

**Too Liberal, Too Conservative, or About Right?
The Implications of Ideological Dissatisfaction for
Supreme Court Legitimacy***

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Version 70, November 5, 2015

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* This is a revised version of a paper delivered at the Annual Meeting of the American Political Science Association, San Francisco, CA, September 3-6, 2015. We greatly appreciate the support of Steve Smith and the Weidenbaum Center for this research. One survey on which this article is based was made possible by a grant from TESS: Time-Sharing Experiments for the Social Sciences (NSF Grant 0818839, Jeremy Freese and James Druckman, Principal Investigators), to whom we are much indebted. We also acknowledge the assistance of Patrick Tucker in preparing these data for analysis, and we appreciate the comments of Pamela Corley, Deborah Beim, Markus Neumann, Jeffrey Ziegler, and Miguel Maria Pereira on an earlier version of this paper.

Abstract

Scholars have rediscovered the theory of institutional legitimacy, with a vengeance. This reinvigorated attention has produced some vexing controversies, none of which is more important than that of whether the Supreme Court's legitimacy depends upon satisfying the ideological expectations of the American people. That debate has recently been enlarged by hypotheses about whether ideological dissatisfaction's influence depends upon citizens' beliefs about legal realism and processes of decision-making. Unfortunately, serious measurement issues cloud the literature. Here, we reconsider these questions using a nationally representative sample. We first show that ideological dissatisfaction has practically no impact on legitimacy, irrespective of how dissatisfaction is measured. We then test hypotheses from Positivity Theory, especially the hypothesized conditional effects of citizens' beliefs about judicial decision-making, politicization, and ideological dissatisfaction on legitimacy. We conclude that the influence of ideological dissatisfaction has been overstated; greater threats to legitimacy lie in beliefs that judges are just ordinary politicians.

Scholarly interest in the legitimacy of the U.S. Supreme Court has exploded in recent years. With this renewed attention, however, a major dispute has emerged: whether citizens’ perceived levels of ideological disagreement with the Court’s decisions affect the amount of legitimacy they ascribe to the institution. Briefly, Bartels and Johnston (2013) argue that people’s ideological dissatisfaction with the Supreme Court is strongly and negatively correlated with individual-level judgments of the Court’s legitimacy, while Gibson and Nelson (2015a), also using a nationally-representative sample, find that dissatisfaction has only a negligible independent effect on support for the Court.¹ Using an opt-in, unrepresentative sample, Christenson and Glick (2015) support Bartels and Johnston’s conclusion, discovering that a single salient decision—in this case, the Supreme Court’s opinion on the Affordable Care Act—is enough to move judgments of the Court’s legitimacy.

How this dispute gets resolved is of enormous theoretical and normative importance. Classical legitimacy theory² holds that public support acts as a “reservoir of goodwill” that allows an institution to make unpopular decisions without public reprisal (Caldeira and Gibson 1992). If ideological dissatisfaction and legitimacy are as strongly linked as Bartels and Johnston and Christenson and Glick maintain, then legitimacy theory may need serious revision. More tangibly, a Court whose legitimacy is so strongly dependent upon its policy outputs would be wise to become cautious about issuing unpopular decisions,³ which might impair the judiciary’s

¹ For a sampling of what has become a formidable body of work see Bartels and Johnston (2015), Nicholson and Hansford (2014), Malhotra and Jessee (2014), and Ura (2014). For

² For an exposition of classical legitimacy theory, see Gibson and Nelson (2014) and Tyler (2006).

³ Chief Justice Roberts may have acted strategically out of concern for the Court’s

ability to serve as an equal and independent partner in governance.⁴

The quality of the existing empirical evidence is not, however, commensurate with the importance of the research question. This is in part because the measures of the Court's perceived ideological location are so different across the various studies as to be non-comparable. Moreover, some challenge the validity of the Bartels and Johnston/Christenson and Glick measure, and, not surprisingly, others challenge the validity of the Gibson and Nelson measure. Thus, two explanations (at least) of the differences of their findings exist: truth and differences in the measures used.

Christenson and Glick introduce two important innovations in their consideration of the same research question. First, they develop a “new and improved” measure of the Court's position. Perhaps more importantly, they introduce the concept of “legalistic court priors” as a test of the Positivity Theory that undergirds all of this research (e.g., Gibson and Caldeira 2009). Unfortunately, however, their measure of these priors raises serious validity concerns, complicating the interpretation of their findings. Worse still, theirs is a highly unrepresentative sample of opt-in respondents – of the exact nature condemned by the AAPOR Task Force (Baker et al. 2010) – so, even if internal validity concerns were set aside, the external validity of their findings is also suspect. Observers of this scientific debate could be easily forgiven were they

legitimacy during the opinion-writing process for *National Federation of Independent Business v. Sebelius*, changing his vote from one to strike down the Affordable Care Act to one preserving the constitutionality of the legislation (Crawford 2012). Clearly, legitimacy has both practical and scholarly importance.

⁴ See Gibson and Nelson (2015b) on the normative question of whether it is desirable or not for the U.S. Supreme Court to have a large store of institutional legitimacy.

completely confused about what conclusions to draw from this important theoretical and empirical literature.

Our purposes in this article are four: (1) We present new evidence on the linkage between ideological dissatisfaction with the Court and institutional support. This evidence is based on a nationally representative sample, so external validity concerns are mitigated. (2) In our analysis of the linkage, we demonstrate that the same conclusions are generated irrespective of which measures are used. (3) Because our findings diverge from those of Bartels and Johnston and Christenson and Glick, our third goal is to provide an explanation of why the various datasets produce different conclusions. We focus in particular on the difference between diffuse and specific support. (4) Finally, we measure “legalistic attitudes” with more valid and reliable indicators, providing much stronger tests of the positivity hypotheses advocated by Christenson and Glick. Not unexpectedly, we reach entirely different conclusions about the role played by these expectations.

In the end, our goal is to advance this substantive debate over legitimacy and positivity by neutralizing most of the crucial issues of both internal and external validity that have heretofore made the various findings of limited probative value. Our research reconciles many of the literature’s conflicting claims, showing that ideological disagreement plays a role in the legitimacy judgments of some of the American people, although that segment of the population is a small one. More importantly, we advance our understanding of legitimacy by drawing attention to the deleterious effects of perceived judicial politicization, a factor that we show plays an outsized role in the legitimacy judgments of the American people. Taken together, our findings seem to support rather than challenge Positivity Theory.

Summarizing the Earlier Findings

All agree that the conventional wisdom documents that institutional support for the U.S. Supreme Court (diffuse support) is only weakly related to evaluations of the outputs of the institutions (specific support).⁵ The relationship between evaluations is “sticky” in the sense that diffuse support does not respond much to dissatisfaction with individual decisions – as in *Bush v. Gore* (Gibson, Caldeira, and Spence 2003).

The revisionist view is that Court support does respond to decisional dissatisfaction, mainly through a two-step process: (1) citizens evaluate the decision, and then (2) recalculate the ideological distance between themselves and the Court, as revealed by its new decision. For example, citizens see that the Supreme Court allowed the ACA to stand. Because government-sponsored health care is a liberal position, citizens update their views and understand the Court to be relatively liberal. They then re-measure the distance between themselves and their updated perception of the Court. If the ideological distance between the citizen and the Court increases, then support for the institution declines. Both Bartels and Johnston and Christenson and Glick advocate this view of how citizens alter their attitudes toward the Supreme Court.

