SHORT ARTICLE

The Stability and Durability of the US Supreme Court's Legitimacy

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Is support for the US Supreme Court stable over time? Recent studies present conflicting evidence about the extent to which dissatisfaction with the Court's performance affects its public support. Drawing on a four-year panel study of Americans' support for the Supreme Court, we demonstrate that the Court's support has been remarkably stable in the aggregate, although there has been systematic change at the individual level. These individual-level changes are related to respondents' satisfaction with the Court's performance and their political orientations. The results both confirm and challenge conventional wisdom, emphasizing the importance of studying individual-level change in attitudes even in the face of aggregate stability.

Democratic institutions rely on the public's esteem for their efficacy. Legitimacy, one type of public support, is particularly important for courts because they lack the ability to enforce their own decisions. Conventional wisdom suggests that the US Supreme Court enjoys a high store of legitimacy that has remained temporally stable even as the Court has issued controversial and high-profile decisions (Gibson and Nelson 2015). However, recent studies suggest that support for the Court is more closely tied to performance satisfaction, also called specific support, than the conventional wisdom suggests (Bartels and Johnston 2013; Christenson and Glick 2015). These competing theoretical perspectives suggest conflicting expectations about legitimacy's stability. The conventional wisdom implies that the Court's legitimacy, also called diffuse support, should be stable and relatively unconnected to specific support. The newer studies suggest more temporal variability due to a tight connection between specific and diffuse support.

Understanding the dynamics of legitimacy is necessary to appreciate the position of courts in separation-of-powers systems. Courts draw on their constituents' support at one point in time to achieve implementation and acceptance of an unpopular decision at a later time. If legitimacy depends heavily on performance satisfaction, strategic courts may be unwilling to make unpopular decisions. Yet, if support for a judicial body reverts to an equilibrium level, courts are free to make decisions that anger their constituents with relative impunity. Understanding the dynamics of institutional support is therefore necessary to understand which institutions will be willing and able to defy the public.

We assess the stability of the Court's legitimacy over the second half of the Obama administration, a period of time in which the Court issued salient rulings on issues as diverse and controversial as the Affordable Care Act, same-sex marriage, and affirmative action. Tracking attitudes toward the Court over 11 waves and four years, we assess whether individuals shift in their support of the Court, whether those shifts are tied to the Court's annual June release of its marquee decisions (Epstein, Landes, and Posner 2015), and what individual-level characteristics explain any individual- or aggregate-level shifts

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This study was conducted in compliance with all relevant laws; the survey on which this article was based was approved by the Washington University in St. Louis Institutional Review Board. Data and supporting materials necessary to reproduce the numerical results in the article are available in the *JOP* Dataverse (https://dataverse.harvard.edu/dataverse/jop). An online appendix with supplementary material is available at https://doi.org/10.1086/710143.

The Journal of Politics, volume 83, number 2. Published online March 17, 2021. https://doi.org/10.1086/710143

in support. Thus, we investigate the magnitude and variability of systematic stability in public attitudes toward the Supreme Court at both the aggregate and individual levels using the longest panel of Supreme Court attitudes ever assembled. Our results demonstrate a long-term aggregate stability in the Supreme Court's legitimacy but also provide evidence of more variable attitudes toward the Court at the individual level. These individual-level changes are associated with the surge in the Court's salience at the end of each June, respondents' judgments about institutional performance, and their political orientations.

THE DYNAMICS OF INSTITUTIONAL SUPPORT

Whether one expects diffuse support to stay stable or to fluctuate over time depends on one's theoretical expectation about the relationship between specific and diffuse support. Specific support refers to performance satisfaction, broadly construed. In his original conceptualization of these two concepts, Easton (1965) suggested that specific and diffuse support should only have a weak relationship with one another, writing that "except in the long run, diffuse support is independent of the effects of daily outputs. It consists of a reserve of support that enables a system to weather the many storms when outputs cannot be balanced off against inputs of demands" (273).

