Jackson who had been nominated by President Biden to the Supreme Court a couple weeks earlier. Respondents were asked: “You might have heard that President Biden has nominated Judge Ketanji Brown Jackson to the U.S. Supreme Court. How closely have you been following the news about Judge Jackson’s nomination?” and “How much do you support Judge Jackson’s nomination to the U.S. Supreme Court?”

Next, participants were randomized into a treated or control condition, with those treated being exposed to similar news headlines as in the Lucid Experiment. However, one of the headlines was replaced that said the Supreme Court was “not well” and was replaced with a New York Times headline saying “How To Fix the Supreme Court.” The reason for swapping out this headline is because the original headline mentioned an ideologically-charged issue (guns) which could affect the treatment effect, especially when combined with the other treatments. Like in the first experiment, all of the headlines on the treatment are real, which eliminates the need for deception in the experiment and adds to the external validity of the study. The treatment is presented below in Figure 4.8. Similar to the Lucid experiment, respondents in the control condition were not exposed to any treatment and progressed straight to the dependent variables. Both the treated and control conditions were asked the same manipulation check used in the earlier Lucid Experiment.

Because of the limited real estate in the study, abridged versions of the dependent variable batteries was used. For the traditional battery, respondents were asked how much they agree with the statements: “If the U.S. Supreme Court started making a lot of decisions that most

⁷This study was appended to an unrelated study which sought to evaluate the role of empathy in politics.

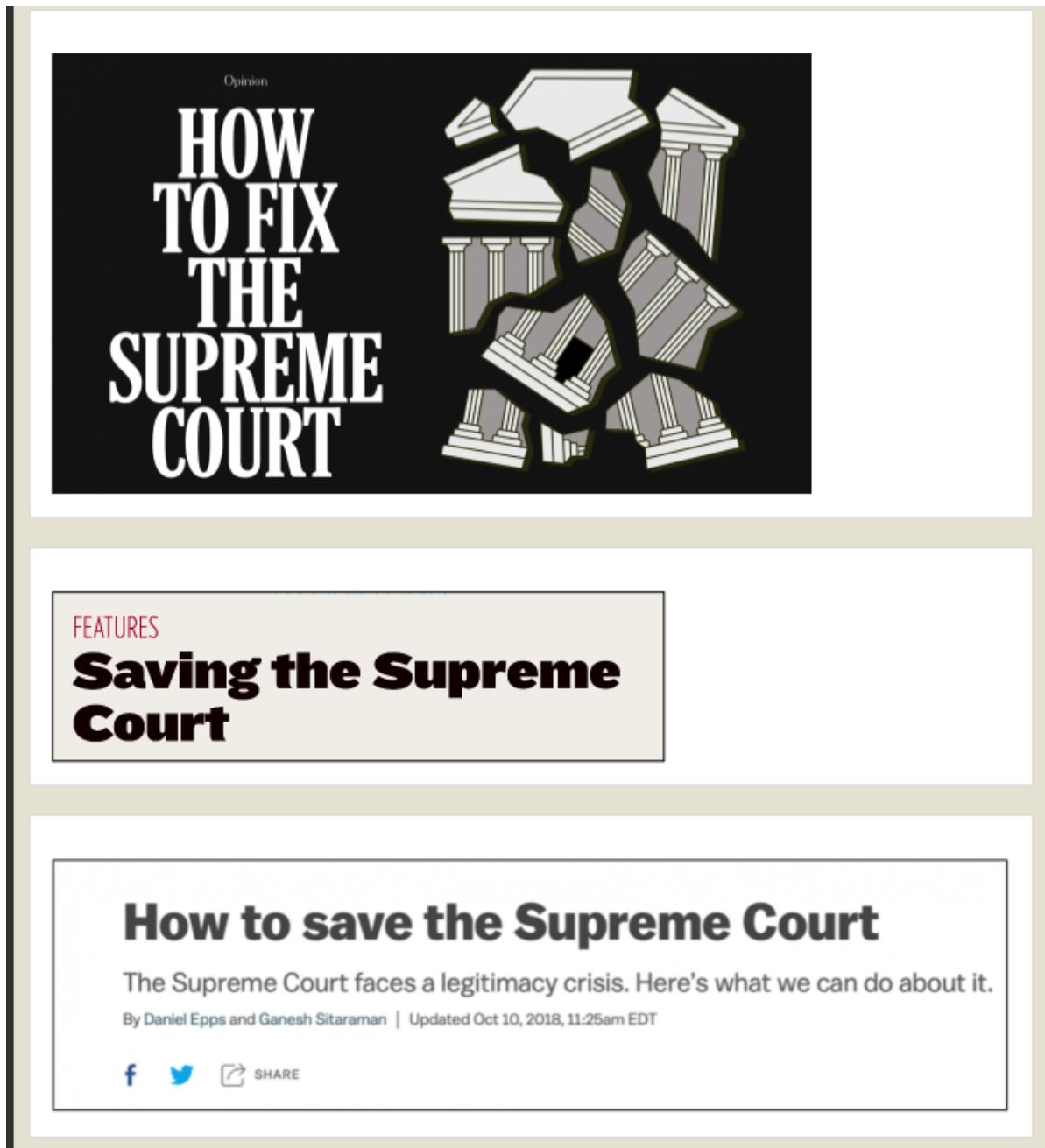


Figure 4.8: Manipulation for Experiment 2 consisting of a variety of real-life headlines signaling that the U.S. Supreme Court needs to be saved or fixed.

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,” and “The U.S. Supreme Court gets too mixed up in politics.” To measure court curbing attitudes, respondents were asked: “Do you support or oppose plans to add justices to the U.S. Supreme Court?” “Do you support or oppose plans to term limit Supreme Court justices to a single 18-year term?” and “Do you support or oppose plans to require justices to retire after they reach a certain age?” To measure felt obligation toward the Court, respondents were asked their agreement with the statements: “Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court;” “Decisions by the United States Supreme Court should be considered final and authoritative;” and “People should obey the Supreme Court even if it goes against what they think is right.” While using abridged versions of the batteries is not the best case scenario, it is consistent with other research investigating Supreme Court legitimacy in studies with limited space ([Armaly and Lane, 2022](#)). In total, 520 respondents participated in the study: 261 in the control condition and 259 in the treated condition.

4.2.1 Results of CloudResearch Experiment

All dependent variables were transformed to range from zero to one with higher values indicating greater legitimacy for the Court. First, similar to in the observational results in Chapter 2, a confirmatory principal-component factor analysis was conducted by including all of the questions comprising the traditional battery and felt obligation battery in the same model to investigate their loadings and latent structure. The PCA returns two factors with loadings suggestive of expectations. A varimax rotation further indicates the presence of two distinct factors, with each question loading decidedly into their respective latent factor.⁸

⁸This same result obtains even when restricting the PCA to only those (untreated) respondents in the control condition.

Next, to what extent was the treatment successful in manipulating perceptions that the Supreme Court is broken? The treatment was very successful in its mission, although it moved respondents in the *opposite* direction than expected. Specifically, mean belief that the Supreme Court is broken among those in the control condition is .63, whereas it is .55 in the treated condition ($t = 3.95; p < .0001$).

This finding is odd and suggests the potential for heterogeneous treatment effects. For fun, I investigated this possibility by running two regressions of the manipulation check on the treatment indicator, but restricting each regression to those who identify as either a Republican or Democrat. The findings support the idea of heterogeneous treatment effects: although strong or weak Republicans are affected by the treatment ($t = -1.98$), Democrats are unaffected ($t = -1.43$). However, when independents who lean toward Republicans or Democrats are included in the model, heterogeneous effects are no longer present: the treatment is successful for both Republicans ($t = -2.68$) and Democrats ($t = -2.79$).

To summarize, heterogeneous effects exist among partisan identifiers, but not when leaners are included. Because of the heterogeneous treatment effects based on self identity, the results that follow are presented in two steps: first, the average treatment effect is reported, and then the same models are re-run restricted to only those who identify as Republican (with leaners excluded).

Figure 4.9 reports the average treatment effects regressing the indexed dependent variable batteries on the treatment indicator and indicate that both institutional support measures are influenced by the treatment in a positive direction. In contrast to theory, however, felt obligation is also positively affected by the treatment ($t = 1.82; p = 0.07$). Substantively similar results obtain when re-running the model with the factored dependent variables in place of the indexed variables: increasing a perception that the Supreme Court is broken results in increased legitimacy toward the Court measured as both obligation and institutional support. Full regression output can be found in Table C.4 in the appendix.

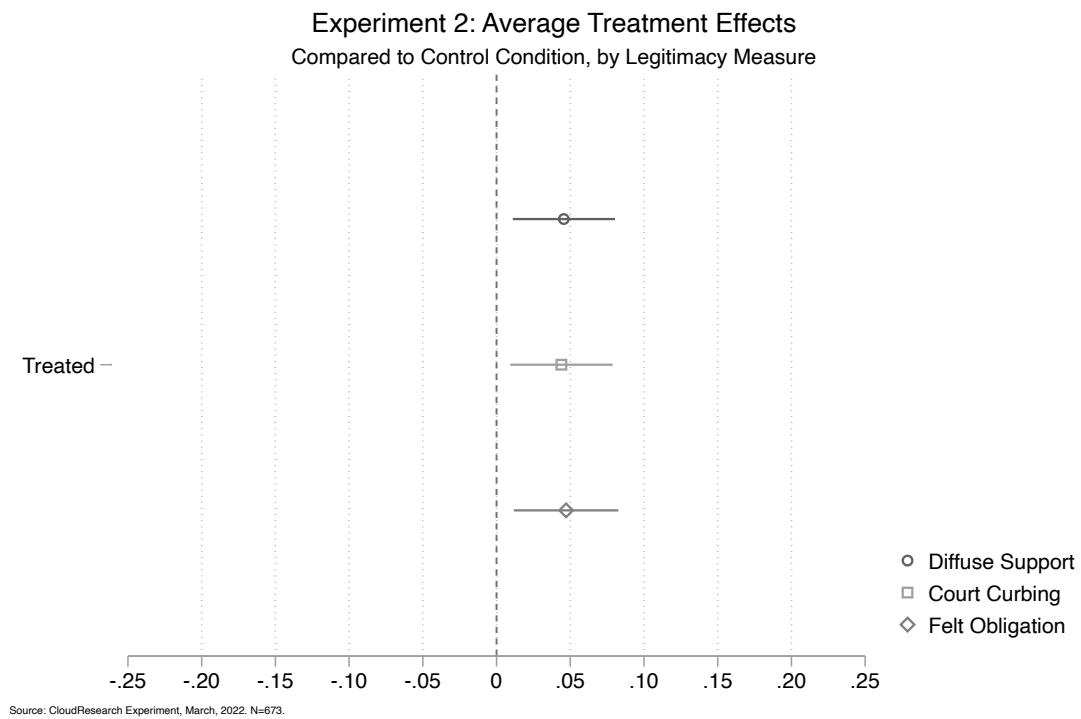


Figure 4.9: Average treatment effects showing a significant increase in legitimacy compared to respondents in the control condition across all measures.

	Traditional Battery	95% C.I.
ACME	0.03	0.02 to 0.05
ADE	0.01	-0.01 to 0.04
ATE	0.04	0.01 to 0.08
% of ATE Mediated	0.70	0.39 to 2.78
	Court Curbing	95% C.I.
ACME	0.03	0.01 to 0.04
ADE	0.02	-0.01 to 0.04
ATE	0.04	0.01 to 0.08
% of ATE Mediated	0.62	0.34 to 2.46
	Felt Obligation	95% C.I.
ACME	0.02	0.01 to 0.03
ADE	0.03	-0.01 to 0.06
ATE	0.05	0.01 to 0.08
% of ATE Mediated	0.37	0.21 to 1.32

Table 4.2: Results from mediation analysis conducted on CloudResearch study.