Gibson and Nelson are not so certain. Finding little relationship between performance evaluations and institutional support, they conclude that “[t]he legitimacy of the Court is not overly dependent upon perceptions and evaluations of its performance ... institutional support is

⁵ Across the twenty surveys included in their analysis, Gibson, Caldeira, and Baird (1998, 352, Table 7) found that the average correlation of the two types of support is .33 (the correlation for the U.S. is .46).

primarily grounded in more fundamental and obdurate democratic values, and is therefore resistant to change” (2015a, 163). This view is quite consistent with the notion of a “reservoir of goodwill” – existing support for the Court is not dislodged much by individual judicial decisions, even if sustained dissatisfaction can undermine support (as Gibson and Caldeira (1992) report happened with African Americans).

We acknowledge, of course, that ideological dissatisfaction is simply one component of specific support. Specific support refers to approval of the performance of the institution; policy outputs are obviously a significant part of such evaluations, although there are other aspects of performance that may be important as well.

Conventional wisdom holds that the relationship between specific and diffuse support is a gradual, incremental one. The Court’s diffuse support may suffer once some accumulated threshold level of dissatisfaction is reached. Conversely, specific support can be transformed into obdurate diffuse support through a string of pleasing policy decisions; such change is gradual, underscoring the varied and varying relationships often observed between indicators of the two concepts (Gibson, Caldeira, and Baird 1998; Baird 2001). The revisionists’ findings seem to fundamentally challenge this understanding of how performance evaluations and institutional support are connected.

Crucial to assessing the different discoveries of the three sets of authors is the measures used to calculate ideological dissatisfaction with the Court. Unfortunately, the conclusions drawn by these scholars are closely associated with the survey question they use to measure the ideological location of the Supreme Court. Bartels and Johnston (2013) and Christenson and Glick (2015) both rely on the following question: “Judging by its recent decisions, do you think

the Supreme Court is generally liberal, generally conservative, or *is it making decisions more on a case-by-case basis?*” (emphasis added).⁶ Gibson and Nelson (2015a) criticize this question, arguing that the measure creates a heterogeneous middle category, housing respondents who believe that the Court is legalistic rather than ideological (and therefore decides cases on a “case-by-case” basis), those who believe that the Court’s policymaking is ideological but moderate, as well as those who simply do not know where the Court stands. Gibson and Nelson (2015a) drew their measure from the following question: “Thinking about the United States Supreme Court in Washington and the decisions that it has been making lately, would you say that the Supreme Court is a very liberal court, a somewhat liberal court, a somewhat conservative court, or a very conservative court.” This question has also come under fire for its omission of a middle category, the lack of which fails to provide respondents a stated option for “moderate” policymaking (see Bartels, Johnston, and Mark 2015, 777, footnote 13).

Given that those scholars who have found a strong linkage between perceived ideological location and legitimacy have relied upon the “case-by-case” question while those who have failed to find such a strong connection have relied upon a question that does not offer respondents a middle category, determining the best way to measure the perceived ideological position of the Supreme Court is of paramount substantive importance. That is one of the purposes of our research.

⁶ As we note below, Christenson and Glick use a follow-up question to convert the three-point scale to a seven-point measure. We consider the implications of this for our empirical analysis below.

Adding “Legalistic Priors” to the Mix

An important extension of the Christenson and Glick research involves the analysis of “Legalistic Court Priors.” As they explain: “A central tenet of the prevailing positivity theory model (e.g., Gibson, Caldeira, and Spence 2003; Gibson and Caldeira 2009, 2011) is that the fact that people view the Court legalistically insulates legitimacy from ideological updating effects” (Christenson and Glick 2015, 412-413). Because some people do not view the Court in ideological terms – instead, thinking of the institution as “legalistic” and removed from ordinary politics – any ideological judgments of the Court those people may form are largely irrelevant to their decision to support the institution.⁷ At the same time, however, those thinking of the Court as primarily a “legalistic” institution are hypothesized to be influenced more by information regarding strategic, non-legalistic, behavior at the Court, as represented by the decision of Chief Justice Roberts to change his vote in the ACA decision (the “Roberts Flip”). More specifically, those with legalistic expectations should be off-put when learning of the Roberts Flip and, as a consequence, should decrease their support for the Supreme Court (presumably because the behavior of Roberts somehow rubs off on the institution itself).⁸ Thus, according to Christenson and Glick, those viewing the Court as a legalistic institution should be distinctive in that (1) their ideological assessments are largely irrelevant to their institutional support, but (2) behaviors such as the Roberts Flip should undermine support.

⁷ Several studies have investigated whether the American people can be thought of a “legal realists.” See, for examples, Gibson and Caldeira (2011), Cann and Yates (2014), and Scheb and Lyons (2000).

⁸ Gibson and Caldeira (2009) present evidence on this point, finding that views of a judicial nominee affect views toward the institution. See also Woodson (2015).

Unfortunately, Christenson and Glick's analysis fails to consistently support their hypotheses concerning the role of "Legalistic Court Priors." They hypothesize that the effect of the Roberts Flip on diffuse support should vary based upon whether one holds legalistic views. However, they find that the effect of the Flip did not depend on whether one held legalistic views or not. Apparently, those with legalistic views of the Court were not particularly or distinctively offended by overt politicization, as embodied in Roberts's behavior.

At the same time, their analysis is said to support the hypothesis that these legalistic priors affect the relationship between ideological distance and change in institutional support, although not in the way originally formulated. Their hypothesis is that "the legitimacy assessments of people who initially view the Court as legalistic will be relatively *less* affected by new information about the Court's ideology" (Christenson and Glick 2015, 414, emphasis added), presumably because ideology is thought to be irrelevant. What Christenson and Glick find is that those with legalistic priors are actually considerably *more* influenced by their reassessments of the Court's ideological position. Christenson and Glick therefore argue that their analysis raises doubts about the Positivity Theory of Gibson and his colleagues.

Why are people with legalistic expectations more sensitive to change in the Court's ideological position? Unfortunately, the authors offer no substantive explanation for this finding.

One way to make sense of these findings would be to suggest that the empirical predictions were actually normative expectations, that learning of Roberts's strategic behavior somehow did not violate these expectations, at least insofar as the Court was concerned.⁹ On the

⁹ Strategic behavior has been found to be objectionable because it is self-interested (e.g.,

other hand, being able to derive enough information to change one's perceptions of the ideological location of the Court was tantamount to concluding that the Court was basing its decision on ideology and politics, thus violating normative expectations and resulting in decreased support for the institution. Still, one might very well have thought that insincere strategic behavior would have a greater influence than (apparently) sincere ideological decision making.

Given these confusing and unexpected findings, it is perhaps useful to revisit the study's approach to measuring "attitudes toward Court legality (the legalistic priors)." Christenson and Glick use a question asking: "Which of these [factors] do you think will play the most important role in the Supreme Court Justices' decisions on the health care reform case?" According to the authors, those who selected "the Justices' analysis and interpretation of the law" [in contrast to other options, such as the party of the president who appointed the justice or national politics] are assumed to view the Court as a primarily legal institution and to have high 'judiciousness'" (Christenson and Glick 2015, 414, citing Gibson and Caldeira 2009).

This is obviously a difficult question for people to answer, in part because it asks them to make a prediction about the future, before the Court had ruled, in part because it ignores any individual differences among the justices in how they make their decisions, and in part because it requires a very high level of information about the decision-making processes within the Court. Further, ranking questions such as this have a variety of known limitations (e.g., how strong is

Hibbing and Theiss-Morse 2001). In this instance, Roberts's behavior served the interests of the institution, not necessarily his own personal interests.

the effect of the criterion rated as “most influential”?). And, obviously, as a single-item indicator, no evidence of the validity or reliability of this operationalization is available.

Perhaps most important, this is an empirical measure rather than a normative one – it asks the respondents about what *will happen* in the ACA decision, not what *should happen*.