Much research supports Easton's conceptualization. Gibson and Caldeira (2009, app. C), relying on repeated cross-sectional samples, found that the Court maintained its high level of diffuse support after its highly controversial ruling in *Bush v. Gore*. More recently, Gibson and Nelson (2015) find a statistically significant, although substantively small, relationship between several measures of specific support and legitimacy, concluding that "the legitimacy of the Court is not overly dependent upon perceptions and evaluations of its performance" (163).

Other recent studies present a different view, suggesting the relationship between specific support—especially satisfaction with individual decisions—and diffuse support is actually fairly strong. Bartels and Johnston (2013), relying on both observational and experimental data, argue that there is a "potent ideological foundation" to the US Supreme Court's legitimacy (184). Christenson and Glick (2015), relying on a short panel design surrounding the US Supreme Court's first ruling on the constitutionality of the Affordable Care Act (*National Federation of Independent Business v. Sebelius*), find a statistically significant change in support for the Court's legitimacy tied with individual-level agreement with that decision.

This existing evidence on judicial legitimacy has been based primarily on cross-sectional surveys, single-shot experiments, and relatively short panels. For example, Christenson and Glick (2015) fielded a panel that spanned a month around the Court's ruling on the Affordable Care Act, Gibson and Caldeira (2009) analyzed a year-long panel to study legitimacy in the wake of the Alito confirmation, Clawson and Waltenburg (2009) conducted a two-wave panel survey of African Americans surrounding the Court's consideration of affirmative action, and Hoekstra (2000) used panels spanning the time between oral argument in a case and two weeks after the decision to understand local reactions to US Supreme Court decisions. While these studies taught us much about legitimacy, they are necessarily limited by their ability to explain change over a period of months, rather than years. The lack of over-time evidence is so severe that Gibson and Nelson (2014) suggest that "the most pressing need for those seeking to understand judicial legitimacy is data capable of supporting dynamic analysis" (215). After all, if support for the Court tends to revert back to an equilibrium level, as Mondak and Smithey (1997) suggest, support for the Court may change in short-term panel surveys or in experimental settings but could still be relatively stable—even at the individual level—over time. We adjudicate between these expectations using data that enable us to (*a*) examine these effects over several years and (*b*) relate any changes in support to particular respondent-level characteristics.

RESEARCH DESIGN, DATA, AND METHOD

Our data come from the May 2012 to July 2016 waves of the American Panel Survey (TAPS), a nationally representative online panel that regularly queried respondents about their views toward the US Supreme Court. Panelists answered diffuse support questions over 11 waves, the timings of which are shown in table C1. Because the data are a panel, the same respondents answered in multiple waves, enabling us to examine changes in attitude toward the Supreme Court within respondents over time.[1] Panelists were surveyed in every July, meaning that respondents provided their opinions on the Court within a few weeks of the Court's most important decisions, which are announced in late June each year (Epstein et al. 2015). The outcome variable is diffuse support for the Supreme Court. We take the summed scores of panelists' responses to six questions gauging attitudes toward the institutional legitimacy of the Supreme Court in each wave. Descriptions of the variables may be found in appendix D.

Our analysis is three pronged. First, we present descriptive findings suggesting that, although aggregate-level support is

1. Appendix C (apps. A–E are available online) provides details about TAPS, including a discussion of attrition.

stable, modest change in diffuse support occurs at the individual level over the course of our panel. Second, we estimate a series of regression models to demonstrate that diffuse support is significantly, albeit modestly, likely to shift among partisans and ideologues following major Supreme Court decisions in June. Third, we estimate a fixed-effects model to demonstrate that specific support predicts changes in Americans' levels of diffuse support for the Supreme Court.