4.2.2 CloudResearch Mediation and Sensitivity Analysis

Similar to the Lucid experiment, I conducted a mediation analysis to investigate the percentage of the total effects that are mediated through the measured mechanism. In other words, how much of the average treatment effect is the result of me tinkering with how broken people perceive the Court and how much travels through other (unidentified) pathways? The results are displayed in Table 4.2.

The results of the mediation analysis show that 70%, 62%, and 37% of the *ACME* on the traditional, curbing, and obligation batteries respectively is mediated through the mechanism measured. This finding suggests that a belief that the Court is broken is less related to the obligation felt than to a willingness to defend the Court from alterations, although both are still moderately related.

To evaluate how robust the findings of the mediation analysis are to violations of the sequential ignorability assumption, the results of the sensitivity analysis are presented in Figure 4.10. Unlike with the Lucid survey (which had null average treatment effects), the

findings here are moderately robust to violations of the sequential ignorability assumption. For the ACME to be zero, the ρ must be 0.46 for the traditional battery, 0.40 for the court curbing battery, and 0.25 for the obligation battery.

Heterogeneous Effect Analysis

To see the effects of Democratic-identifiers not responding to the treatment (as discussed previously), each legitimacy battery was regressed on an interaction of the treatment indicator and partisanship. Figure 4.11 presents the predicted legitimacy of the Supreme Court for each of the legitimacy batteries.

As a reminder, the court curbing variable is coded such that greater values indicate *opposition* to Court curbing.⁹ In other words, all three dependent variables are coded such that greater values correspond to more legitimacy for the institution.

Across all three measures, Democrats are decidedly less supportive of the Court, though they do not report feeling significantly less obligated toward the Court. When it comes to heterogeneous treatment effects, Republicans become less willing to support Court curbing when treated whereas Democrats remain steadfast in their support for curbing the Court. Finally, Democrats appear to respond more to the treatment in the traditional support measure, though marginally. Full model outputs can be found in Table C.5 in the appendix.

⁹You might be thinking: “that’s dumb,” to which I respond, “I agree.” But, it helps in interpretation to have this variable consistent with the others in terms of direction. I am open to other phrases beyond “Court curbing” that do not refer back to the traditional battery. [Badas \(2019\)](#) terms these questions the “applied legitimacy index,” but I find “Court curbing” to be more intuitive in what is being measured. Would welcome thoughts here, though.

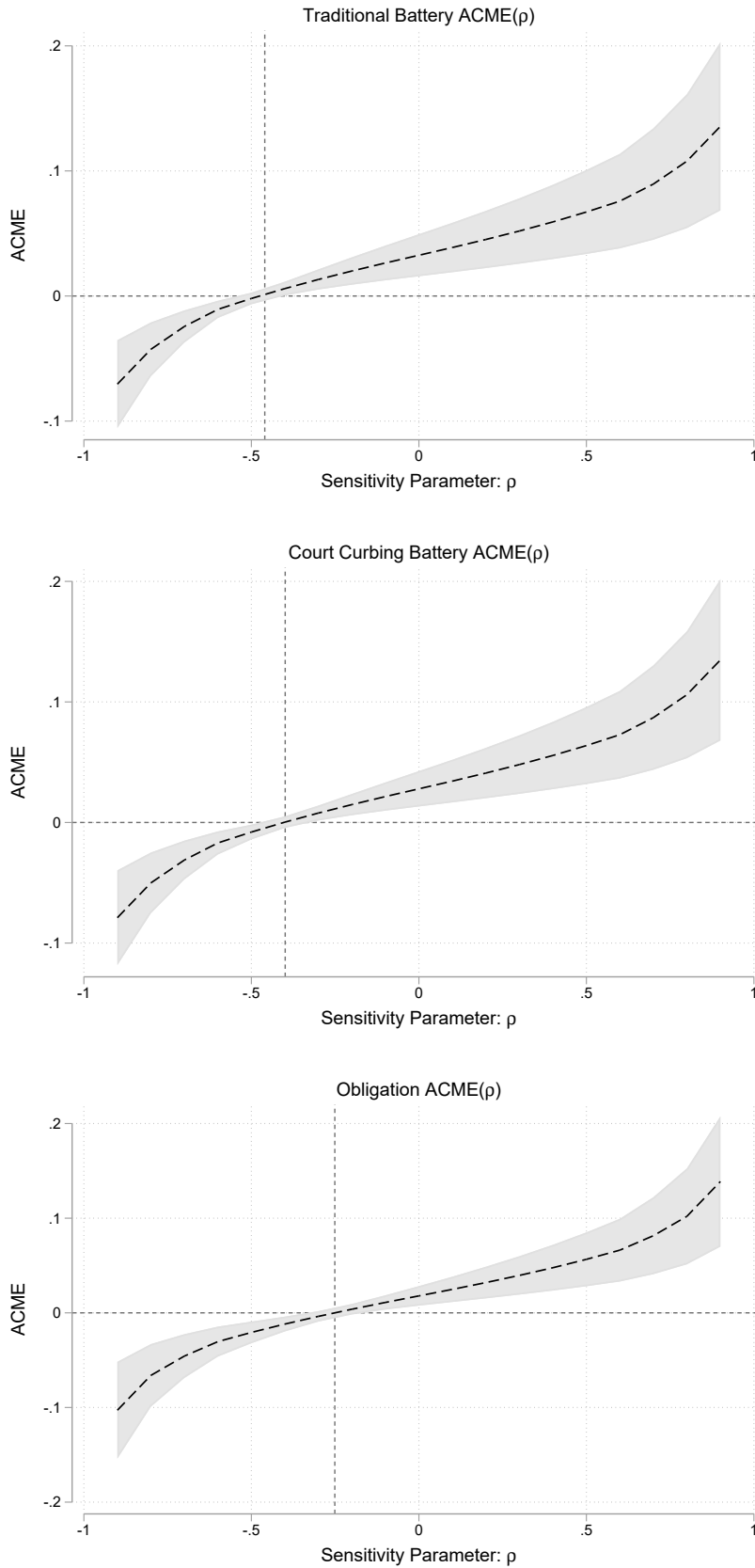
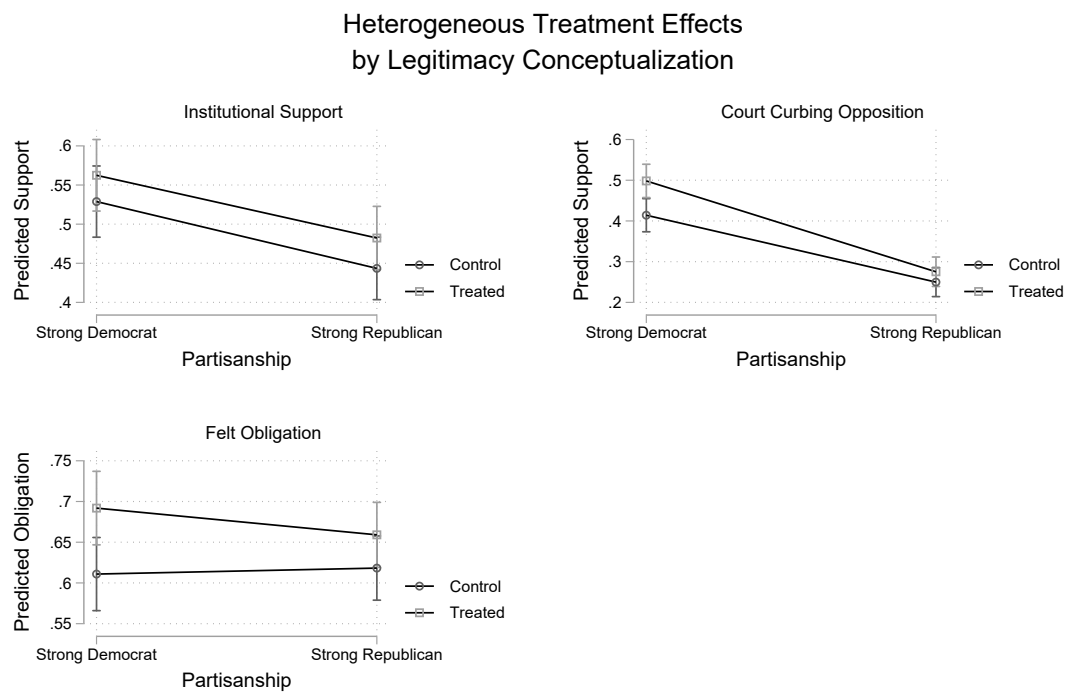


Figure 4.10: Results of the sensitivity analysis conducted on the CloudResearch experiment.



Source: CloudResearch Study, March, 2020.

Figure 4.11: Predicted values for the interaction between partisanship and treatment, by legitimacy conceptualization. Leaners excluded.

4.3 Conclusion

This chapter has presented a trove of information and data, very little of which supports the theory outlined at the outset. To recount and summarize: the (preregistered) Lucid experiment attempted to manipulate both the belief that the Court was hostile to partisan goals and belief that it was broken. To do the former, the experiment used a blocking technique to expose respondents to in-party signals expressing worry of what the Court will do in the future. For the latter, respondents were exposed to news stories about how the Court is broken.

The results of the Lucid experiment offer limited support for the theory in Chapter 1 and supported with observational data in Chapter 3. The preregistered analysis returned null effects on all three legitimacy batteries for those treated to news stories on how the Court is broken. Due to a mistake in the blocking, only Republicans were treated with the “hostile Court” treatment, but the results among GOP respondents do not support the theory. However, when directly modeling the mechanism on the dependent variable (instead of a treatment indicator), both institutional support measures are significantly related while felt obligation is uncorrelated.

Experiment 2 sought to further scrutinize the findings of the Lucid Study on a new sample of respondents that, historically, has provided higher data quality. Specifically, Experiment 2 was conducted using CloudResearch instead of Lucid and only sought to manipulate belief that the Supreme Court was broken. As a result, the study design was much simpler. While results show that the experiment was successful in manipulating the perception that the Court was broken, it did so in the opposite direction than expected. Specifically, those exposed to the treatment became *less* supportive of the statement: “The U.S. Supreme Court is broken.” Even with this hiccup, however, the results do not offer support for the theory: all three outcome variables increased among those who were treated.

4.3.1 What Explains the Findings?

Not only do the results of the second experiment not match the results of the first experiment, but the results of the experimental data offered here do not substantiate the results of the observational analysis presented in the last chapter. This section theorizes why this might be the case on both dimensions.

When comparing the second experiment to the first, several differences stand out that could potentially explain the diverging results. While the Lucid experiment shows null results on the hostility treatment across the dependent variables, the CloudResearch study shows significant results among all three batteries. Why?

One potential explanation is the attentiveness of the samples, with CloudResearch offering higher quality data than Lucid. This is not uncommon. Around the time that the Lucid experiment was fielded, concern was being raised about a decline in the attentiveness of respondents on the Lucid Theorem platform. In other words, although the attentiveness of Lucid respondents was thought at one time to be acceptable (Coppock and McClellan, 2019), respondent quality began to decline, especially surrounding the COVID-19 pandemic (Peyton, Huber and Coppock, 2020). An attention check was included in the experiment to attempt to remove inattentive respondents, but these are not always successful at weeding out inattentive respondents and might even introduce systematic bias.¹⁰ While respondent attentiveness on Lucid is currently being debated in the literature, researchers generally agree about the high-level of attentiveness paid by MTurk workers to their tasks. Because CloudResearch uses workers from MTurk—and because the study was limited to only those respondents who were approved to do CloudResearch tasks—it suggests that the results of the CloudResearch study are more valid and reliable.