Nonetheless, to make sense of the use of the variable by Christenson and Glick, one must assume that expectations about what *will happen* are closely connected to normative expectations about what *should happen*. Their hypothesis is that the Roberts Flip should interact with beliefs about the basis of judicial decision-making to affect change in institutional support. More specifically, those with legalistic expectations should find the Roberts Flip objectionable, leading to a decrease in their support for the Supreme Court. These are all normative processes.

Given their inconsistent and unpredicted empirical findings and this dubious measure of legalistic attitudes, it is useful — if not essential — to revisit the role of these attitudes in any process of updating views about the Supreme Court’s legitimacy. Perhaps Positivity Theory is not as endangered as Christenson and Glick suggest.

We hypothesize that the three concepts—ideological dissatisfaction, legalistic beliefs, and perceived politicization—interact, with ideological disagreement only affecting the judgments of those who perceive the Court to be ideological in the first place (the original, *unsupported* Christenson and Glick hypothesis). Among those who do not subscribe to legal realism, the very concept of ideological disagreement is a non-sequitur. Hence, we expect that the effect of ideological disagreement on diffuse support is greater among legal realists.

Also following the logic (though not the findings) of Christenson and Glick, we hypothesize that insincere “political” behavior will have a greater influence than (apparently)

sincere ideological decision-making. Politicized activity—judges acting like regular politicians—seems to fly against the Court’s normative role in the American political system. Hence, we suggest that the effect of perceived politicization on diffuse support should trump that of either ideological disagreement or legal realism. Such an analysis, of course, requires valid measures of both perceptions of legal realism and judicial politicization.

The TAPS Survey Design

This paper relies on a survey we commissioned on the American Panel Study (TAPS), a monthly online survey. Panelists were first recruited as a national probability sample in the fall of 2011 by Knowledge Networks for the Weidenbaum Center at Washington University. Individuals without internet access were provided a laptop and internet service at the expense of the Weidenbaum Center. Two sample replenishment efforts have kept the panel at approximately 2,000 panelists. In a typical month, about 1,700 of the panelists complete the online survey. More technical information about the survey is available at taps.wustl.edu.¹⁰

¹⁰ Calculating the AAPOR response rates for any given survey within complex panel designs such as this is extremely complicated (e.g., Callegaro and DiSogra 2008). However, the compound rate for our survey is undoubtedly in the single digits.

Measures of Key Concepts

Institutional Support

Following closely the conventional wisdom on operationalizing this construct (e.g., Gibson, Caldeira, and Spence 2003), we have measured the diffuse support of our respondents with a standard set of survey items. Appendix A reports the indicators of institutional support and their univariate frequencies.

This set of measures has very strong psychometric properties. Reliability is high – Cronbach's alpha = .89. So too is validity. The item set is strongly unidimensional (the second eigenvalue from a Common Factor Analysis (CFA) is a mere .74), and all items load well on the first unrotated factor (minimum loading = .55). These results confirm that this dependent variable is unusually strong in terms of both validity and reliability.

Our survey also included the conventional measures of specific support: assessments of how well the Court is doing its job and judgments about whether the Court's decisions are "just right" (as opposed to "too liberal" or "too conservative"). Most of the respondents (65%) rated the Court as doing at least a "pretty good job," although only 42% judged the Court's decisions as about right. Thus, our data parallel surveys by journalists in documenting dissatisfaction with the contemporary performance of the Supreme Court (e.g., Pew Research Center 2015). The two measures of specific support are moderately correlated at .35.

Diffuse support and performance evaluations are somewhat related. Assessments of how well the Court is doing its job are correlated with the diffuse support index at .40; the "just right" dichotomy is correlated at .24.

Belief in the Myth of Legality/Legal Realism

As we have noted, an important theoretical contribution of the Christenson and Glick article is its test of the hypothesis that prior legal beliefs condition the relationship between ideological dissatisfaction and institutional support. But, as we also noted above, their measure of these beliefs is a simple dichotomy, one, we suspect, suffering from low validity and reliability. We therefore employ a better measure of the construct.

Our survey included three indicators of perceptions of how decisions are made. These measures, which can be considered as indicating whether the respondent embraces legal realism or a legalistic view of judicial decision making. The statements are:

- The U.S. Supreme Court makes its decisions on a case-by-case basis, so it doesn't really make sense to think of it as either liberal or conservative.
(Disagree: realist)
- Judges' values and political views have little to do with how they decide cases before the Supreme Court. (Disagree: realist)
- Judges' party affiliations have little to do with how they decide cases before the Supreme Court. (Disagree: realist)

This three-item set is reasonably reliable (Cronbach's $\alpha = .72$), especially given that so few indicators are included in the scale. And when subjected to Common Factor Analysis (CFA), the item-set is shown to be strongly unidimensional (eigenvalue₂ = .67), with strong validity loadings for each of the three items. We created an index measuring belief in legal realism, and, as with all of the variables in the analysis, scaled it to range from 0 to 1 (with high scores

indicating a more realistic understanding of judicial decision making).

We also measured perceptions of politicized judicial decision making. Legal realism may include beliefs that court decision making is politicized, but does not necessarily do so. The three items indicating judicial politicization are:

- Supreme Court judges are little more than politicians in robes. (Agree: politicized)
- The justices of the Supreme Court can be trusted to tell us why they actually decide the way they do, rather than hiding some ulterior motives for their decisions. (Disagree: politicized)
- Judges may say that their decisions are based on the law and the Constitution, but in many cases, judges are really basing their decisions on their own personal beliefs. (Agree: politicized)

In essence, these items measure judgments about whether judges are sincere in their methods of deciding cases, in contrast to acting strategically, as do normal politicians. This item-set is slightly less reliable (Cronbach's $\alpha = .66$), even though the mean inter-item correlation is .39. Strong evidence of unidimensionality emerges from the CFA ($\text{eigenvalue}_2 = .67$), and the validity loadings on the first unrotated factor range from .53 to .70. High scores indicate perceptions that judges behave like ordinary politicians.

The measure of empirical beliefs about realism is correlated with perceived judicial politicization at .48. This means that those who hold more realistic views about how decisions are actually made tend fairly strongly to view judges as akin to ordinary politicians.

What we find more interesting, however, is that legal realism and politicization are far

from identical. This no doubt reflects the fact that some may believe that judges rely on their own values, etc., to make decisions, but that they do so in a principled way, which is quite different from ordinary politics. As mentioned above, we hypothesize that belief in legal realism has less impact on institutional support than perceptions of the Court as politicized. Our empirical analysis will provide the evidence necessary for deciding whether it is worth differentiating between citizen perceptions of realism and politicization.

Measures of the Perceived Ideological Location of the Supreme Court

Indicators of ideological dissatisfaction with the Court are a function of the respondent's own ideological position and her or his perception of the ideological location of the Court. Because the former is not controversial, we focus on measuring the perceived ideological location of the Court.

The three papers under consideration here use different measures: (1) Bartels and Johnston use a trichotomy, (2) Christenson and Glick extend this basic trichotomy to a seven-point variable, and (3) Gibson and Nelson use a four-category measure. The respondents in our TAPS survey were randomly assigned to one of four conditions, two of which are employed in this paper:¹¹ (1) Respondents were given the Bartels and Johnston version of the ideological location question, with follow-up questions: N = 678. (2) Respondents were given the Gibson

¹¹ The number of respondents per condition was designed to vary according to the theoretical importance of the condition. The other two conditions are: (3) Respondents were first given the Bartels and Johnson questions, then the Gibson and Nelson version: N = 257. (4) Respondents were first asked the Gibson and Nelson questions, followed by the Bartels and Johnston measure: N = 276.

and Nelson version, with follow-up questions: N = 342. Because we seek to determine how ideological disagreement with the Court, measured variously, connects to institutional support, we derive from each condition a measure of the perceived ideological location of the Court.