RESULTS

We begin by assessing whether aggregate diffuse support is stable over time. The January 2013 wave of the panel had the lowest average value of legitimacy: 2.20 on a seven-point scale. By contrast, the maximum mean value we observe is 2.52 in July 2016. Thus, the range in average legitimacy we observe is tiny, falling within only 5% of the theoretical range of diffuse support (see fig. D1). This is clear evidence of aggregate-level stability.

While we observe only minute aggregate-level change in judicial legitimacy, we find nonnegligible individual-level change in that outcome across our panel.[2] When restricting our sample to those panelists who participated in more than three of the possible 11 waves, we find that the average panelist moved about 1.24 points on our seven-point scale.[3] The aggregate-level stability of diffuse support appears in the face of this individual-level change because panelists changed their views toward the Court in roughly equal numbers, some panelists became more supportive of the Court while others withdrew legitimacy from the institution over this time period.

What explains these changes? If these panelist-level shifts were associated with the respondents' individual-level characteristics, especially their partisan and ideological identities, it would support the argument that the combination of one's political orientation and one's favorable (or unfavorable) reaction to the Court's decisions is associated with changes in an individual's diffuse support for the Court (Bartels and Johnston 2013; Christenson and Glick 2015). To assess this possibility, we estimated a series of 10 linear regressions of the following form:

$$Y_{it} = \alpha + \beta_1 \times \text{wave}_t + \beta_2 \times \text{Republican}_i + \beta_3 \times \text{wave}_t \times \text{Republican}_i + \varepsilon_i,$$

where the first month-to-month transition is from May 2012 to July 2012 (i.e., $t_0 = \text{wave}_1$), and Y_{it} represents the panelist's current period diffuse support. The regressions were limited to Democratic and Republican respondents in subsamples of two consecutive waves, allowing us to examine change among partisans for each wave-to-wave transition. We are most interested in the estimated magnitude and precision for the coefficient β_3 in the July waves; this coefficient provides the estimated difference between partisans across the two months of a subsample. A substantively large negative and precise estimate of β_3 would suggest that Republicans decreased their level of support in a significantly distinct manner in the current wave from the previous recorded month relative to Democrats. Distinct differences between the parties would provide insightful information regarding the correlates of individual change, but the panel's structure provides greater context to the circumstances of such shifts. While we are limited in our ability to draw causal inferences between salient decisions and individual-level change since technically all subjects are exposed to the "treatment" of the Court's June decisions, stronger interaction effects between partisan identity and period would suggest that divisive rulings are associated with individual-level changes in diffuse support based on baseline political attitudes. By contrast, the non-July waves provide placebo tests. For these months, we do not expect significant shifts in the magnitude of diffuse support by party when the Court (and its most high-profile decisions) has not been prominently featured in the news recently.

The results are found in table E1, but we also illustrate the results and predicted levels of diffuse support in figure 1. There

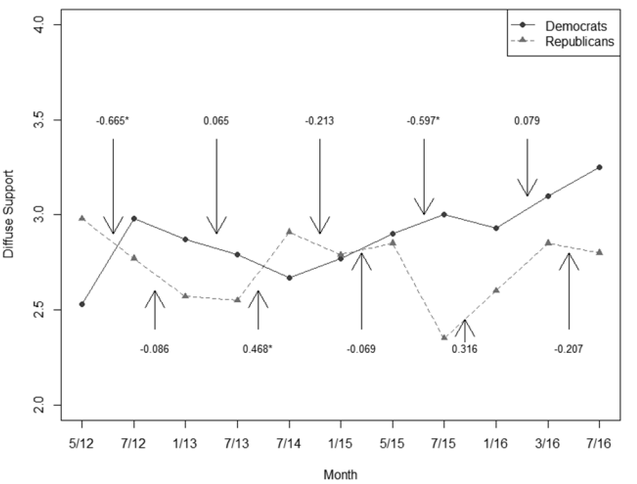

Figure 1. Predicted levels of diffuse support from regression analyses that examine the correlation of partisanship and wave-to-wave change in diffuse support across the 11 waves of our panel. Numbers represent the coefficient of the interaction term. * $p < .05$.