Another potential explanation for the incongruent findings across experiments is that the

¹⁰I saw a recent paper about this on Twitter but I’ve looked high and low and cannot find it anywhere.

CloudResearch experiment used three questions for each battery instead of the full batteries used in the Lucid experiment. If this modification explains the inconsistent results, then re-running the Lucid experiment limited to only those questions used in the CloudResearch study should produce similar results. The results of the reanalysis confirm the results obtained using the full batteries: there are no significant differences among those randomized into the “broken” wave compared to those randomized into the “treatment” wave.

Finally, the treatments across the studies were not perfectly identical. Although both studies sought to manipulate a perception that the Supreme Court is broken, the treatment was modified after the Lucid study by swapping out one of the more questionable headlines. Moreover, the directions of the manipulations is inconsistent. Although the manipulation in the Lucid study does not reach conventional measures of statistical significance (but is close enough), it nevertheless appears to *increase* the belief that the Court is broken. Conversely, the CloudResearch treatment *decreases* the belief that the Court is broken.

Why might the experimental results differ from the observational results? First, the observational results suffer from omitted variable bias and other concerns with endogeneity. Also, although the observational data are weighted, they derive from a nonprobability-based sample.

Future experimental research would benefit from validating each of the headlines used in the experiments through pretesting. Additionally, the results of these studies should be replicated on a probability-based sample. For the “hostile” treatment, scholars should investigate if hostility toward other non-partisan identities matter for legitimacy. For example, if the Court is perceived to be hostile to your gender, sexual orientation, or race, might that matter, even when partisanship does not.¹¹ Future observational research should be conducted on a probability sample.

¹¹I acknowledge this is unlikely given how interconnected each of these identities have become with political partisanship (Mason, 2018). Nevertheless, it should be explored.

What do the results to this point mean for the theory? One way of thinking about the results is that they offer no support for the theory and, consequently, the theory should be rejected. However, because two experiments are producing two different findings, I believe a better interpretation to be that they are inconclusive and that additional data collection is needed to evaluate the theory. Future studies should investigate additional observable implications of the theory and seek to test them with pretested, validated treatments on better samples of respondents.

Chapter 5

Conclusion

The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.

Hamilton, *Federalist* 78

Over two centuries ago, Alexander Hamilton, in his characteristically arrogant way¹, assured the young nation that the Supreme Court would “...always be the least dangerous to the political rights of the Constitution.” To Hamilton, this “incontestible” and “simple view of the matter” was based on the assurances that the Court possesses “neither force nor will, but merely judgement.” While the executive branch controlled the military, and the legislative branch controlled the purse strings, the Court controlled neither. It must

¹See: Miranda, Lin-Manuel. “A Winter’s Ball.” *Hamilton: The Musical*.

depend entirely on others to be effective. To Hamilton, this fact made the Court “...beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two [branches]; and that all possible care is requisite to enable to defend itself against their attacks” ([Hamilton, 1788](#)).

Was Hamilton right? A lot has changed in the intervening 234 years, particularly with constitutional divisions of power. From restricting state governments through the Bill of Rights, to directly electing senators, the size and scope of the President’s cabinet (to say nothing of the abolition of slavery, promotion of a multiracial republican democracy, and expansive federal powers), the Constitution and government of today would arguably be unrecognizable to the ratifying generation, including Hamilton. With the changes to the structure of the Constitution came changes in the sources of power and authority for the Court. Although Hamilton was correct in the inability of the judiciary to compel realizations of its decisions through force, I would argue that Hamilton undervalued the usefulness of popular legitimacy and its path dependency in his assertion that the Court would be the least dangerous branch.

As we’ve seen, a goal of all governing institutions is to inculcate a sense of legitimacy such that it need not resort to using the purse or sword to be effective ([Weber, 1947](#); [Easton, 1965](#); [Tyler, 2006b](#)). Although the Congress controls the power of the purse, it rarely uses that power to coerce widely-unpopular outcomes. Similarly, the president rarely sends troops to American cities to compel unpopular acts.² For the Court, legitimacy is a useful, non-coercive tool and source of power to get its decisions realized. To put this a different way, if a government or institution must rely on the purse and sword to maintain the regime, it opens itself up to a world of hurt and risks “living on a precipice of disorder” ([Easton, 1965, 279](#)). While it is true that some of the legitimacy observed today is the result of decades of the Court being placed on a pedestal by the elected branches ([Whittington, 2007](#); [Graber,](#)

²Of course, it has happened, but it’s not a weekly occurrence.

1993), legitimacy nevertheless exists and is critical for the Court to realize its decisions.

Not only does legitimacy exist for the Court, but the other branches of government seem set on protecting (and even enhancing) that legitimacy. In their final report, the Presidential Commission on the Supreme Court of the United States uses the word “legitimacy” a total of 58 times across nearly 300 pages. Though the concept is invoked in a variety of contexts (and never properly defined), the report underscores the importance of “protecting or enhancing the Court’s legitimacy” (6) and uses this as a consideration when evaluating the current state of, practices at, and proposed reforms to the Court. The fact that the report uses various understandings of legitimacy and never actually provides a definition underscores the challenges associated with measuring this amorphous concept.

Related, a press release announcing an investigation into the Court’s use of its “shadow docket” by the Senate Committee on the Judiciary noted that the Court “must operate with the highest regard for judicial integrity in order to earn the public’s trust.” The Committee investigated the Court in part out of fear that its increasing reliance on the Shadow Docket to deliver unpopular outcomes would affect how the public perceives the Court. The fact that the other two branches of power seem determined to protect the legitimacy of the Court and, consequently, protect an important source of its inherent power, seems to run counter to Hamilton’s expectations.

The goal of this dissertation has been to evaluate the current state of legitimacy for the Supreme Court in the 21st Century and to see how such reverence for the institution, should it still exist, relates to efforts at reform. This concluding chapter recounts the puzzle that we set out to investigate and also underscore some of the things we’ve learned along this magical journey together.

5.1 The “Puzzle”

For the first time in almost a century, serious conversations are taking place involving reform of the nation’s highest Court. These reform attempts are not just coming from one political party or ideology: Democrats, Republicans, Liberals, and Conservatives have all endorsed some form of Court reform in recent years, whether expansion, retraction, term limits, mandatory retirement ages, or something else. Additionally, available public opinion data shows a public willing to support many of these reforms while, at the same time, exhibiting record-low levels of confidence in the Court.³

Why does any of this matter? Well, although legitimacy is crucial for all governing institutions, it is amorphous and impossible to measure directly. Instead, we can only infer that legitimacy exists by looking at observable downstream consequences that (theoretically) exist as a result of legitimacy. It is these indicators of legitimacy that help us infer whether an institution is “healthy” (in a legitimacy sense) or in danger. For decades, researchers focusing on the health of the Supreme Court have opted to measure institutional support—that is, whether people are willing to defend the Supreme Court from reform—as their preferred indicator for legitimacy. This choice relates to historical examples of when the Court’s legitimacy was thought to be at its lowest (such as FDR’s Court Packing plan of 1937). And, not only that, it makes intuitive sense: so long as people view the Court as legitimate, they should oppose efforts at reform. As a result, our current political climate, where scores of groups are calling for reform, signals a pretty significant decrease in legitimacy under the widely-used indicator.

If the Court’s legitimacy has evaporated, then we can expect subsequent negative impacts on the ability of the Court to do what we think courts ought to do: like, resolve disputes,

³For example, both Quinnipiac (<https://poll.qu.edu/poll-release?releaseid=3820>) and Gallup (<https://news.gallup.com/poll/354908/approval-supreme-court-down-new-low.aspx>) polling shows SCOTUS approval at all-time lows.

protect minority rights, and “hold the countryside” (Shapiro, 1981; Ely, 1980; Zilis, 2021). If the Court has lost its legitimacy, it would be unable to overcome the “countermajoritarian difficulty” and, consequently, would stop being countermajoritarian (Bickel, 1986). Has the Court as we know it come to an end? More specifically, what is the status of the Court’s legitimacy in our political climate? This dissertation argues that the Court’s legitimacy is alive and well. Not only that, but it is *thriving*.

To make this argument, I take from the starting point that legitimacy and institutional support will not always be positively related, as existing scholarship has assumed. Instead, it is theoretically possible that legitimacy might serve as a powerful tool to achieve policy goals, and that this possibility can compel individuals to support reform of the Court. In other words, the reason the Court is so powerful is precisely because of its legitimacy, and groups can want to alter the institution either to prevent or to achieve policy objectives. Importantly, doing so would not necessarily imperil the legitimacy of the institution.

But, how would we know? Or, to put this another way, what might a legitimacy-free Supreme Court look like (Carrington and French, 2022)? One way that it might manifest is through a willingness to support altering the Court as existing scholarship posits. However, it is not clear that supporting reform is a sufficient (nor necessary) condition to warn that the status of the Court as a co-equal branch of government is in jeopardy or that the Court’s legitimacy has subsided. It is possible to support reform while nevertheless conferring it enough legitimacy to maintain itself in the constitutional order. Its judgements can still be enforced while institutional reform is taking place and its power remains.

Instead, this dissertation argues that a better indicator of legitimacy—one which is both a necessary and sufficient condition to warn that the Court’s status is deteriorating—relates to how obligated the public feels toward the Court. Not only is a widespread sense of obligation relevant to the ability of the Court to get its judgements implemented (and do everything else we think a Court should do), but it is also directly measurable. High levels of obligation felt

toward the Court increases the social and political costs for ignoring the Court’s judgements, offering an important (and underappreciated) avenue around Hamilton’s assertion that the Court is the “least dangerous” branch. If the public feels obligated toward the Court, it would be unwise for elected officials to simply shirk its judgements, even those which are unpopular.

5.2 Findings

A few findings from this dissertation are worth emphasizing again in the conclusion. The first regards the latent dimensions of legitimacy. The results presented in Chapter 2 suggests that obligation felt toward the Court and a willingness to defend the Court are two *distinct* dimensions. Moreover, the former is only partially incorporated into the latter, as was demonstrated using both correlation matrices and a principal-component analysis. In the PCA, the results suggest that the two batteries are orthogonally related. Importantly, with the exception of the single question from the traditional battery loading into the obligation battery, the two batteries seem to be *negatively* correlated: that is, as obligation felt increases, willingness to defend the Court decreases.

Turning to the survey presented in Chapter 3, the results offer support for the theory that institutional support is separate from felt obligation. Specifically, the linear models presented demonstrate that some considerations correlate with institutional support (like a belief that the Court is hostile to group interests or that it is broken) but not with the level of obligation felt toward the Court. In Chapter 4, though, the story gets more complicated, as two experiments (offering mixed findings) fail to substantiate the claim. While attempting to manipulate institutional support but not felt obligation, one experiment returned null results across the board while the other showed that both the traditional and proposed batteries move together. Further experiments are needed to better dissect the causal direction of the

observational results shown in Chapter 3.

5.3 Broader Contributions

The contributions this dissertation makes to the world can be divided into three components: theoretical, empirical, and practical. This section discusses each in turn.

Theoretically, I challenge the conventional wisdom in the literature that legitimacy and institutional support will always be positively related. Instead, the project advances the theory that legitimacy can compel reform of the institution by serving as a sword to use for policy goals rather than an anodyne evaluation of the institution.