Christenson and Glick and Bartels and Johnston both use the “case-by-case” measure of the perceived ideological location of the Court, but, unlike Bartels and Johnston, Christenson and Glick also employed a follow-up question “asking those with responses in the middle category whether they perceive themselves and/or the Court [as] ‘more on the liberal side or the conservative side.’” (Christenson and Glick 2015, 408). For those perceiving the Court as liberal or conservative, a follow-up question was asked about whether the Court is “extremely” or “somewhat” liberal/conservative. Thus, their measure of the Court’s location is a seven-point variable.

The critique of the Gibson and Nelson measure is that it denies to the respondents a center category; those who view the Court as moderate are forced to choose between characterizing the Court as “somewhat liberal” or “somewhat conservative.” We therefore sought to determine whether those answering with a “somewhat” response really wanted to say that the Court makes about the same number of liberal and conservative decisions but were denied the opportunity to do so by the question’s wording.¹²

¹² To investigate these critiques more fully, we conducted a question wording experiment with TESS. The results indicate that both critiques have merit, with about 40% of respondents selecting the middle category to the Gibson and Nelson question when it is an option. Similarly, whereas a majority of respondents believe that the Court decides cases on a “case-by-case” basis when asked the Bartels and Johnston question, that number declines to 38% when that phrase is changed to “generally moderate.” For more on these findings, see Gibson and Nelson (2015c).

Among those judging the Court to be “somewhat liberal,” 53.7% said in a follow-up question that the Court made more liberal than conservative decisions and 46.5% thought that the Court made about the same number of liberal and conservative decisions. Among those thinking the Court was “somewhat conservative,” 56.7% said the Court was more conservative than liberal; 43.0% viewed the balance of liberal and conservative decisions to be equal. Thus, very roughly speaking, the true views of those rating the Court as “somewhat” are divided, with nearly one-half seeming to prefer a more centrist position than indicating by their “somewhat” responses. We therefore include in our analysis a variant of the original Gibson and Nelson four-category measure – a five-category indicator created from the follow-up question allowing a “middle-of-the-road” response alternative.

Measuring ideological dissatisfaction with the Court for the Christenson and Glick and Gibson and Nelson measures is straightforward. For Bartels and Johnston, the approach is more complicated, as explained in detail in their Table 2 (Bartels and Johnston 2013, 191). We replicate their methodology for the purposes of comparison. The contrast of our respondents with theirs is striking: strong disagreement, 27.0% versus 27.8%; moderate disagreement, 12.9% versus 13.3%; tacit agreement, 27.2% versus 32.9%; and strong agreement, 32.9% versus 26.1%, for our survey versus theirs, respectively. Thus, our findings regarding the distribution of ideological dissatisfaction are remarkably similar to theirs, providing some evidence of stability in the American people’s perceptions of their ideological disagreement with the Court between 2005, when the Bartels and Johnston survey was conducted, and 2014, when the TAPS survey was fielded.

Supreme Court Knowledge

Because of the potentially confounding role of political knowledge, we include knowledge of the Court in our analysis. We measure knowledge with five conventional items. As with many internet surveys, knowledge is high,¹³ ranging from 91% knowing that the justices are appointed to the Court to 68% knowing that the Court currently makes less than 100 decisions per year. More than 36% of the respondents got all five knowledge questions correct; 4% missed all five.

Our survey reproduces the conventional finding about the relationship between knowledge and Court attitudes. “To know the Court” is to love it – the correlation of knowledge and diffuse support is .39. On the other hand, knowledge is only weakly related to performance evaluations ($r = .18$) and even more weakly related to the specific support dichotomy ($r = -.08$). This latter correlation indicates that those more knowledgeable about the institution are less likely (slightly) to judge its decisions as “about right.”

Analysis: Connecting Diffuse and Specific Support

Table 1 reports basic correlations between the various measures of ideological dissatisfaction and diffuse support and the two measures of specific support.¹⁴ As the table shows, the Bartels and Johnston measure of ideological dissatisfaction is correlated with diffuse support at .03 – an entirely trivial correlation (in the wrong direction). Even the nine-category measure (Christenson

¹³ Internet surveys have no control over respondents who look up the questions on the internet so as to be able to answer knowledge queries correctly.

¹⁴ Note that, in general, the correlations are drawn from different portions of the database, reflecting the experimental nature of our research design. To reiterate, however, respondents were randomly assigned to the question-wording conditions.

and Glick, variant 1) reveals a correlation not much stronger: $r = -.08$. Exactly the same conclusion is supported by the Gibson and Nelson measure and the Christenson and Glick measure: ideological dissatisfaction clearly does not drive institutional support, no matter how dissatisfaction is measured.

[PLACE TABLE 1 ABOUT HERE]

At the same time, these measures are at least weakly related to performance evaluations, with greater ideological dissatisfaction associated with lower performance ratings in every instance. The relationship for the Bartels and Johnston measure is very weak ($r = -.10$), but is considerably stronger for the 9-category measure ($r = -.20$), and even somewhat stronger for the 5-category measure ($r = -.23$). The correlations with the specific support dichotomy (about right versus not) are stronger across the board: for the Bartels and Johnston measure it is $-.38$; for the nine-category variable, it is $-.40$.

The conclusions from this portion of our analysis are clear: Ideological dissatisfaction has practically no implication for institutional support. Indeed, dissatisfaction seems to indicate little more than one aspect of specific support for the current activities of the institution, just as legitimacy theory predicts.

Predicting Diffuse Support

Table 2 reports the regression of diffuse support on ideological disagreement,¹⁵ the two conventional measures of specific support, the legal realism and politicization variables, Court

¹⁵ Given our interest in Christenson and Glick's hypotheses, our analysis uses their seven-

knowledge, and several conventional control variables. Because some may regard the specific support dichotomy as contaminated by ideological disagreement, we present two equations, one including the specific support measure, the other excluding it.¹⁶

[PLACE TABLE 2 ABOUT HERE]

The most obvious conclusion from Table 2 is that neither ideological disagreement, measured by comparing the respondent's location with the perception of the Court's location (Model I) nor the specific support ideological evaluation of Court outputs (Model II) has much influence on institutional support. The disagreement coefficient is statistically significant but is quite small. (Because all of the variables vary from 0 to 1 comparisons can be made across the various coefficients.) Instead, institutional support is strongly related to perceived judicial politicization, with those holding more strongly politicized perceptions expressing considerably less support for the Court. Perceived legal realism is also significantly connected to institutional support, but much less strongly so. Notably, those who perceive the Court in realistic terms are *more* supportive of the institution, not less. The sizes of these coefficients provide some context for the magnitude of the ideological disagreement effect—about half the size of the effect of legal realism and only about one-eighth of the size of the effect of politicization. Some of the control variables are statistically significant, but, generally, the influences of the controls are

point measure of ideological dissatisfaction.

¹⁶ In Appendix C, we add measures of democratic values to this equation (as well as every equation we present in the paper), demonstrating (a) that our findings are robust to the inclusion of democratic values, and (b) that the effects of democratic values are larger than those of ideological distance (a finding consistent with the results reported by Gibson and Nelson (2015a)).

minimal. Overall, a considerable amount of the variance in institutional support is explained by these predictors.

In sum, three important conclusions emerge from this analysis: (1) Diffuse support and specific support are connected, but not overwhelmingly so. (2) Ideological disagreement has very little to do with institutional support. (3) Perceptions of realism and politicization have dramatically different effects on institutional support. Realism contributes to support. Politicization, which is not the same thing as realism, substantially detracts from support.

It remains to consider the important interactive hypotheses put forth by Christenson and Glick.

