IS THE U.S. SUPREME COURT'S LEGITIMACY GROUNDED IN PERFORMANCE SATISFACTION AND IDEOLOGY?*

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Abstract

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

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

Their research is of immense theoretical importance for American politics. In essence, Bartels and Johnston assert that legitimacy depends upon performance satisfaction. In Easton's original conceptual language, this means that diffuse support depends mightily upon specific support. If so, then the distinction between legitimacy and satisfaction weakens dramatically, with the consequence that the so-called reservoir of goodwill that many believe protects the Court against retribution for policies displeasing to the majority cannot offer much protection at all. Indeed, in the experiment Bartels and Johnston report, the Court's legitimacy suffers a serious blow when respondents are told of *only a single displeasing decision*. If legitimacy is that fragile, then a wise and prudent Court would shift from emphasizing the "minority rights" half of its democratic assignment to becoming an agent of "majority rule."

The Bartels and Johnston paper is all the more significant because it may be the only existing example of research showing a strong link between legitimacy and ideological dissatisfaction using a seemingly valid and generally reliable measure of court legitimacy. Much earlier research uses dependent variables heavily contaminated with specific support variance. With a dependent variable systematically affected by a construct other than the one it purports to

measure, it is not at all surprising to find that performance satisfaction depends upon performance; when the dependent variable analyzed is the conventional confidence item – an indicator more closely connected to specific support than to diffuse support (Gibson, Caldeira, and Spence 2003a) – then it should be entirely expected that confidence reflects performance. To the extent that the dependent variable is connected to the expectation that the Court will make pleasing public policies, then, obviously, performance matters.

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

At the same time, however, their main independent variable – perceived ideological disagreement – is not nearly so clearly measured validly and reliably. To be clear, Bartels and Johnston did not design the survey they analyze in the first part of their paper – the data are from the Annenberg Supreme Court survey of 2005. But, as the authors acknowledge, fully one-half of the respondents gave conceptually and empirically ambiguous answers to the question about their perceptions of Supreme Court policy-making. If a more valid and more reliable measure of ideological agreement were used, then perhaps the empirical findings would be different.

The flawed Annenberg survey is only one-half of the data analysis reported in the paper. Equally unprecedented is their finding that a single contrary Supreme Court decision can undermine judicial legitimacy. They conclude: ". . . we examined the influence of a *single*

decision, so the size of the effects found is quite impressive and reinforces the importance of Court policymaking for citizen judgments of legitimacy" (Bartels and Johnston 2013, 196, emphasis in original). It is one thing to argue that accumulated grievances can undermine judicial legitimacy, as Gibson and Caldeira (1992) suggested happened among African Americans. It is quite another to claim that *each unpopular Court decision is dangerous to the institution's health*. If so, the "countermajoritarian dilemma" is truly a profound dilemma. If legitimacy cannot protect the institution when it makes unpopular decisions, then the Court should no longer be listed as among the most powerful and independent institutions in American politics, but should instead be understood as a majoritarian institution (and in an even more extreme version of majoritarianism than found in Dahl's famous paper of 1957). With so much at stake, it would be unwise to let these empirical findings enter the literature without careful scrutiny.

As it turns out, national survey data exist that allow a reconsideration of the Bartels and Johnston thesis. In this data set, a more valid and reliable measure of ideological dissatisfaction is available. Additional control variables – especially the crucially missing support for democratic institutions and processes – can be added to the analysis. The dependent variable is more reliable in this data set, and it does not suffer from a recently reported discovery suggesting that important contamination exists in the dependent variable analyzed by Bartels and Johnson. Finally, this article attempts to reconcile the experimental finding regarding the impact of a single disagreeable decision with high – and stable – levels of institutional support for the Supreme Court over time, thereby drawing a theoretical conclusion about Court legitimacy quite different from that of Bartels and Johnston. In the end, this paper challenges virtually all of the theoretical and empirical claims made in the Bartels and Johnston paper.

We lay out our analysis according to the following logic. We first begin with a critique of the Bartels and Johnson paper, focusing mainly on the measurement of both the independent and dependent variables. We suggest that the findings they report are largely a function of measurement issues, particularly validity, surrounding the key variables used in their analysis.

However, the main purpose of this paper is not to re-do the Bartels and Johnson analysis; instead, we produce some new evidence on precisely the question of whether institutional support and ideological dissatisfaction are strongly interrelated. Care must be taken in this analysis, because legitimacy theory does not predict a zero correlation between specific support and diffuse support; instead, the correlation should have a Goldilocks character – being neither too high, nor too low. We also blend their ideological disagreement into the specific support concept, discovering that ideological dissatisfaction is a relatively small component of performance dissatisfaction. In the end, our data suggest a conclusion directly at odds with that of Bartels and Johnston: the legitimacy of the U.S. Supreme Court is not overly dependent upon perceptions and evaluations of its performance. Instead, consistent with previous research, institutional support is primarily grounded in more fundamental and obdurate democratic values, and is therefore fairly resistant to change.

Finally, we reinterpret the Bartels and Johnson experimental findings, offering an alternative understanding of how specific and diffuse support are related in the current era. In the end, our new analysis suggests a Supreme Court with institutional legitimacy that is far more resilient than thought by Bartels and Johnston. We conclude by proposing a "new math" by which the Court's "countermajoritarianism" might be calculated.