One way to think of this theoretical contribution is by asking what legitimacy requires of the governed. According to the widely-adopted account, judicial legitimacy requires us to always be governed by the dead hand of the past because any efforts at changing the Court (even that which is done with the goal of modernizing the institution or even enhancing its legitimacy) is *ipso facto* indicative of a decrease in legitimacy. This theoretical account seems not only incomplete, but also antidemocratic. While the Court acts as a normative countermajoritarian check, it does not follow that the institution itself should be beyond reproach through democratic channels.

Instead, I argue that legitimacy theoretically requires the Court to be able to function effectively as a Court, meaning that everything we associate with a Court should remain plausible. Legitimacy does not require unquestioning loyalty to the institution but, instead, that we honor its judgements even if we might try to get those judgements reversed, overturned, or while we want to adjust the number of justices. As noted in an earlier chapter: what matters for legitimacy is that a sizable portion of the public is willing to respond “how high?” when the justices yell “JUMP!” even while the same members of the public wish to

change whether Democratic or Republican justices are doing the yelling.

A high level of obligation felt toward the Court explains several observed phenomena, such as groups turning to the Court for recognition of rights and privileges, parties attempting to entrench themselves into the institution, and very high levels of compliance with the Court's judgements. As obligation felt toward the Court increases, so too do the costs associated with ignoring the Court. Conversely, once the obligation felt begins to deteriorate, the Court theoretically becomes much less effective at getting its decisions realized absent force.

Empirically, this project shows that the obligation felt toward the Court among the mass public is quite high. Indeed, in all of the studies presented, the base level of obligation felt toward the Court is higher than peoples' willingness to defend the Court from changes. This high sense of obligation felt toward the Court increases the political and social costs for shirking the Court's decisions, making it an effective mechanism for realizing the Court's decisions without it needing either the purse or sword (take that, Hamilton!).

Another empirical contribution is by helping bring the existing literature in line with what we see in the world. Just the last several months have seen a Supreme Court willing to increasingly use its emergency docket to decide the merits of controversial cases (like Texas's abortion ban or the COVID pandemic restrictions). Moreover, the Court has recently added a whole host of high-profile "culture war" issues onto its docket, including LGBT rights, affirmative action, gun control, and abortion, just to name a few.

We would not expect a Court that is on the verge of losing its legitimacy to behave in this way. Knowing that justices are strategic actors who are keenly aware of their need to maintain legitimacy as an important source of their power, it seems that a Court which senses a decrease in its legitimacy would, at least temporarily, shy away from the hot-button issues. Instead, the Court's own actions suggests that it perceives its legitimacy to be high enough to get controversial decisions implemented.

This point turns to the practical contributions of the project. The results here suggests that Court reform can take place without jeopardizing the Court’s place in the constitutional order, so long as people remain obligated. The action of the Court, combined with the empirical findings of the dissertation, show that the public does feel a widespread sense of obligation to the Court which should permit it to maintain its normative status.

5.4 Project Shortcomings and Avenues for Future Research

There are many shortcomings to the data presented throughout the dissertation that make them less than ideal. Here, I recount some of the shortcomings and plans for future research.

When it comes to the theory, additional work is needed to connect the idea of felt obligation to additional historical work on obligation felt toward institutions independent of the holders of the institutions.⁴ Likewise, additional theorizing would benefit the analysis on the relationships between variables (specifically, whether felt obligation is thought to be stable or fluid), and where these attitudes form.

Empirically, none of the data presented here derive from a probability-based sample. Although the observational data are weighted to national benchmarks, they are still not as ideal as a probability-based sample would be. Consequently, a goal for the future is to secure external funding to fund a nationally-representative, probability-based survey. For example, a module on the CCES would yield important insights while being cost effective. Another shortcoming is the inconsistent results across the experiments. In the future, pretesting should be conducted to validate the experimental treatments before their inclusion in the study. The experimental results are also limited by time constraints and should be replicated

⁴One suggested source to incorporate is “The King’s Two Bodies” by Ernst Kantorowicz.

in other contexts.

Second and related, existing research using institutional support shows that the way individuals respond to new information about the Supreme Court is, in part, dictated by preexisting levels of legitimacy afforded to the Court. In other words, those higher in preexisting legitimacy respond differently to information about the Court than those lower in legitimacy. Aside from the interaction effects evaluated in Chapter 3, the data here do not provide for a robust investigation of how this existing observation holds for felt obligation. Future research should use a panel design to measure preexisting levels of legitimacy and, at a later time, expose respondents to experimental treatments to investigate conditional effects.

Another contribution to be made in future research is to evaluate the impact of race on obligation felt toward the institution. In light of vast amounts of existing research documenting the reduced levels of institutional support among Black Americans when compared to white Americans, it is important to understand how this relates to the obligation felt toward the institution.

Finally, the dissertation did not go too in-depth into the origins and predictors of felt obligation toward the Court. An important avenue for future scholarship is to investigate from where these attitudes originate, as well as what factors predict obligation felt toward the Court. For example, how much obligation felt toward the Court is the result of dispositions like right-wing authoritarianism (RWA) or social dominance orientation (SDO)? Might the questions simply be picking up deference to authority in general? How does obligation felt toward the Court relate to deference to Congress or the presidency? These are but a few critical questions that should be addressed in subsequent research seeking to validate this measure.

Beyond the immediate dissertation, however, a multitude of possibilities exist for further

contributing to the field of judicial legitimacy. Several of these possibilities were previously impossible because of the way that the field conceptualized legitimacy.

First, if felt obligation and institutional support are distinct concepts as argued, to what extent is the former influenced by policy disapproval. The impact of policy dissatisfaction on institutional support is currently a hot topic in the field. It could be the case that institutional support decreases in the face of unsatisfactory policy outputs but people, nevertheless, remain feeling obligated to the Court.

Another area for future research to explore is how varying levels of obligation influence the willingness of various movements to utilize the judiciary as an avenue to promote social change. Likewise, what is the relationship between legitimacy and partisan entrenchment. Both of these relationships are speculated to exist to varying degrees throughout this dissertation, but future studies could focus exclusively on these questions and offer an important contribution in and of themselves.

Finally, questions remain about what causes obligation felt toward the Court to deteriorate. As the results throughout this dissertation show, however, it should not be assumed that factors shown to influence institutional support will, likewise, affect obligation felt. To this end, research within procedural justice theory would suggest that the Court making a series of decisions predictable on partisan grounds (signaling unfairness behind the scenes) might begin to erode even the obligation felt toward the institution. A future goal of mine is to see how this new understanding of legitimacy relates to procedural justice theory, especially since previous efforts to connect Supreme Court legitimacy to procedural justice theory have found mixed support.

Much like the legitimacy of the Court itself, research focusing on how the public perceives the institution is alive and well. This dissertation contributes a small but important piece to the puzzle by focusing on what, exactly, we are measuring. In doing so, it challenges the

foundations of existing research while opening avenues for a plethora of future studies and expansions.

Appendices

Appendix A

Legitimacy Battery Design

This section presents the procedure and results of the cognitive interviewing that took place in order to construct the compliance attitudes battery. What follows is motivated by [Boeije and Willis \(2013\)](#) who outline the “cognitive interviewing reporting framework,” or CIRF.

A.1 Research Objectives

The purpose of the cognitive interviewing was to get a glimpse into the mind of respondents who were answering survey questions in an effort to ensure the internal validity of questions that would construct the compliance attitudes battery. Given the ubiquity of the existing “institutional support” battery of questions measuring legitimacy ([Gibson, Caldeira and Spence, 2003](#)), it is critical to ensure that respondents are understanding any new questions in the appropriate manner.

A.2 Research Design

Under normal circumstances, cognitive interviewing is conducted in person, among a small group of approximately 5 to 15 people, in a laboratory environment. However, because this research is being conducted during the Coronavirus pandemic, and upon researching emerging best practices, modifications from this prototypical cognitive interviewing were undertaken for this study.

Perhaps the biggest change is that the cognitive interviewing took the form of online probing (OP) in an online survey environment. Moving online has several advantages to its face-to-face counterpart. First, the online environment reduces the chances of false positives by reducing interviewer effects. Second, because “live probing” is not yet possible in an online environment, researchers must anticipate all probes ahead of time and program them

into the survey software. This process systematizes all interviews from individual to individual. In other words, all participants in the study are responding to the same set of questions, which is not true in a face-to-face interview which encourages live-probing. Third, online probing allows for a broader geographic reach than a face-to-face study. Finally, the resources required for an online study are significantly less than for a face-to-face. While traditional interviews can take an hour or longer, online studies conclude in 10-15 minutes, maximum. This reduced time commitment also lessens the financial cost on researchers, since participant labor is reduced. Importantly, research consistently demonstrates that online probing produces similar results to traditional face-to-face cognitive interviewing (Meitinger and Behr, 2016; Lenzner and Neuert, 2017).

The cognitive interviewing was testing eight potential multiple-choice questions for inclusion in an eventual legitimacy battery. Depending on the question, each was followed by three to five “probes” inquiring about various aspects of the question. In designing these probes, attention was paid to the four components of surveys: comprehension, retrieval, estimation, and response (Boeije and Willis, 2013). Each multiple choice question and its corresponding probes comprise a “set,” and respondents were exposed to two sets. Importantly, Neuert and Lenzner (2019) find no relationship between response quality among a number of dimensions and the number of probes presented to respondents. However, to keep the interview short, respondents were only asked to answer two sets and a series of demographic questions.

The total questions, and their subsequent probes, are:

1. “Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court.”
 - (a) “Why did you give this answer? That is, could you please explain your answer further?”
 - (b) “What comes to mind when you read the word ‘comply?’”
 - (c) “What type(s) of decisions come to mind when answering this question?”
 - (d) “In answering this question, what ‘people’ do you have in mind?”
 - (e) “Is there anything unsure about the answer that you provided?”
2. “Decisions by the United States Supreme Court should be considered final and authoritative.”
 - (a) “When reading this question, what does the phrase ‘final and authoritative’ mean to you?”
 - (b) “In coming up with your answer to this question, what do you think about?”
 - (c) “Is there anything that makes you unsure about the answer that you provided?”
3. “If necessary, people have an obligation to pressure politicians to comply with decisions by the United States Supreme Court.”
 - (a) “In answering this question, what does ‘obligation to pressure’ mean to you?”

- (b) “What comes to mind when you read the word ‘comply?’”
 - (c) “Who do you think “people” refers to?”
 - (d) “Is there anything that makes you unsure about the answer that you provided?”
4. “It is okay for politicians to ignore a decision by the U.S. Supreme Court if they believe they are doing what is best for the country.”
- (a) “What does the phrase ‘ignore a decision by the US Supreme Court’ mean to you?”
 - (b) “Who or what do you think of when you read the term “politicians?”
 - (c) “What do you think ‘doing what is best for the country’ means?”
 - (d) “Is there anything that makes you unsure about the answer that you provided?”
5. “Sometimes, elected officials need to ignore decisions by the United States Supreme Court, and that is okay.”
- (a) “Who did you think of when you read ‘elected officials?’”
 - (b) “What does the phrase ‘ignore decisions by the United States Supreme Court’ mean?”
 - (c) “Is there anything that makes you unsure about the answer that you provided?”
6. “People should obey the Supreme Court even if it goes against what they think is right.”
- (a) “What does it mean to ‘obey the Supreme Court?’”
 - (b) “What comes to mind when you think of a Supreme Court opinion that goes against what someone thinks is right?”
 - (c) “Is there anything that makes you unsure about the answer you provided?”
7. “Sometimes, the Supreme Court is wrong and, when this happens, it is okay to ignore its decision.”
- (a) “What does it mean when the Supreme Court is ‘wrong?’”
 - (b) “What comes to mind when you read ‘ignore?’”
 - (c) “To you, how often is ‘sometimes?’”
 - (d) “Is there anything that makes you unsure about the answer that you provided?”
8. “Those who openly advocate for ignoring a Supreme Court decision are a threat to the rule of law in our country.”
- (a) “What comes to mind when you read ‘openly advocate for ignoring a Supreme Court ruling?’”
 - (b) “What does the phrase ‘rule of law’ mean to you?”
 - (c) “Who do you think the statement is referring to when it says ‘people?’”
 - (d) “Is there anything that makes you unsure about the answer that you provided?”