Testing the Positivity Hypotheses

Relying on Positivity Theory, Christenson and Glick argue that legalistic views of the Court should inoculate the institution from any negative consequences of growing ideological distance between the institution and the citizen. They find, however, that the effect of legalistic priors is exactly the opposite of their prediction: the institutional support of those with legalistic views is actually more sensitive to ideological dissatisfaction than among those without legalistic views. We have suggested above that one way in which these findings make sense is to assume that legalistic priors are actually normative expectations favoring legalism, and that highly salient cases like ACA reveal information that the Court is not acting legalistically, thereby subtracting from institutional support.

In our analysis, we refine this hypothesis somewhat by considering our measures of both perceived legal realism and perceived judicial politicization. Because our measure of perceived legal realism is most similar to the Christenson and Glick measure, we begin by testing for an interactive effect of this variable, investigating the extent to which perceptions of legal realism condition the effects of ideological disagreement with the Court.

Our data provide some evidence of such an interactive effect. In a model that adds the realism/ideological dissatisfaction interaction term to the equation reported in Table 2 (above), the increment in R^2 is statistically significant at $p = .033$ (and, by definition, the significance of the coefficient on the interaction term is the same). When legal realism is at its lowest, the effect of ideological dissatisfaction is $.07$ ($p = .254$, coefficient in the wrong direction). When realism is at its highest, the coefficient is $-.14$, a significant but small effect. Thus, with our measure of perceived legal realism – which we consider to be more reliable and more valid – we cannot reproduce the Christenson and Glick findings. Indeed, these results suggest the exact opposite: that ideological distance has an effect only upon those who are legal realists.

However, the story is reversed for judicial politicization. When its interaction term is added to the equation in Table 2, the increment in R^2 is significant at $.010$. When perceived politicization is at its lowest, the effect of ideological dissatisfaction is $-.22$, which is significant at $p = .001$. When perceived politicization is at its highest, the coefficient is $.07$ (implying that greater ideological dissatisfaction is associated with *more* institutional support); however, this effect is *not* distinguishable from zero. In general, the results suggest that, for those who do not view the Court as politicized, ideological disagreement has a statistically significant and negative effect on diffuse support, but that the magnitude of that effect declines as people increasingly see

the Court as politicized. Once a respondent believes the Court is politicized (passing roughly the two-thirds point on the scale), ideological disagreement no longer has a statistically significant effect. More documentation of this analysis, including plots of the marginal effects of these interactions, is available in Appendix B.

To the extent that one views Christenson and Glick's Roberts Flip variable as a measure of perceived politicization – because it addresses strategic behavior directly – some comparisons between our findings and theirs are possible. Recall that Christenson and Glick found that exposure to the Roberts Flip exacerbated the role ideological dissatisfaction played in evaluations of diffuse support. Our findings indicate the direct opposite: ideology plays no role in the evaluations of those who perceive the Court as politicized. Instead, views of judicial politicization dominate. Still, these findings require additional confirmation from more comprehensive analysis.

To that end, we consider the hypothesis that the effect of ideological disagreement is conditional upon the interaction of *both* perceived legal realism and perceived judicial politicization. This hypothesis relies on the theory that the extent to which ideological disagreement affects evaluations of the Court's legitimacy is conditioned by the interplay of one's views of both how the Court makes decisions and how politicized the institution is. After all, if someone views the Court in starkly non-realist terms, then ideological disagreement has a profoundly different meaning than it does for those who believe the justices' votes reflect their personal views. To compound the matter, some legal realists may believe the Court is a fundamentally nonpolitical institution—perceiving that justices are sincere in their decisions, even though those decisions are based on personal preferences and values—while other legal

realists may believe that the justices are both making decisions on the basis of their personal beliefs *and* behaving as “regular politicians.” To test this hypothesis, we augment Model 1 in Table 2 with the three-way multiplicative interaction between perceptions of legal realism, judicial politicization, and ideological disagreement (and their constituent terms). Table 3 reports the results of this regression and Figure 1 illustrates the various relationships further.

[PLACE TABLE 3 ABOUT HERE]

[PLACE FIGURE 1 ABOUT HERE]

We first note that all of the interactions pass the basic significance tests associated with the change in R^2 . The hypothesis that no interactions exist can be rejected. Moreover, performance evaluations and political knowledge continue to have a positive and statistically significant relationship with diffuse support.¹⁷

Because our primary hypothesis of interest is the potentially varying relationship between ideological disagreement and diffuse support, Figure 1 plots the marginal effect of ideological disagreement as perceptions of both legal realism and judicial politicization vary. The first conclusion we draw from Figure 1 is that some belief in legal realism is a prerequisite to the expected relationship between ideological disagreement and diffuse support materializing. Indeed, as the lower-left panel shows, there is no relationship between ideological disagreement and diffuse support—at any value of perceived politicization—for those respondents who are not

¹⁷ Note that adding the specific support dichotomy to the equation reported in Table 3 has practically no effect at all on the estimates of the coefficients.

legal realists. Put simply, those who view the Court as fundamentally legalistic give the institution a free pass when it makes disagreeable decisions.¹⁸

Second, as the top two panels show, ideological disagreement has the strongest deleterious effects on diffuse support among those individuals who hold the most unequivocal perceptions of legal realism. Just as those individuals who fail to perceive the Court as ideological do not hold the Court into account when it makes decisions they dislike, the segment of the American people who views the Court's decisions as ideological considers ideology when evaluating the institution.

These conclusions stand in direct opposition to the findings of Christenson and Glick.

Their analysis suggests that increased support for legal realism is associated with a reduced role of ideological disagreement. We reach the opposite conclusion. As one becomes a stronger and stronger legal realist, the deleterious effects of ideological disagreement on diffuse support also increase.

The final conclusion this figure supports is that the level of politicization conditions realism's effect on the relationship between ideological disagreement and diffuse support. As the

¹⁸ Because "Low" and "High" values of these continuous variables are operationalized in the figure as the 25th and 75th quartiles of the data, one may wonder about the behavior of the few respondents who hold especially legalistic beliefs: those that scored below the 25th percentile on perceived legal realism. The top two panels of Figure 1 shed some light on these individuals, suggesting that they actually exhibit a positive relationship between ideological disagreement and diffuse support (more disagreement, more support). Perhaps, among those who subscribe exclusively to a legalistic view of judicial decision-making, disagreeable decisions are taken as a sign that the Court is fulfilling its role as a check on the democratic process, as implied by the constitution, thus increasing the esteem these individuals accord to the Court. However, as the distributions of the data at the bottom of the panels show, this pertains to only a tiny proportion of the sample.

panel in the lower-right demonstrates, the strongest relationship between ideological disagreement and diffuse support materializes when belief in politicization is at its lowest, and the relationship attenuates until respondents begin to see the Court as politicized. Once legal realists believe that the Court is politicized, there is no longer a statistically significant relationship between diffuse support and ideological disagreement – views on politicization take over.

A simple way to illustrate the preempting effect of politicization is to view the predicted values from the equation reported in Table 3. Table 4 reveals that the highest predicted levels of diffuse support are found among those individuals who ascribe to legal realism, view themselves as close to the Court ideologically, and perceive the Court as not politicized. Conversely, the lowest levels of diffuse support are among individuals—*regardless of their ideological dissatisfaction with the Court*—who do not subscribe to legal realism but who perceive the Court as politicized.

[PLACE TABLE 4 ABOUT HERE]

Again, this finding is at odds with that of Christenson and Glick. Our data suggest that politicization trumps ideology. Even legal realists—who might otherwise judge the Court on the basis of ideological satisfaction—do not punish the Court based on their ideological disagreements with the institution if they believe that the Court is politicized. Among legal realists who view the Court as non-politicized, ideological disagreement with decisions is associated with a modest discount in their support for the Court. Yet, among legal realists who believe the Court is politicized, evaluations of diffuse support are driven by distaste for politics

as usual rather than ideological compatibility. The effects of ideology and politics are not the same.