2. We also investigated the individual-level stability of diffuse support accounting for measurement error, comparing two hierarchical measurement models. Model fit statistics suggest that a model including individual time trends, compared to a model that dose not allow for these trends, significantly improves model fit. Full results are found in table A1.

3. The mean distance between the initial and final waves for those who answered in every wave is 1.21.

is no clear trend in diffuse support by party identification over the duration of the panel, particularly for the initial months. Yet, we do find sharp shifts in diffuse support from wave to wave. We find significant differences from wave to wave by party for three of the five July waves. Consider, for example, the time period surrounding the Court's *Sebelius* decision, the same decision studied by Christenson and Glick (2015). The Court decided this case in June 2012; our respondents were queried in May and July 2012. We observe a significant difference between May and July 2012 across the partisan groups, as shown by the significant and sizable interaction effect (-0.665, $p < .01$). More directly, a Republican's level of diffuse support was predicted to be roughly 0.45 points greater than a Democrat's level on the scale in May 2012. By July 2012, however, the model predicts that a Democrat's level of diffuse support was 0.21 points greater than that of a Republican. TAPS respondents received an invitation to complete the survey at the beginning of the month, and an average of 72% of panelists per wave completed the survey within one week. Additionally, none of our placebo tests (the non-July waves) present significant interaction terms, suggesting that partisans do react in different ways to the major decisions released in June.[4]

Finally, we investigate the extent to which specific support is associated with diffuse support over time. To explore this relationship, we estimated two fixed effects models regressing current period diffuse support on current period and lagged specific support. The results of this analysis may be found in table 1. In column 1, we find that specific support is significantly related to diffuse support in the same period. To put this effect in perspective, consider two hypothetical individuals with the same level of diffuse support in the previous period but who have diametrically opposed levels of specific support in the current period. The estimated coefficients indicate that a panelist who strongly approves of the Supreme Court's job performance would have a diffuse support score 0.76 points greater than a citizen who strongly disapproved of the Supreme Court's performance. When considering lagged specific support in a similar model, we find that the size of the effect is drastically reduced: the difference in predicted diffuse support between the extremes of specific support is estimated to be only 0.14. Nonetheless, this the effect is still significant, suggesting that individual-level specific support is modestly associated with diffuse support.

While a Hausman test suggests a fixed effects approach is superior to a random-effects model, we also estimated a series of hierarchical measurement models to estimate the correlates of short-term and longitudinal change in diffuse support at the individual level. To this end, we investigated the correlates of individual-level trends using an autoregressive latent trajectory (ALT) model that includes a standard matrix of time-invariant covariates (Gibson and Nelson 2015). We allow one covariate—Supreme Court approval (specific support)—to vary over time. For each period, the current level of diffuse support is regressed onto this measure of specific support. Appendix A presents these results, and appendix B provides robustness checks, including an outcome variable that uses the mean, rather than the sum, of the diffuse support items. Even when controlling for the lagged value of diffuse support, current period specific support is positively related to the current level of diffuse support.[5] The marginal effect of specific support for a panelist who strongly approves of the Court in each wave over the four-year panel is +0.58, an increase of 8% of the range of diffuse support. Where systematic change exists, it is related to individuals' ideology: more conservative respondents gradually lowered their support for the Court such that a strong liberal and a strong conservative who began the panel with the same level of support for the Court came to differ by a single point on the scale after four years.

Table 1. The Relationship between Individual-Level Diffuse and Specific Support: Fixed Effects Model

	(1)	(2)
Diffuse support$_{t-1}$	−.017	−.015
	(.009)	(.009)
Specific support$_t$	.187*	
	(.013)	
Specific support$_{t-1}$		.035*
		(.013)
Constant	2.916*	2.920*
	(.027)	(.028)
R^2	.046	.123
N	2,195	2,202

Note. Standard errors are in parentheses.
* $p < .05$.