Appendix B

Fall 2020 Lucid Survey

The Fall 2020 Lucid Survey is discussed in Chapters 1, 2, and 3. More information is presented on the survey [here](#).

B.1 Descriptive Results

This section presents the descriptive statistics of the Fall 2020 Lucid Study and compares the weighted and unweighted samples.

B.2 Regression Tables and Figures

Characteristic	Weighted %	Unweighted %
Age: 18-24	11.95	21.85
Age: 25-34	17.86	24.22
Age: 35-44	16.31	18.71
Age: 45-54	15.93	13.70
Age: 55-64	16.57	11.86
Age: 65+	21.37	9.66
Female	54.93	50.10
Male	45.07	49.90
White	74.77	65.62
Black	13.29	18.32
American Indian or Alaska Native	0.93	1.38
Asian – Asian Indian	1.35	1.51
Asian – Chinese	1.35	1.72
Asian – Filipino	0.93	0.84
Asian – Japanese	0.21	0.71
Asian – Korean	0.41	0.67
Asian – Vietnamese	0.62	0.96
Aisan – Other	0.93	1.43
Pacific Islander – Native Hawaiian	0	0.29
Pacific Islander – Guamanian	0	0.08
Pacific Islander – Samoan	0	0.08
Pacific Islander – Other	0	0.21
Some Other Race	5.19	6.16
Less than HS	10.32	1.35
HS Graduate	28.47	17.60
Some College	18.07	20.29
Year Degree	9.85	9.81
4 Year Degree	21.40	27.98
Professional Degree	10.06	17.60
Doctorate	1.83	5.38

Table B.1: Table presenting summary statistics of the Lucid Survey (Study 1) comparing both weighted and unweighted percentages. Weighting was conducted using the `ipfweight` command in Stata which uses an iterative proportional fitting (raking) method to construct the survey wights.

Table B.2: Predictors of Legitimacy (Fall 2020 Study)

	(1)	(2)
	Institutional Support	Compliance Attitudes
Concern for Future	-0.178*** (0.0378)	-0.0506 (0.0380)
Judicial Obsolescence	-0.263*** (0.0437)	-0.00700 (0.0599)
Ideological Proximity	-0.0815** (0.0294)	-0.142*** (0.0298)
Age	0.0688 (0.0366)	0.172*** (0.0470)
Ideology (1=Conservative)	0.0386 (0.0275)	0.0417 (0.0270)
Education	-0.0135 (0.0347)	0.0986* (0.0412)
Democratic Values	0.204** (0.0647)	-0.0660 (0.102)
Black	-0.0226 (0.0166)	0.0258 (0.0310)
Knows Court	0.0405* (0.0173)	0.0787*** (0.0231)
Republican	0.0312* (0.0153)	0.0174 (0.0184)
Constant	0.614*** (0.0486)	0.604*** (0.0714)
<i>N</i>	817	817
<i>R</i> ²	0.503	0.186

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

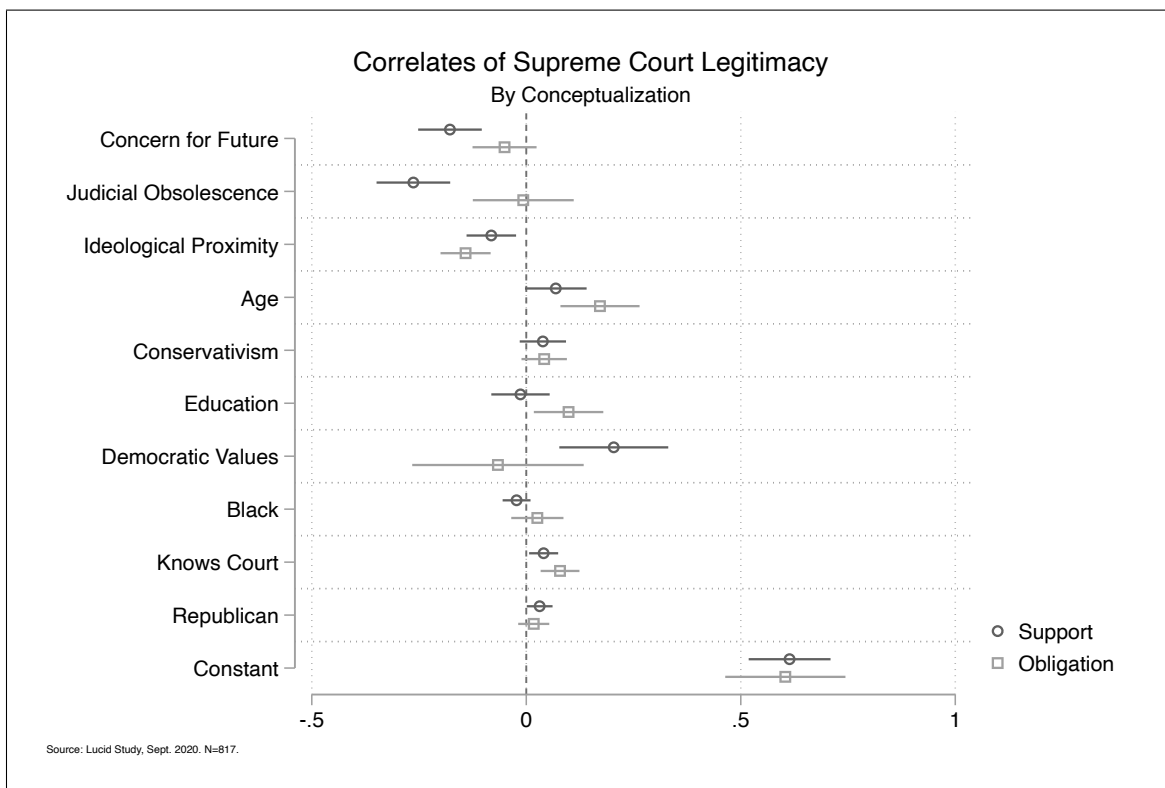


Figure B.1: Unabridged figure showing the results of the OLS regression presented and discussed in Chapter 2.

Appendix C

Experiment Supplementary Materials

C.1 Experiment 1 Preregistration

CONFIDENTIAL - FOR PEER-REVIEW ONLY
Dissertation - Signals Study (December 2021) (#82551)

Created: 12/09/2021 05:58 AM (PT)

This is an anonymized copy (without author names) of the pre-registration. It was created by the author(s) to use during peer-review.
A non-anonymized version (containing author names) should be made available by the authors when the work it supports is made public.

1) Have any data been collected for this study already?

It's complicated. We have already collected some data but explain in Question 8 why readers may consider this a valid pre-registration nevertheless.

2) What's the main question being asked or hypothesis being tested in this study?

Hypothesis A: Increasing the perception that the U.S. Supreme Court is broken will result in a decrease in institutional support but will not impact felt obligation toward the Court.

Hypothesis B: Increasing the belief that the Supreme Court will decide cases counter to respondents' own political party will result in a decrease in institutional support but will not impact felt obligation toward the Court.

3) Describe the key dependent variable(s) specifying how they will be measured.

The DV of interest is legitimacy measured as both institutional support and felt obligation. Institutional support is measured using both the traditional battery of questions in the literature and an original battery of questions measuring support for court curbing measures. Felt obligation is captured using an original battery of questions measuring how obligated respondents feel toward the Court and the various dimensions of that obligation.

Traditional institutional support battery: 1) "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." 2) "The right of the Supreme Court to decide certain types of controversial issues should be reduced." 3) "The decisions of the U.S. Supreme Court favor some groups more than others." 4) "The U.S. Supreme Court gets too mixed up in politics." 5) "The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court's decision."

Court curbing: 1) Do you support or oppose plans to add additional justices to the U.S. Supreme Court? 2) Do you support or oppose plans to term limit Supreme Court justices to a single 18-year term? 3) Do you support or oppose plans to require justices to retire after they reach a certain age? 4) Do you support or oppose plans to make Supreme Court justices elected by the people? 5) Do you support or oppose this plan to enable Congress to overturn Supreme Court decisions? 6) Do you support or oppose this plan to require a unanimous Supreme Court when overturning a law passed by Congress?

Felt obligation: 1) "Even if a majority of citizens disagree with its decisions, people should still comply with decisions issued by the United States Supreme Court." 2) "Decisions by the United States Supreme Court should be considered final and authoritative." 3) "If necessary, people have an obligation to pressure politicians to comply with decisions by the United States Supreme Court." 4) "People should obey the Supreme Court even if it goes against what they think is right." 5) "People who openly advocate for ignoring a Supreme Court ruling are a threat to the rule of law in our country."

Response options for the traditional and felt obligation batteries are a six-point Likert scales ranging from "Strongly Agree" to "Strongly Disagree" with midpoint removed. The response options for the Court curbing battery are six-point Likert scales ranging from "Strongly Support" to "Strongly Oppose" with midpoint removed.

The primary DVs for the study will be constructed using an additive index after rescaling variables to range from zero to one. However, a PCA factor analysis will also be used to construct the dependent variables as a robustness test and the results included in an appendix.

4) How many and which conditions will participants be assigned to?

Upon consenting to participate in the study, respondents are asked their political party affiliation using the standard ANES two-question prompt. Thereafter, respondents are randomized into one of three study waves: a control wave, a "concern" wave, and a "broken" wave.

Those randomized to the "concern" wave are blocked based on their political partisanship and exposed to a hypothetical news article. This article conveys that a high-ranking co-partisan expressed concern about the Supreme Court's future decisions and that these decisions are likely to go against the respondents' party goals. Pure independents (who do not lean) randomized to this wave of the study are removed. After being exposed to the treatment, respondents progress to the dependent variables of interest. At the end of the study, those exposed to the "concern" wave are debriefed. Those randomized to the "broken" treatment are exposed to a page containing three real-world news headlines expressing, in various ways, that the Supreme Court is broken or in need of being fixed. All respondents randomized to this wave are exposed to the treatment (with no blocking). Finally, those randomized to the control wave progress directly to the dependent variables without being exposed to any treatment.

The study includes manipulation check questions after each treatment (where appropriate) and the control condition is also asked the manipulation check

questions. These questions will be used to ensure successful randomization across the treatment groups.

5) Specify exactly which analyses you will conduct to examine the main question/hypothesis.

To recover the average treatment effects, each dependent variable index will be regressed on treatment indicator variables using a standard OLS model. No control variables will be included in the model since the study is randomized. However, if the study balance table indicates that the randomization was unsuccessful on demographic questions, control variables will be included in the models to control for the failed randomization. Each model will be run twice: once with the dependent variable comprising the additive index and another time with the factored dependent variables. The null hypotheses will be rejected using the traditional cutoff for significance of $p < .05$.