Table 4 also enables us to compare the relative change in diffuse support as one moves from a “low” to “high” value of a variable, holding constant the values of the other two constituent terms to the interaction. Such comparisons make clear that the effect of politicization far outweighs the effects of either legal realism or ideological disagreement. The *largest* difference between “low” and “high” values in Table 4 for perceived realism is a paltry .07, while the *smallest* change as one varies perceived politicization across the interquartile range is .11. And, in the other three cases, moving from a low to high view of judicial politicization (again, from the 25th to the 75th quantile) results in a movement of between .15 and .17 units in diffuse support—nearly one-fifth of the entire range of the variable! This is a powerful role for politicization to play.

Taken together, our three conclusions highlight the primacy of perceptions in conditioning the role of ideological disagreement on diffuse support, largely as predicted by Positivity Theory. Figure 2 displays these findings in the form of a flowchart that illustrates the limited conditions under which ideological disagreement is connected to diffuse support for the Court. Ideological disagreement only affects judgments of judicial legitimacy once individuals accept the premise that ideology matters in judicial decisions. Moreover, among those who accept that premise, ideological disagreement only affects legitimacy to the extent that individuals view the Court as a different type of political institution, namely one that is divorced from politics as usual. Once someone views the Court as just another political institution dominated by strategic, rather than sincere, decision-making, the role of ideological

disagreement is again negated and instead replaced by a heretofore discounted—but extraordinarily powerful—factor: perceptions of the politicization of the Court. More than ideological disagreement or legal realism, perceptions of politicization play the strongest role in affecting individual-level judgments of legitimacy. In short, ideology is only influential among those who believe the Court makes principled, non-political, decisions on the basis of ideology rather than law.

[PLACE FIGURE 2 ABOUT HERE]

But how many of the American people meet this condition? As an estimate, Table 4 also reports the percentages of the American people who populate each cell. Since ideological disagreement has an effect among only those legal realists who believe the Court is not politicized, we are interested in the lower-left hand cells of each of the major columns in Table 4. Here, we see that about 22% (13.2% + 8.3%) of the American people are expected to judge the Court on ideological terms, and only a minority of those people—8.3% of the public—are individuals who perceive the Court as fairly distant from themselves. For the remaining portion of this 22%, ideology may matter in principle, but they are fairly satisfied with the Court's outputs, providing them little reason to penalize the Court for its decisions.

In short, the overarching lessons of our analysis are threefold: (1) ideological disagreements do sometimes affect individual-level judgments of diffuse support; (2) the conditions under which ideological disagreement matter—and when ideological disagreement is severe enough to matter substantively—are rare, affecting less than 1-in-10 people; and (3) even among those for whom ideology might matter, the magnitude of the effect of ideological disagreement is insignificant in contrast to the effect of politicization.

Discussion and Concluding Comments

Our analyses support several major conclusions. First, as in earlier research, diffuse support and specific support are connected, but not inordinately so. Second, one component of specific support – ideological dissatisfaction – has very little to do with diffuse support among a large majority of the American people. Third, that conclusion is entirely robust to alternative measures of ideological dissatisfaction. From the analysis of these new data we strongly reinforce the conclusions of Gibson and Nelson (2015a).

Fourth, we do not find evidence supporting the Christenson and Glick findings regarding perceived legal realism. Where they found that increases in perceived legalism are associated with a more substantial role for ideology, we find the opposite: among those who perceive the Court through a legalist lens, ideology has no role to play. Perceived realism has few consequences for institutional support, most likely, we suspect, because some perceive realism and applaud it, others see and condemn it, while some see it and judge it inevitable and therefore are agnostic as to its desirability.

Fifth, perceptions of judicial politicization are important. Where Christenson and Glick conclude that perceptions of politicization exacerbate the effects of ideology, we again reach the opposite conclusion: ideology has no effect among those who perceive the Court to be politicized. Reinforcing the findings of Gibson and Caldeira (2009), those who see the judiciary as more politicized, as more similar to ordinary politics, tend to support the Supreme Court less.

But, and sixth, these perceptions of politicization interact with ideological dissatisfaction. When citizens perceive the Court as politicized, they punish it for behaving like a legislature; only among those citizens who believe the Court is *not* politicized does ideological dissatisfaction play a role. Our major finding is nuanced: ideological disagreement affects diffuse support only among the 8% of the American public who both view the Court through the lens of legal realism and who judge the Court to be non-politicized. Thus, we reconcile the conflicting claims of Bartels and Johnston and Gibson and Nelson: under some conditions, for some relatively small groups of people, ideological disagreement does play a role in individual-level judgments about legitimacy.

Despite the strength of our findings, this is an area of inquiry that requires further thought and empirical research. The relationships we have discovered are both complex and conditional. Our study provides insights into the attitudes of the American people at only a snapshot in time. Future research should examine how Americans make their judgments about the Court's politicization and decision-making practices, the extent to which those judgments are stable, and the temporal dynamics of these relationships.

We must also acknowledge some important limitations to our research. For instance, as Bartels, Johnston, and Mark have recently argued, the causal interconnections of all of these variables are complex, to say the least. These authors put forth the notion that the framing attitude is not legalistic priors, but is instead legitimacy itself: “. . . legitimacy may serve as a powerful lens or frame through which perceptions of a political versus apolitical Court are assessed” (2015, 766). Legitimacy serves a motivated reasoning function, with those seeing an institution as legitimate deriving views about politicization, etc., that are compatible with their

legitimacy stance (for an early statement of this viewpoint, see Gibson 1991). We have shown that perceptions of politicization are negatively associated with legitimacy: those seeing more politicization judge the Court as less legitimate. But the same relationship can be (and perhaps should be) recast: those who see the court as more legitimate are likely to see it as less politicized. Even the question of the causal status of ideological disagreement may be unclear, as those granting the Court legitimacy tending to minimize disagreements through cognitive dissonance reduction processes and motivated reasoning. Teasing out the causal interconnections among the various attitudes discussed in this research agenda is as daunting as it is essential.

Some additional comments about measurement are also in order. Our view is that one reason why the literature on institutional support is in a bit of disarray has to do with measurement. Only a very small proportion of the research in the field addresses basic issues of validity and reliability. We obviously have devoted considerable effort to measuring perceptions of the Court's ideological location in this research, and we hope we have put that measurement issue to bed. But scholars in the field routinely confuse diffuse and specific support, put forth measures with no face validity at all (e.g., measures that are empirical when they are conceptualized to be normative), and rarely are validity and reliability discussed and practically never are validity and reliability factored into substantive research conclusions.

We include in this criticism our own measures of perceived realism and politicization. Perhaps one reason why our results on this score are complicated is that we still have not fully understood the context in which the American people perceive, understand, and evaluate their highest court. We are certain that some believe the Court ought to strictly follow the law no matter the consequences, while others are more interested in achieving fairness. We are certain

that normative and empirical views often get confused. We are certain that large gaps in the empirical knowledge of the American citizenry exist, especially when it comes to the question of how judges actually make decisions. And, we are certain that the measures we put forth in this paper can benefit from considerable additional psychometric improvement.

We conclude with some observations about how our findings relate to the seemingly conventional wisdom that the Court today finds itself in serious trouble with its constituents. While many would be quick to attribute the decline in the Court's support to its decisions, we do not. After all, just as the Court has ruled liberally in many high profile cases, such as those concerning same-sex marriage and health care, it has ruled conservatively in major cases involving contraception and the death penalty, perhaps negating much of the ideological valence of its decisions. Instead, these findings document the importance of beliefs among the American people that the Court is a political—rather than strictly legal—institution. We note, however, that “political” and “ideological” are different descriptors. Perhaps any decline in support for the institution that we see reported in the news is due to changes in these beliefs (spurred, perhaps, by intemperate and politicized dissents by some justices). The Court, our data suggest, should worry less about angering the public with its policy decisions, and focus more on the public's satisfaction with its processes, procedures, and politics, if it is to avoid putting its popular legitimacy at risk.