DISCUSSION

Aggregate support for the US Supreme Court was relatively stable from 2012 to 2016. While some panelists systematically changed their views toward the Court over this time, these

4. Appendix E provides similar results repeating the analysis using respondents' ideology.

5. We also estimated the relationship in trends between diffuse and specific support. Table B5 presents the result: a significant, positive association in trajectories.

changes happened in relatively equal positive and negative deviations. Thus, the timeline for a meaningful aggregate shift in the Court's support is one of years rather than weeks. This finding stands in stark contrast to the results of single-shot studies that suggest fairly large changes in diffuse support. The Court's policy making might contribute to stability; during our panel, the Court's policy making, per the Supreme Court Database, was 48.5% liberal. Were the Court to abandon its moderate policy making, perhaps our results would show more change. Indeed, some suggest that the Court is savvy enough to correct its course should its public support begin to decline (Ura 2014).

Our study's strength lies in the longest ever panel study of diffuse support; its major weaknesses are twofold. First, we are able to examine specific support generally rather than subjective ideological disagreement specifically. Because TAPS began before Bartels and Johnston (2013) emphasized the relationship between ideological disagreement and legitimacy, we lack valid and reliable measures of individual-level policy satisfaction in our survey. Our data enable us to assess the general relationship between specific and diffuse support that has been debated by scholars since Easton (1965), but we are unable to assess directly the ideological disagreement component of specific support. Given the Bartels and Johnston findings, that our results reveal a relationship between ideology and change in diffuse support over time demands follow up. Our results support Easton, revealing a meaningful, but not overwhelming, relationship between the two types of support.

Second, the Court decides many major decisions at the end of each June (Epstein et al. 2015); oftentimes, these cases vary in their ideological valence. The TAPS data do not contain the issue-specific questions one would need to tie changes in individual-level support to most major decisions or events. While it is possible that aggregate opinion of the Supreme Court could change when the entire population is exposed to decisions, not all Americans hear about a decision when it is issued (Franklin and Kosaki 1989). With this said, our data provide telling evidence that individual-level legitimacy judgments move weakly, but systematically, over time.

The implication of these results is both clear and comforting. Because the Court's support is so stable, it should be able to fulfill its constitutional roles both as the protector of individual rights and liberties and as a check on Congress and the executive, even when those decisions are unpopular. In a day and age where many fear the breakdown of institutional norms and powers, our results suggest that the American constitutional scheme may be more robust than many currently fear.

ACKNOWLEDGMENTS

We thank Jim Gibson, Damon Cann, Ben Woodson, Keith Schnakenberg, Morgan Hazelton, Steve Morgan, Amanda Driscoll, Michael Zilis, and seminar participants at Penn State for helpful comments.

REFERENCES

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.

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): 403–18.

Clawson, Rosalee A., and Eric N. Waltenburg. 2009. *Legacy and Legitimacy: Black Americans and the Supreme Court*. Philadelphia: Temple University Press.

Easton, David. 1965. *A Systems Analysis of Political Life*. New York: Wiley.

Epstein, Lee, William M. Landes, and Richard A. Posner. 2015. "The Best for Last: The Timing of Supreme Court Decisions." *Duke Law Journal* 64:991–1022.

Franklin, Charles H., and Liane C. Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion and Abortion." *American Political Science Review* 83:751–71.

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 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 (1): 201–19.

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): 162–74.

Hoekstra, Valerie J. 2000. "The Supreme Court and Local Public Opinion." *American Political Science Review* 94 (1): 89–100.

Mondak, Jeffrey J., and Shannon Ishiyama Smithey. 1997. "The Dynamics of Public Support for the Supreme Court." *Journal of Politics* 59 (4): 1114–42.

Ura, Joseph Daniel. 2014. "Backlash and Legitimation: Macro Political Responses to Supreme Court Decisions." *American Journal of Political Science* 48 (1): 1107–26.