6) Describe exactly how outliers will be defined and handled, and your precise rule(s) for excluding observations.

Respondents are automatically removed from the study if they fail a (pre-treatment) attention check question, do not consent to participate, or do not participate to having their answers scrutinized via an attention check. Further, respondents will be excluded if they deviate more than two standard deviations of the mean duration to complete the study. Respondents will also be excluded if they are not in the United States, are under the age of 18, or if they do not consent to the researchers using their data after being debriefed (for those assigned to the "concern" wave).

7) How many observations will be collected or what will determine sample size? No need to justify decision, but be precise about exactly how the number will be determined.

The study will remain open until 700 valid responses are collected. This number was selected due to a lack of resources and also an estimate of the number of respondents necessary in each treatment condition to allow adequate comparison.

8) Anything else you would like to pre-register? (e.g., secondary analyses, variables collected for exploratory purposes, unusual analyses planned?)

Data collection was ongoing when this study was preregistered. However, the data already collected have not been downloaded from Qualtrics nor have they been analyzed. In other words, this study is being preregistered while data collection is ongoing and while the researchers remain blind about what the data might or might not show.

In addition, the study contains several questions to create a battery of questions on how knowledgeable respondents are about the Supreme Court. Because of the strong correlation between Court-specific knowledge and legitimacy, this "knowledge" index will be included in the balance table to ensure successful randomization on knowledge across groups.

Finally, exploratory analysis will be conducted by modeling the legitimacy batteries on the manipulation check questions instead of treatment assignment indicators. This will allow a more precise measure of the effects of the mechanisms of interest on the dependent variable and alleviate any intent-to-treat effects from those who did not receive the treatments.

Figure C.1: Preregistration for Experiment 1

C.2 Lucid Experiment—Broken Model Output

Table C.1: Model Outputs from Experiment 1: Broken Wave

	(1)	(2)	(3)
	Diffuse Support	Court Curbing	Felt Obligation
Treated	-0.00202 (0.0178)	0.0137 (0.0199)	0.0123 (0.0178)
Control	0.507*** (0.0127)	0.430*** (0.0141)	0.634*** (0.0127)
N	495	495	495
R^2	0.000	0.001	0.001

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C.3 Lucid Experiment—Broken Model Output (Manipulation Check)

Table C.2: Model Outputs from Experiment 1: Broken Wave

	(1)	(2)	(3)
	Diffuse Support	Court Curbing	Felt Obligation
Perceived Brokenness	-0.392*** (0.0245)	-0.373*** (0.0293)	-0.256*** (0.0280)
Control	0.733*** (0.0160)	0.654*** (0.0191)	0.788*** (0.0182)
N	494	494	494
R^2	0.342	0.247	0.145

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C.4 Lucid Experiment—Hostile Model Output

Table C.3: Model Outputs from Experiment 1: Hostile Wave (GOP)

	(1)	(2)	(3)
	Diffuse Support	Court Curbing	Felt Obligation
Treated	-0.0388 (0.0280)	-0.00144 (0.0351)	-0.0262 (0.0273)
Control	0.602*** (0.0201)	0.543*** (0.0250)	0.681*** (0.0196)
N	179	177	179
R^2	0.011	0.000	0.005

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C.5 Cloud Research Experiment—Model Output

Table C.4: Model Outputs from Experiment 2

	(1)	(2)	(3)
	Diffuse Support	Court Curbing	Felt Obligation
Treated	0.0457** (0.0177)	0.0440* (0.0177)	0.0472** (0.0180)
Control	0.477*** (0.0124)	0.342*** (0.0124)	0.605*** (0.0127)
N	673	673	673
R^2	0.010	0.009	0.010

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C.6 Cloud Research Experiment—Het. Model

Table C.5: Model Outputs from Heterogeneous Effects Analysis

	(1)	(2)	(3)
	Diffuse Support	Court Curbing	Felt Obligation
Republican x Treated	0.0336 (0.0328)	0.0843** (0.0294)	0.0810* (0.0324)
Democrat x Control	-0.0854** (0.0308)	-0.164*** (0.0276)	0.00737 (0.0304)
Democrat x Treated	0.00525 (0.0437)	-0.0589 (0.0391)	-0.0402 (0.0432)
Republican x Control	0.529*** (0.0232)	0.414*** (0.0207)	0.611*** (0.0229)
N	474	474	474
R^2	0.035	0.186	0.018

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

References

- Armaly, Miles T. and Adam M Enders. 2021. “No home court advantage: The trump impeachment trial and attitudes toward the U.S. Supreme Court.” *Research & Politics* 8(2).
- Armaly, Miles T. and Elizabeth A. Lane. 2022. “Politicized Battles: How Vacancies and Partisanship Influence Support for the Supreme Court.” *American Politics Research Online* First.
- Associated Press. 2004. “Ipsos-Public Affairs Poll November 19-21, 2004.”.
- Badas, Alex. 2019. “The Applied Legitimacy Index: A New Approach to Measuring Judicial Legitimacy.” *Social Science Quarterly* 100(5):1848–1861.
- Bartels, Brandon L. and Christopher D. Johnson. 2013. “On the Ideological Foundations of Supreme Court Legitimacy in the Mass Public.” *American Journal of Political Science* 57(1):184–199.
- Bartels, Brandon L. and Christopher D. Johnston. 2020. *Curbing the Court: Why the Public Constrains Judicial Independence*. Cambridge University Press.
- Beatty, P. C. and Gordon B Willis. 2007. “The Practice of Cognitive Interviewing.” *Public Opinion Quarterly* 71(2):287–311.
URL: <https://academic.oup.com/poq/article-lookup/doi/10.1093/poq/nfm006>
- Bickel, Alexander M. 1986. *The Least Dangerous Branch*. 2nd ed. New Haven: Yale University Press.
- Boeije, Hennie and Gordon Willis. 2013. “The cognitive interviewing reporting framework (CIRF): Towards the harmonization of cognitive testing reports.” *Methodology* 9(3):87–95.
- Braman, Eileen. 2022. “Institutional Prospects: Exploring Perceptions of Past Benefits and Future Risks From Supreme Court Decisions and Support for Institutional Change.” *Political Psychology* .
- Calabresi, Steven G. and James Lindgren. 2006. “Term Limits for the Supreme Court: Life Tenure Reconsidered.” *Harvard Journal of Law and Public Policy* 29(3).

- Caldeira, Gregory A. 1987. "Public Opinion and The U.S. Supreme Court: FDR's Court-Packing Plan." *The American Political Science Review* 81(4):1139–1153.
- Caldeira, Gregory A. and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36(3):635–664.
- Caldeira, Gregory A. and James L. Gibson. 1995. "The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support." *American Political Science Review* 89(2):356–376.
- Carpini, Michael X Delli and Scott Keeter. 1997. *What Americans Know about Politics and Why It Matters*. Yale University Press.
- Carrington, Nathan T. and Claire Sigsworth. 2022. "Home-State Interest, Nationalism, and the Legitimacy of the International Criminal Court." *Law & Social Inquiry* 47(2):449–477.
- Carrington, Nathan T. and Colin French. 2021. "One Bad Apple Spoils the Bunch: Kavanaugh and Change in Institutional Support for the Supreme Court." *Social Science Quarterly* 102(4):1484–1495.
- Carrington, Nathan T. and Colin French. 2022. "Mechanisms, Measurements, and Manifestations in Evaluating the Effects of Confirmation Hearings on Supreme Court Legitimacy." *Social Science Quarterly*.
- CBS News and New York Times. 1987. "CBS News; New York Times May 11-14, 1987."
- Clark, Tom S. 2011. *The Limits of Judicial Independence*. Cambridge, UK: Cambridge University Press.
- Coppock, Alexander and Oliver A. McClellan. 2019. "Validating the demographic, political, psychological, and experimental results obtained from a new source of online survey respondents." *Research & Politics* 6(1).
- Democracy Corps. 2014. "Greenberg Quinlan Rosner Research."
- DNC. 2020. 2020 Democratic Party Platform. Technical report.
- Druckman, James N. 2001*a*. "On The Limits of Framing: Who Can Frame?" *The Journal of Politics* 63(4):1041–1066.
- Druckman, James N. 2001*b*. "The Implications of Framing Effects for Citizen Competence." *Political Behavior* 23(3):225–256.
- Easton, D. 1975. "A re-assessment of the concept of political support." *British Journal of Political Science* 5(4):435–457.
- Easton, David. 1965. *A Systems Analysis of Political Life*. New York, N.Y.: John Wiley & Sons, Inc.

- Ely, John Hart. 1980. *Democracy and distrust: a theory of judicial review*. Cambridge: Harvard University Press.
- Epps, Daniel. 2020. "The Supreme Court is Leaking. That's a Good Thing." *The Washington Post*.
- Epps, Daniel and Ganesh Sitaraman. 2018. "How to Save the Supreme Court."
URL: <https://www.vox.com/the-big-idea/2018/9/6/17827786/kavanaugh-vote-supreme-court-packing>
- Epps, Garrett. 2019. "The Supreme Court is Not Well. And the People Know It."
URL: <https://www.theatlantic.com/ideas/archive/2019/09/requiem-supreme-court/597238/>
- Fairleigh Dickson University. 2010. "PublicMind Poll Jan 24, 2010-Feb 6, 2010."
- Fox News. 2015. "Fox News Survey July 13-15, 2015."
- Fox News. 2019. "Fox News Poll April 14-16, 2019."
- French, John R.P. and Bertram Raven. 1959. The Bases of Social Power. In *Classics of Organization Theory*, ed. Jay M. Shafritz and J. Steven Ott. 5th ed. Harcourt College Publishers pp. 319–329.
- Gallup Organization. 1937*a*. "Gallup Organization Poll April 1-6, 1937."
- Gallup Organization. 1937*b*. "Gallup Organization Poll April 7-12, 1937."
- Gallup Organization. 1937*c*. "Gallup Organization Poll, April 7-12, 1937."
- Gallup Organization. 1937*d*. "Gallup Organization Poll, February 17-22, 1937."
- Gallup Organization. 1937*e*. "Gallup Organization Poll, February 24-March 1, 1937."
- Gallup Organization. 1937*f*. "Gallup Organization Poll March 12-17, 1937."
- Gallup Organization. 1937*g*. "Gallup Organization Poll March 17-22, 1937."
- Gallup Organization. 1937*h*. "Gallup Organization Poll March 24-29, 1937."
- Gallup Organization. 1937*i*. "Gallup Organization Poll March 3-8, 1937."
- Gallup Organization. 1938. "Gallup Organization Poll April 15-20, 1938."
- Gallup Organization. 1963. "Gallup Organization Poll May 23-28, 1963."
- Gallup Organization. 1965. "Gallup Organization Poll Dec 11-16, 1965."
- Gibson, James L. 2004. *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York, N.Y.: Russell Sage Foundation.