References

- Baird, Vanessa A. 2001. "Building Institutional Legitimacy: The Role of Procedural Justice." *Political Research Quarterly* 54: 333-54.
- Baker, Reg, Stephen J. Blumberg, J. Michael Brick, Mick P. Couper, Melanie Courtright, J. Michael Dennis, Don Dillman, Martin R. Frankel, Philip Garland, Robert M. Groves, Courtney Kennedy, Jon Krosnick, Paul J. Lavrakas, Sunghye Lee, Michael Link, Linda Piekarski, Kumar Rao, Randall K. Thomas, and Dan Zahs. 2010. "AAPOR Report on Online Panels." *Public Opinion Quarterly* 74 (#4): 711-781.
- Bartels, Brandon L., and Christopher D. Johnston. 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." *American Journal of Political Science* 57: 184-99.
- Bartels, Brandon L., and Christopher D. Johnston. 2015. "Is Supreme Court Legitimacy Irredeemably Politicized in the Public Mind? Competing Theories and New Evidence Surrounding the Affordable Care Act Ruling." Paper delivered at the 2015 Annual Meeting of the American Political Science Association, San Francisco, CA, September 3-5, 2015.
- Bartels, Brandon L., Christopher D. Johnston, and Alyx Mark. 2015. "Lawyers' Perceptions of the U.S. Supreme Court: Is the Court a 'Political' Institution?" *Law and Society Review* 49 (#3): 761-794.
- Caldeira, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36: 635-64.
- Callegaro, Mario, and Charles DiSogra. 2008. "Computing Response Metrics for Online Panels." *Public Opinion Quarterly* 72 (#5): 1008-1032.
- Cann, Damon, and Jeff Yates. 2014. "Citizen Perceptions of Judicial Realism in American State Courts." Paper prepared by the BYU Center for the Study of Elections and Democracy Spring Workshop, June 11-12, 2014.
- Christenson, Dino P., and David M. Glick. 2015. "Chief Justice Roberts's Health Care Decision Disrobed: the Microfoundations of the Supreme Court's Legitimacy." *American Journal of Political Science* 59 (#2, April): 403-418.
- Crawford, Jan. 2012. "Roberts Switched Views to Uphold Health Care Law." CBS News. July 1, 2012. http://www.cbsnews.com/8301-3460_162-57464549/roberts-switched-views-to-uphold-health-care-law/ [accessed 4/30/2013].
- Gibson, James L. 1991. "Institutional Legitimacy, Procedural Justice, and Compliance With Supreme Court Decisions: A Question of Causality." *Law and Society Review* 25 (1991): 631-635.
- Gibson, James L., and Gregory A. Caldeira. 1992. "Blacks and the United States Supreme Court: Models of Diffuse Support." *Journal of Politics* 54: 1120-45.
- Gibson, James L., and Gregory A. Caldeira. 2009. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton, NJ: Princeton University Press.
- Gibson, James L., and Gregory A. Caldeira. 2011. "Has Legal Realism Damaged the Legitimacy

- of the U.S. Supreme Court?" *Law and Society Review* 45 (#1): 195-219.
- Gibson, James L., Gregory A. Caldeira, and Vanessa Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92: 343-58.
- 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: 354-67.
- Gibson, James L., and Michael J. Nelson. 2014. "The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms and Recent Challenges Thereto." *Annual Review of Law and Social Science* 10: 201-219.
- Gibson, James L., and Michael J. Nelson. 2015a. "Is the U.S. Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59: 162-74.
- Gibson, James L., and Michael J. Nelson. 2015b. "Can the U.S. Supreme Court Have Too Much Legitimacy?" In *Making Law and Courts Research Relevant: The Normative Implications of Empirical Research*. Edited by Brandon L. Bartels and Chris W. Bonneau. New York: Routledge. Pp. 169-179.
- Gibson, James L., and Michael J. Nelson. 2015c. "Measuring the Perceived Ideological Position of the U.S. Supreme Court: Alternative Approaches, Different Conclusions?" Working Paper.
- Hibbing, John R., and Elizabeth Theiss-Morse. 2001. *What Is It About Government That Americans Dislike?* New York: Cambridge University Press.
- Malhotra, Neil and Stephen A. Jessee. 2014. "Ideological Proximity and Support for the Supreme Court." *Political Behavior* 36 (#3, December): 817-846.
- Nicholson, Stephen P., and Thomas G. Hansford. 2014. "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions." *American Journal of Political Science* 58 (#3): 620-636.
- Pew Research Center. 2015. "Negative Views of Supreme Court at Record High, Driven by Republican Dissatisfaction." Washington, DC: Pew Research Center, July 29, 2015. <http://www.people-press.org/files/2015/07/07-29-2015-Supreme-Court-release.pdf>
- Scheb, John M., and William Lyons. 2000. "The Myth of Legality and Public Evaluation of the Supreme Court." *Social Science Quarterly* 81 (#4): 928-940.
- Tyler, Tom R. 2006. "Psychological Perspectives on Legitimacy and Legitimation." *Annual Review of Psychology* 57 (1): 375-400.
- Woodson, Benjamin. 2015. "Politicization and the Two Modes of Evaluating Judicial Decisions." *Journal of Law and Courts* 3 (#2, Fall): 193-221.
- Ura, Joseph Daniel. 2014. "Backlash and Legitimation: Macro Political Responses to Supreme Court Decisions." *American Journal of Political Science* 58 (1): 110-126.

Cases

- Bush v. Gore*, 531 U.S. 98 (2000)
- National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012)

Table 1. Ideological Disagreement and Court Attitudes			
Ideological Disagreement	Diffuse Support	Specific Support₁	Specific Support₂
Bartels & Johnston (3)	.03 (672)	-.10 (671)	-.38 (652)
Variant 1 (5)	-.06 (674)	-.23 (672)	-.36 (653)
Gibson & Nelson (4)	.01 (328)	-.14 (328)	-.28 (328)
Variant 1 (5)	-.05 (328)	-.18 (328)	-.33 (328)
Christenson & Glick (7)	-.06 (655)	-.19 (654)	-.39 (648)
Variant 1 (9)	-.08 (655)	-.20 (654)	-.40 (648)

Note: This table reports bivariate correlations (and the Ns on which they are based). All variables are scored to range from 0 to 1.

The dependent variables are:

 Diffuse Support: Index, high = greater support

 Specific Support₁: Job approval, high = greater approval

 Specific Support₂: “Just right” decisions, high = greater approval

The independent variables (with the number of categories for the perceived Court location component of the ideological disagreement measure) are:

 Bartels & Johnston (3): liberal, case-by-case, conservative

 Variant 1 (5): Follow-up on liberal and conservative responses

 Gibson & Nelson (4): very liberal, somewhat liberal, somewhat conservative, very conservative

 Variant 1 (5): Follow-up on somewhat liberal and somewhat conservative

 Christenson & Glick (7): Bartels and Johnston (3) with follow-ups on each of the three original responses

 Variant 1 (9): Bartels and Johnston (3) with more detailed follow-ups on each of the three original responses