- Gibson, James L. 2011. "A Note of Caution About the Meaning of "The Supreme Court can usually be trusted..."." *Law & Courts: Newsletter of the Law & Courts Section of the American Political Science Association* 21(3):10–16.
- Gibson, James L. and Gregory A. Caldeira. 1992. "Blacks and the United States Supreme Court: Models of Diffuse Support." *The Journal of Politics* 54(4):1120–1145.
- Gibson, James L and Gregory A Caldeira. 1998. "Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis." *British Journal of Political Science* 28(1):63–91.
- Gibson, James L. and Gregory A. Caldeira. 2009a. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgements of the American People*. Princeton University Press.
- Gibson, James L. and Gregory A. Caldeira. 2009b. "Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court." *The Journal of Politics* 71(2):429–44.
- Gibson, James L., Gregory A. Caldeira and Lester Kenyatta Spence. 2003. "Measuring attitudes toward the United States Supreme Court." *American Journal of Political Science* 47(2):354–367. ISBN: 0092-5853.
- Gibson, James L., Gregory A. Caldeira and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *The American Political Science Review* 92(2):343–358.
- Gibson, James L. and Michael J. Nelson. 2014. "The Legitimacy of the US Supreme Court: Conventional Wisdoms and Recent Challenges Thereto." *Annual Review of Law and Social Science* 10(1):201–219.
- Gibson, James L. and Michael J. Nelson. 2015. "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59(1):162–174.
- Gibson, James L. and Michael Nelson. 2018. *Black and Blue: How African Americans Judge the U.S. Legal System*. New York, N.Y.: Oxford University Press.
- Glennon, Colin and Logan Strother. 2019. "The Maintenance of Institutional Legitimacy in Supreme Court Justices' Public Rhetoric." *Journal of Law and Courts* 7(2):241–261.
- Graber, Mark A. 1993. "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary." *Studies in American Political Development* 7(1):35–73.
- Hall, Matthew E.K. 2011. *The Nature of Supreme Court Power*. New York, N.Y.: Cambridge University Press.
- Hamilton, Alexander. 1788. "Federalist Paper 78."
- Hart, H L A. 1961. *The Concept of Law*. 3 ed. Oxford University Press.
- Hearst Corporation. 1986. "Hearst Corporation Poll October 20–November 2, 1986."

- Hicks, Raymond and Dustin Tingley. 2011. "Causal Mediation Analysis." *The Stata Journal* 11(4):605–619.
- Hitt, Matthew P. and Kathleen Searles. 2018. "Media Coverage and Public Approval of the U.S. Supreme Court." *Political Communication* 35(4):566–586.
- Imai, Kosuke, Luke Keele and Dustin Tingley. 2010. "A general approach to causal mediation analysis." *Psychological Methods* 15(4):309–334.
- Johnson, Tyler and Erica Socker. 2012. "Actions, Factions, and Interactions: Newsworthy Influences on Supreme Court Coverage*." *Social Science Quarterly* pp. n/a–n/a.
- Johnston, Christopher D. and Brandon L. Bartels. 2010. "Sensationalism and sobriety differential media exposure and attitudes toward american courts." *Public Opinion Quarterly* 74(2):260–285.
- Keck, Thomas M. 2018. "The Supreme Court Justices Control Whether Court-Packing Ever Happens." *The Washington Post*.
- Keck, Thomas M. 2022. Court-Packing and Democratic Erosion. In *Democratic Resilience: Can the United States Withstand Rising Polarization?*, ed. Suzanne Mettler, Robert Lieberman and Ken Roberts. Cambridge University Press.
- Keele, Luke, Dustin Tingley and Teppei Yamamoto. 2015. "IDENTIFYING MECHANISMS BEHIND POLICY INTERVENTIONS VIA CAUSAL MEDIATION ANALYSIS." *Journal of Policy Analysis and Management* 34(4):937–963.
- Krewson, Christopher N. and Jean R. Schroedel. 2020. "Public Views of the U.S. Supreme Court in the Aftermath of the Kavanaugh Confirmation." *Social Science Quarterly* 101(4):1430–1441.
- Krosnick, Jon A. and Donald R. Kinder. 1990. "Altering the Foundations of Support for the President Through Priming." *American Political Science Review* 84(2):497–512.
- Lenzner, Timo and Cornelia E. Neuert. 2017. "Pretesting Survey Questions Via Web Probing – Does it Produce Similar Results to Face-to-Face Cognitive Interviewing?" *Survey Practice* 10(4):1–11.
URL: <https://surveypractice.scholasticahq.com/article/2768-pretesting-survey-questions-via-web-probing-does-it-produce-similar-results-to-face-to-face-cognitive-interviewing>
- Levy, Pema. 2019. "How Court-Packing Went From a Fringe Idea to a Serious Democratic Proposal."
- Litt, David. 2020. "How to Fix the Supreme Court: It Doesn't Require a Constitutional Amendment."
URL: <https://www.bostonglobe.com/2020/07/16/opinion/how-fix-supreme-court/?event=event25>
- Los Angeles Times. 1991. "Los Angeles Times Poll, June 28, 1991-June 30, 1991."

- Lupia, Arthur. 1994. "Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections." *American Political Science Review* 88(1):63–76.
- Lupia, Arthur. 2015. *Uninformed: Why People Seem to Know So Little About Politics and What We Can Do About It*. Oxford: Oxford University Press.
- Mangan, Dan. 2016. "Trump: I'll appoint Supreme Court justices to overturn Roe v. Wade abortion case.".
- Marquette University Law School. 2019. "Supreme Court Poll - Sept 3-11, 2019.".
- Marquette University Law School. 2020. Supreme Court Poll - Sept 8-15, 2020. Technical report Marquette University Law School.
URL: <https://law.marquette.edu/poll/wp-content/uploads/2020/09/MLSPSCOTUS02Toplines.html>q25.
- Mason, Lilliana. 2018. *Uncivil Agreement: How Politics Became our Identity*. Chicago, Illinois: University of Chicago Press.
- Mayhew, David R. 2004. *Congress: the electoral connection*. Second edi ed. New Haven: Yale University Press.
- McCammon, Sarah. 2021. "'Trigger laws' are abortion bans ready to go if 'Roe v. Wade' is overturned.".
URL: <https://www.npr.org/2021/12/06/1061896291/trigger-laws-are-abortion-bans-ready-to-go-if-roe-v-wade-is-overturned>
- Meitinger, Katharina and Dorothee Behr. 2016. "Comparing Cognitive Interviewing and Online Probing: Do They Find Similar Results?" *Field Methods* 28(4):363–380.
- Mercer, Jonathan. 2005. "Prospect theory and political science." *Annual Review of Political Science* 8:1–21.
- Millhiser, Ian. 2019. "Let's Think About Court-Packing." *Democracy: A Journal of Ideas* 51(Winter).
- Millhiser, Ian. 2021. "The Supreme Court's coming war with Joe Biden, Explained.".
- Miratrix, Luke W., Jasjeet S. Sekhon, Alexander G. Theodoridis and Luis F. Campos. 2018. "Worth Weighting? How to Think About and Use Weights in Survey Experiments." *Political Analysis* 26(3):275–291.
- Murphy, Walter F and Joseph Tanenhaus. 1968. "Public Opinion and the United States Supreme Court: Mapping of Some Prerequisites for Court Legitimation of Regime Changes." *Law & Society Review* 2(3):357–384.
- Neier, Aryeh. 1979. *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom*. New York, N.Y.: E.P. Dutton.

- Nelson, Michael J. and James L. Gibson. 2018. U.S. Supreme Court Legitimacy: Unanswered Questions and an Agenda for Future Research. In *Routledge Handbook of Judicial Behavior*, ed. Robert M. Howard and Kirk A. Randazzo. New York, N.Y.: Routledge pp. 132–150.
- Nelson, Michael J. and James L. Gibson. 2019. “How Does Hyperpoliticized Rhetoric Affect the US Supreme Court’s Legitimacy?” *The Journal of Politics* 81(4):1512–1516.
- Nelson, Michael J. and James L. Gibson. 2020. “Measuring Subjective Ideological Disagreement with the US Supreme Court.” *Journal of Law and Courts* (Online Version).
- Nelson, Thomas E., Rosalee A. Clausen and Zoe M. Oxley. 1997. “Media Framing of a Civil Liberties Conflict and Its Effect on Tolerance.” *American Political Science Review* 91(3):567–583.
- Neuert, Cornelia E. and Timo Lenzner. 2019. “Effects of the Number of Open-Ended Probing Questions on Response Quality in Cognitive Online Pretests.” *Social Science Computer Review* .
URL: <http://journals.sagepub.com/doi/10.1177/0894439319866397>
- Opinion Dynamics. 2005. “Opinion Dynamics Poll July 12-13, 2005.”.
- Page, Benjamin I. and Robert Y. Shapiro. 1992. *The Rational Public: Fifty Years of Trends in Americans’ Policy Preferences*. Chicago, IL: University of Chicago Press.
- Peyton, Kyle, Gregory A Huber and Alexander Coppock. 2020. “The Generalizability of Online Experiments Conducted During The COVID-19 Pandemic.”.
URL: [10.31235/osf.io/s45yg](https://osf.io/s45yg)
- Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. Chicago, IL: University of Chicago Press.
- Samuels, Brett. 2020. “Trump Says ‘we live’ with SCOTUS Decision on LGBTQ Worker Rights.”.
URL: <https://thehill.com/homenews/administration/502812-trump-says-we-live-with-scotus-decision-on-lgbtq-worker-rights>
- Shapiro, Martin. 1981. *Courts: A Comparative and Political Analysis*. Chicago, Illinois: University of Chicago Press.
- Shaw, Adam. 2020. “Trump Calls for ‘New Justices’ on Supreme Court, as Conservatives Rage at Roberts.”.
URL: <https://www.foxnews.com/politics/trump-justices-supreme-court-conservatives-roberts>
- Shesol, Jeff. 2013. “Column: Not ‘Court -Packing,’ GOP’s Aim is ‘Court-Shrinking’.”.
- Stimson, James, Michael MacKuen and Robert S. Erickson. 2002. *The Macropolity*. Cambridge, MA: Cambridge University Press.

- Strother, Logan. 2017. "How Expected Political and Legal Impact Drive Media Coverage of Supreme Court Cases." *Political Communication* 34(4):571–589.
- Strum, Philippa. 1999. *When the Nazis Came to Skokie: Freedom for Speech We Hate*. Lawrence, KS: University Press of Kansas.
- Tanenhaus, Joseph and Walter F. Murphy. 1981. "Patterns of Public Support for the Supreme Court: a Panel Study." *The Journal of Politics* 43(1):24–39.
- Totenberg, Nina. 2016. "If Clinton Wins, Republicans Suggest Shrinking Size of Supreme Court." *NPR Politics* .
- Totenberg, Nina. 2019. "Justice Ginsburg: 'I Am Very Much Alive'." *NPR Politics* .
- Trinkner, Rick and Tom R. Tyler. 2016. "Legal Socialization: Coercion versus Consent in an Era of Mistrust." *Annual Review of Law and Social Science* 12:417–439.
- Tyler, Tom R. 1997. "The Psychology of Legitimacy: A Relational Perspective on Voluntary Defence To Authorities." *Personality and Social Psychology Review* 1(4):323–345.
- Tyler, Tom R. 2001. A Psychological Perspective on the Legitimacy of Institutions and Authorities. In *The Psychology of Legitimacy*, ed. John T. Jost and Brenda Major. Cambridge, MA: Cambridge University Press chapter 17, pp. 416–436.
- Tyler, Tom R. 2006a. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57(1):375–400.
- Tyler, Tom R. 2006b. *Why People Obey the Law*. Princeton, N.J.: Princeton University Press.
- Tyler, Tom R. and Jonathan Jackson. 2014. "Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation, and engagement." *Psychology, Public Policy, and Law* 20(1):78–95.
- Tyler, Tom R. and Rick Trinkner. 2017. *Why Children Follow Rules*. New York, N.Y.: Oxford University Press.
- Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45(2):346.
- Voters Study Group. 2019. "VIEWS OF THE ELECTORATE RESEARCH SURVEY." *Democracy Fund Voter Study Group* .
- Weber, Max. 1947. *The Theory of Social and Economic Organizations*. New York: The Free Press and Falcon's Wing Press.
- Whitehouse, Sheldon, Mazie Hirono, Richard Blumenthal, Richard Durbin and Kirsten Gillibrand. 2019. "Brief of Senators Sheldon Whitehouse, Mazie Hirono, Richard Blumenthal, Richard Durbin, and Kirsten Gillibrand as Amici Curiae in Support of Respondents."