Table 2A. The Predictors of Support for the U.S. Supreme Court

	OLS Regression Results: Model I		
	b	s.e.	p-value
Ideological Disagreement (7 category)	-.06	.02	.022
Specific Support: Performance Evaluations	.11	.03	.001
Court Knowledge	.19	.03	.000
Perceived Legal Realism	.14	.04	.000
Perceived Judicial Politicization	-.53	.04	.000
Specific Support: Just Right	-	-	-
Age	.01	.04	.709
Gender	-.03	.01	.024
African American	-.01	.02	.536
Hispanic	.01	.02	.571
Level of Education	.08	.02	.001
Home Ownership	-.01	.01	.487
Religiosity	.04	.02	.040
Party Identification	-.03	.02	.139
<i>Equation</i>			
Intercept	.54	.04	.000
Standard Deviation – Dependent Variable	.20		
Standard Error of Estimate	.15		
R ²	.46		.000
N	640		

Note: All variables are scored from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

Table 2B. The Predictors of Support for the U.S. Supreme Court

	OLS Regression Results: Model II		
	b	s.e.	p-value
Ideological Disagreement (7 category)	-.07	.03	.009
Specific Support: Performance Evaluations	.12	.03	.001
Court Knowledge	.19	.03	.000
Perceived Legal Realism	.13	.04	.001
Perceived Judicial Politicization	-.54	.04	.000
Specific Support: Just Right	-.02	.01	.135
Age	.01	.04	.808
Gender	-.03	.01	.016
African American	-.01	.02	.625
Hispanic	.01	.02	.622
Level of Education	.08	.02	.001
Home Ownership	-.01	.01	.465
Religiosity	.04	.02	.054
Party Identification	-.03	.02	.122
<i>Equation</i>			
Intercept	.57	.04	.000
Standard Deviation – Dependent Variable	.20		
Standard Error of Estimate	.15		
R ²	.47		.000
N	640		

Note: All variables are scored from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

Table 3. The Interactive Effects of Legal Priors on Support for the U.S. Supreme Court

	OLS Regression Results		
	b	s.e.	p-value
Ideological Disagreement (7 category)	.40	.20	.045
Specific Support: Performance Evaluations	.14	.03	.000
Court Knowledge	.19	.03	.000
Perceived Legal Realism	.16	.12	.170
Perceived Judicial Politicization	-.77	.12	.000
Perceived Realism X Perceived Politicization	.25	.20	.212
Perceived Realism X Ideological Disagreement	-1.10	.32	.001
Perceived Politicization X Ideological Disagreement	-.27	.33	.409
Perceived Realism X Perceived Politicization X Ideological Disagreement	.98	.49	.044
Age	.01	.04	.698
Gender	-.03	.01	.032
African American	-.03	.02	.131
Hispanic	.00	.02	.867
Level of Education	.06	.02	.008
Home Ownership	-.01	.01	.396
Religiosity	.05	.02	.011
Party Identification	-.04	.02	.024
<i>Equation</i>			
Intercept	.59	.07	.000
Standard Deviation – Dependent Variable	.20		
Standard Error of Estimate	.15		
R ²	.49		.000
N	640		

Note: All variables are scored from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

Significance of change in R² from adding the interaction terms:

Perceived Legal Realism X Perceived Judicial Politicization: p = .002

Perceived Legal Realism X Ideological Disagreement: p < .000

Perceived Judicial Politicization X Ideological Disagreement: p = .008

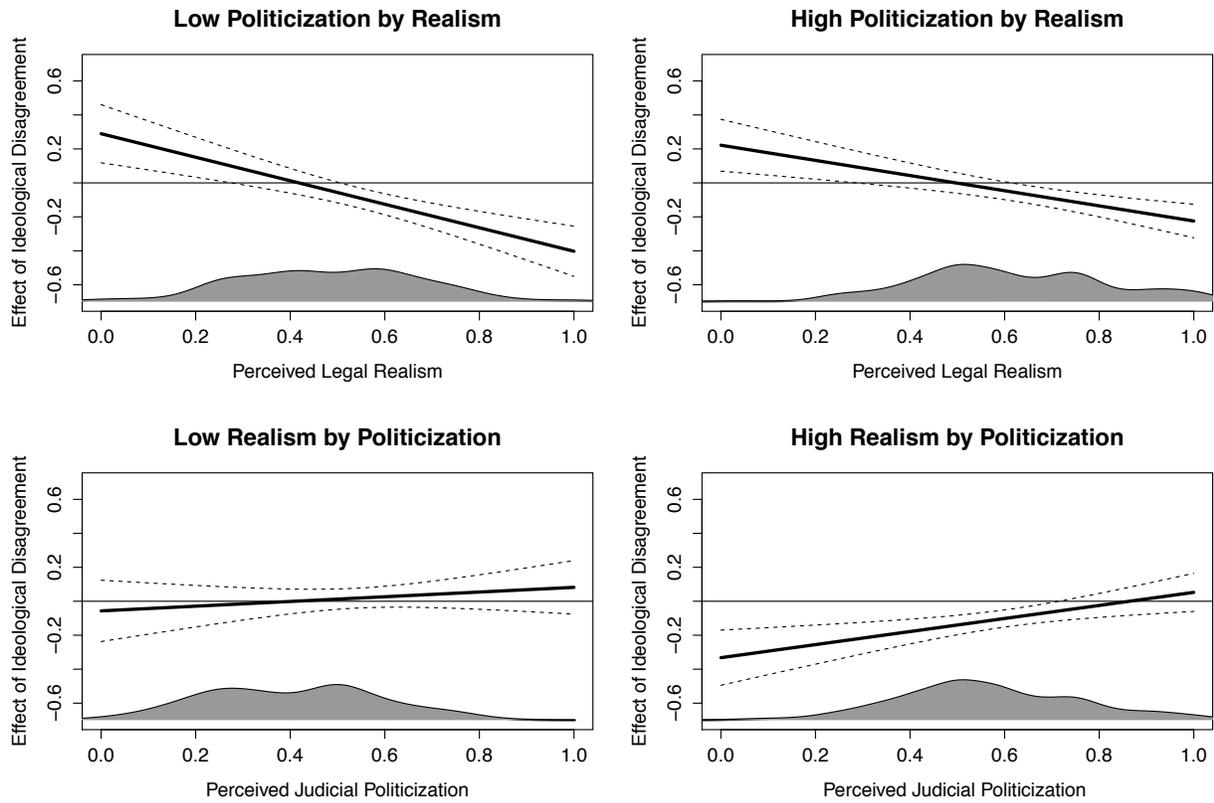
Perceived Legal Realism X Perceived Judicial Politicization X Ideological Disagreement: p = .044

Table 4. Predicted Values of Diffuse Support from the Equation Shown in Table 3

		Ideological Distance				
		Low		High		
		Perceived Politicization		Perceived Politicization		
		Low	High	Low	High	
Perceived Realism	Low	.64 [.61, .66] 30.1%	.47 [.44, .51] 8.6%	Low	.64 [.61, .67] 6.1%	.49 [.45, .52] 2.4%
	High	.70 [.67, .74] 13.2%	.55 [.52, .59] 12.5%	High	.63 [.60, .66] 8.3%	.52 [.49, .55] 18.8%

Note: “Low” and “High” values (the two columns) represent values of the variables set at the 25th and 75th quantiles, respectively. All other variables are held at their median values. The first entry in each cell is the expected value of diffuse support. The numbers in brackets represent 95% confidence intervals around the predictions, and the last number in each cell represents the percentage of respondents who fall into that category, after dividing each of the variables at its median. The percentages do not add to 100% because of rounding.

Figure 1. The Effect of Ideological Disagreement on Diffuse Support at Varying Levels of Perceived Legal Realism and Perceived Judicial Politicization



Note: “Low” and “High” values (the two columns) represent values of the variables set at the 25th and 75th quantiles, respectively. The rug at the bottom of each panel shows the distribution of the variable on the x-axis. Median splits were used to divide the data between “low” and “high” categories.

Figure 2. The Conditions Under Which Ideological Disagreement Influences Diffuse Support for the U.S. Supreme Court