- Whittington, Keith E. 2007. *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*. Princeton, New Jersey: Princeton University Press.
- Willis, Gordon B. 2005. *Cognitive Interviewing: A Tool for Improving Questionnaire Design*. Thousand Oaks, California: Sage Publications, Inc.
- Winston Group. 2019. “Winning the Issues Poll March 30-31, 2019.”.
- Zaller, John and Stanley Feldman. 1992. “A Simple Theory of the Survey Response : Answering Questions versus Revealing Preferences.” *American Journal of Political Science* 36(3):579–616.
- Zilis, Michael A. 2018. “Minority Groups and Judicial Legitimacy: Group Affect and the Incentives for Judicial Responsiveness.” *Political Research Quarterly* 71(2):270–283.
- Zilis, Michael A. 2021. *The Rights Paradox*. Cambridge University Press.

Nathan T. Carrington

Syracuse University
Department of Political Science
100 Eggers Hall
Syracuse, NY 13244

Tel: 618.521.0040
ntcarrin@syr.edu
nathantcarrington.com

Education

- PH.D., POLITICAL SCIENCE July, 2022
SYRACUSE UNIVERSITY
Committee: Tom Keck, Keith Bybee, Shana Gadarian, Emily Thorson, and Michael Nelson
- M.A., POLITICAL SCIENCE May, 2018
SYRACUSE UNIVERSITY
Fields: American Politics, Law and Courts
- SUMMER INSTITUTE IN POLITICAL PSYCHOLOGY August, 2017
STANFORD UNIVERSITY
- B.S. POLITICAL SCIENCE May, 2016
SOUTHEAST MISSOURI STATE UNIVERSITY
Honors: Magna Cum Laude, Ronald E. McNair Scholar

Research & Teaching Interests

LAW AND COURTS

Judicial Process, Law and Society, Constitutional Law, Freedom of Speech

AMERICAN POLITICS

Introduction to American Politics, Political Psychology, Public Opinion, Surveys & Experiments

Peer-Reviewed Publications

5. Carrington, Nathan T., Thomas Keck, and Claire Sigsworth. Forthcoming. "Minority Rights, Governing Regimes, or Secular Elites: Who Benefits from the Protection of Religious and Anti-Religious Speech by the U.S. Supreme Court and European Court of Human Rights?" *Journal of Law and Courts*.

4. Liu, Dongshu and Nathan T. Carrington. 2022. “Minority versus Minority: Partisanship and Inter-Group Competitions among Asian Americans.” *American Politics Research*, 50(2): 265-276. [\[Link to Article.\]](#)

Winner of the 2018 Stonecash Award from the Syracuse University Dept. of Political Science for the best graduate student paper written in the last year on American politics.

3. Carrington, Nathan T. and Claire Sigsworth. 2022. “Home-State Interest, Nationalism, and the Legitimacy of the International Criminal Court.” *Law & Social Inquiry*, 47(2): 449-477. [\[Link to Article.\]](#)

Winner of the 2021 APSA Law & Courts Section Award for Best Paper by a Graduate Student.

2. Carrington, Nathan T. and Colin French. 2021. “One Bad Apple Spoils the Bunch: Kavanaugh and Change in Institutional Support for the Supreme Court.” *Social Science Quarterly*, 102(4): 1484-1495. [\[Link to Article.\]](#)

Winner of the 2021 Stonecash Award from the Syracuse University Dept. of Political Science for the best graduate student paper written in the last year on American politics.

1. Carrington, Nathan T. and Logan Strother. 2020. “Who Thinks Removing Confederate Icons Violates Free Speech?” *Politics, Groups, and Identities*, 9(1): 208-218. [\[Link to article.\]](#)

Other Academic Writing

2. Carrington, Nathan T. and Colin French. 2022. “Mechanisms, Measurements, and Manifestations in Evaluating the Effects of Confirmation Hearings on Supreme Court Legitimacy.” *Social Science Quarterly*.
1. Strother, Logan and Nathan T. Carrington. 2020. “Free Speech and Confederate Symbols” in *Free Speech Theories: Understanding the Controversies*, eds. Helen J. Knowles and Brandon T. Metroka. New York: Peter Lang.

Public Writing

5. Carrington, Nathan T. and Logan Strother. May 13, 2022. [“Leaks don’t hurt trust in the Supreme Court. Unpopular decision do.”](#) Monkey Cage at *The Washington Post*.
4. Carrington, Nathan T. and Logan Strother. February 4, 2022. [“Gorsuch is scheduled to speak to the right-wing Federalist Society. Americans find such speeches inappropriate.”](#) Monkey Cage at *The Washington Post*.

3. Carrington, Nathan T. and Logan Strother. June 15, 2020. “**Legally, Confederate statues in public spaces aren’t a form of free speech.**” Monkey Cage at *The Washington Post*. Reprinted by **Newsday**.
2. Carrington, Nathan T. and Logan Strother. June 15, 2020. “**Abstract Appeals to Free Speech Won’t Solve the Debate Surrounding Confederate Monuments—It’s a Political Question.**” The London School of Economics American Politics and Policy Blog.
1. Sigsworth, Claire and Nathan T. Carrington. September 20, 2019. “**The Brexit battle has reached the U.K. Supreme Court. Here’s what you need to know.**” Monkey Cage at *The Washington Post*. Updated, expanded, and republished on September 24, 2019. Reprinted by *The Peninsula Qatar* on September 25, 2019.

Select Working Papers

1. “Plugging the Pipe?: Evaluating The (Null) Effects of Media Leaks on Supreme Court Legitimacy” (with Logan Strother; Under Review)
2. “Extremist Speech, Militant Democracy, and American Exceptionalism” (with Tom Keck, Claire Sigsworth, and Stephan Stohler; Under Review)
3. “Evaluating Supreme Court Legitimacy in an Era of Court Reform”

Grants, Honors, and Awards

BEST GRADUATE STUDENT PAPER, APSA LAW & COURTS SECTION (COAUTHORED)
2021

STONECASH AWARD — BEST PAPER ON AMERICAN POLITICS
DEPT. OF POLITICAL SCIENCE AT SYRACUSE UNIVERSITY (COAUTHORED) 2018, 2021

RONALD E. MCNAIR SCHOLARS PROGRAM 2014-2016

External Funding

HUMANE STUDIES FELLOWSHIP
Institute for Humane Studies 2019, 2020
\$4,000.00 for 2020; \$2,000.00 for 2019

HAYEK FUNDING FOR SCHOLARS
Institute for Humane Studies 2019, 2020 (x2)

PH.D. SCHOLARSHIP
Institute for Humane Studies (\$1,500.00) 2017

Internal Funding

RESEARCH FLASH GRANT Dept. of Political Science, Syracuse University	2021
GRADUATE STUDENT RESEARCH MINI GRANT Campbell Public Affairs Institute, Syracuse University	2019 (x2), 2020
ROSCOE MARTIN DISSERTATION RESEARCH FUNDING Maxwell School of Citizenship and Public Affairs (\$1,000)	2021, 2020
SAWYER SUMMER FELLOWSHIP Dept. of Political Science, Syracuse University	2018, 2019
KISSEL FUND FOR THE STUDY OF CIVIL LIBERTIES Dept. of Political Science, Syracuse University	2016, 2019, 2020, 2021
SUMMER INSTITUTE IN POLITICAL PSYCHOLOGY SCHOLARSHIP Dept. of Political Science, Syracuse University (\$4,500.00)	2017
SUMMER INSTITUTE IN POLITICAL PSYCHOLOGY GRANT Moynihan Institute, Syracuse University(\$1,500.00)	2017

Research Presentations

Syracuse University Graduate Student Brown Bag Research Workshop	2021
Annual Meeting of the Midwest Political Science Association	2021
Annual Meeting of the Southern Political Science Association	2021
Annual Meeting of the Law and Society Association	2019, 2020 ¹ , 2021
Annual Meeting of the International Society of Political Psychology	2019
Institute for Humane Studies - Graduate Research Workshop	2019
Law and Courts Research Workshop, Syracuse University	2019 (x2)
Midwest Regional McNair Conference, Denton Texas	2016
Annual Meeting of the Great Plains Political Science Association, Kansas City, Missouri	2015

Teaching and Mentorship Experience

Syracuse University

Undergraduate Thesis Committee Member	Spring, 2022
---------------------------------------	--------------

¹Non-Presenting Co-Author

PSC691: American Politics Seminar <i>Guest Lecturer — Courts</i>	Spring, 2022
PSC121: American National Government <i>Instructor of Record</i> (Online due to COVID-19)	Summer, 2021
PSC300: Free Speech Theory and Law <i>Instructor of Record</i> (Online due to COVID-19)	January, 2021
PSC300: Free Speech Law <i>Instructor of Record</i> (Online due to COVID-19)	Summer, 2020
PSC121: American National Government <i>Teaching Assistant to Dr. Chris Faricy</i>	Fall, 2017
PSC 304: The Judicial Process <i>Teaching Assistant to Mr. Rick Trunfio</i>	Spring, 2017
PSC 324: Constitutional Law <i>Teaching Assistant to Dr. Thomas M. Keck</i>	Fall, 2016

Research Experience

Research Associate, Campbell Public Affairs Institute	2017–Present
Research Assistant to Professor Thomas M. Keck Syracuse University	2016–Present
Research Assistant to Professor Shana Kushner Gadarian Syracuse University	Fall 2018
Research Assistant to Professor Jeremy Walling Southeast Missouri State University	Summer 2014

SEMINAR, SYMPOSIA, AND WORKSHOP PARTICIPATION

Exploring Free Speech in an Age of Polarization — <i>Institute for Humane Studies</i>	2022
Free Speech, Free Press, and Misinformation — <i>Institute for Humane Studies</i>	2020
Hayek's Social and Political Thought — <i>Institute for Humane Studies</i>	2017
Law, Legislation, and Liberty — <i>Center for Free Enterprise at Florida Southern College</i>	2015

DEPARTMENT SERVICE

First-Year Ph.D. Student Mentor	2020 to Present
Workshop Panelist, Teaching During and After a Pandemic	Sept. 2021

American Politics Search Committee (Graduate Student Representative)	2018-2019
Campbell Public Affairs Institute Advisory Board	2018-2020
Graduate Student Brown Bag Research Workshop Coordinator	2019-2020
Post-Comprehensive Exam Graduate Student Representative	2018–2019
Pre-Comprehensive Exam Graduate Student Representative	2017–2018
Political Science Research Workshop (PSRW) Discussant	2017, 2019, 2020, 2021

UNIVERSITY SERVICE

Judge for University’s Undergraduate Research Celebration	Spring, 2022
Chancellor’s Citation for Excellence Committee Member	2021-2022
Consultant for Debate Hosted by the Delta Sigma Theta Sorority	February, 2019
McNair Scholars Recruitment Panel Organized by Grad School	2018

DISCIPLINE SERVICE

Anonymous reviewer: *American Journal of Political Science*, *Journal of Law and Courts*, *Public Opinion Quarterly*, *Political Research Quarterly*

SPECIALIZED SOFTWARE

L^AT_EX, Stata, Qualtrics, Slack, R

Updated on June 28, 2022.