Specifying the Research Problem

Ultimately, the research question put forth by Bartels and Johnston concerns the degree of connection between specific and diffuse support, both as theoretical and empirical matters. The issue is whether a "reservoir of goodwill" exists, which is indicated by a broken or weakened relationship between performance satisfaction and institutional support. If an independent reservoir does not exist that can cushion the institution from the effects of policy disagreement, then diffuse support is of little practical consequence. As Gibson and Caldeira put it, "[t]heoretically and conceptually, the two forms of support should *not* bear a close relationship to one another. To conceive of the former as a simple and contemporaneous function of the latter would undermine much of the utility of distinguishing institutional commitments from satisfaction with outputs. The stability of political institutions would then simply turn on their performance in the short run. In a theoretical sense, then, diffuse support *must* be disconnected from specific support to at least some degree" (Gibson and Caldeira 1992, 1127, emphasis in original). Similarly, Easton (1975, 442, n. 21) implies that the relationship should be rather small; he goes so far as to argue that a high correlation between the two concepts may be an indication of error in the measurement of diffuse support (see also Caldeira and Gibson 1992; 1995). Thus, from the viewpoint of the theory, the two concepts should be far from perfectly correlated.[1]

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[1] From the point-of-view of the theory (and the Bartels and Johnston two-part analysis), it matters little whether dissatisfaction with the Supreme Court's decisions is conceptualized as dissatisfaction with a specific ruling (e.g., *Kelo*) or whether it is dissatisfaction with the ideological direction of the Court's rulings as whole. One might expect accumulated dissatisfaction – as indicated by disapproval of the ideological direction of the Court's decisions – to have a stronger influence than dissatisfaction with a single decision, but, conceptually, the same process is involved: support for the Court is weakened because of the decisions it makes.

At the same time, one would not expect the two forms of support to be unrelated to each other. One way in which diffuse support is built is through a succession of pleasing policy decisions (Gibson, Caldeira, and Baird 1998). Indeed, some have conceptualized institutional support as a "running tally" through which citizens keep track of their likes and dislikes of the policy outputs of courts (e.g., Baird 2001). So diffuse and specific support ought to be related, at least moderately.

Specifying the expected magnitude of the correlation is not simple, however. The theory predicts something of an asymmetry in the relationship between the two constructs: diffuse support should be high among those satisfied with the institution's performance, and, if support serves as a reservoir of goodwill, it should be lower (but can also be relatively high) among those not so satisfied with the performance of the institution. The degree of correlation between the two measures is therefore very much a function of the size of the population that is satisfied with the Court's policy-making, in the sense that most of the satisfied are likely to support the Court, as are a sizable (but smaller) portion of the dissatisfied.

The strength of the relationship has varied in published studies. For example, Murphy and Tanenhaus's pioneering research on the connection between the Supreme Court and public opinion reported correlations between various indicators of ideology and diffuse support that ranged from .45 to .55 (Murphy and Tanenhaus 1968; Murphy, Tanenhaus, and Kastner 1973). However, Murphy and Tanenhaus's measure of diffuse support has been the subject of criticism due to concerns about endogeneity between it and measures of specific support (Caldeira and Gibson 1992; Murphy and Tanenhaus 1990). Scheb and Lyons (1999) discuss the relationship between diffuse and specific support based on a 1997 nationally representative survey. They find

a bivariate correlation between diffuse support (which is measured differently from Gibson and Caldeira) and specific support of r = .39.

Scholars have also examined the relationship between specific and diffuse support in courts abroad. Caldeira and Gibson (1995), studying the legitimacy of the European Court of Justice, report correlations between diffuse and specific support that range from gamma = .13 to gamma = .45. In Gibson, Caldeira and Baird's study of the legitimacy of national high courts, diffuse and specific support are only moderately related in most countries (1998, 352, Table 7). Indeed, across the twenty surveys included in their analysis, the average correlation of diffuse and specific support is .33.[2]

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

Conceptualizing Ideological Disagreement

We should be clear at the outset that we consider ideological dissatisfaction with the direction of the Court's decisions to be an element of specific support. Specific support refers to performance satisfaction, and one component of performance is policy making. Satisfaction with the performance of a court may therefore reflect agreement with the decisions made by that court. But it may also reflect other considerations, including satisfaction with how decisions are made, the speed and alacrity with which they are made, how litigants are treated, and the overall

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[2] The correlation for the United States is .46.

context of the institution. Perhaps, for some, dissatisfaction with the current Supreme Court has

nothing at all to do with the ideological make-up of its decisions, but has instead to do with the

fact that the Court makes so few decisions per term, especially in comparison to the past.

Dissatisfaction may stem from the actions of the justices, such as writing books for profit, going

duck hunting, disagreeing in public with the president, refusing to televise its proceedings, etc.

Bartels and Johnston do not test alternatives to ideological factors because they do not include in

their analysis a more general measure of performance satisfaction.[3] On the contrary, we

hypothesize that ideological disagreement with the Court is only a relatively small component of

people's views on how well the Court is doing its job, and therefore include in our analysis both

measures of ideological dissatisfaction and more general performance dissatisfaction.

Finally, we should note that we agree with Bartels and Johnston on the nature of the

causal connection between specific and diffuse support. That is, the authors come down strongly

on the view that specific support causes diffuse support, rather than vice versa. One aspect of

their analysis we do not challenge is this presumed causal ordering.

Reconsidering the Bartels and Johnston Findings

The Dependent Variable: Institutional Legitimacy

The survey portion of the Bartels and Johnston analysis uses a five-item dependent variable that

is grounded in extant research (e.g., Gibson, Caldeira, and Spence 2003b). Their dependent

variable is said to be a measure of legitimacy, or institutional support. It is therefore important to

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[3] As we note below, a measure of performance satisfaction is available in the Annenberg survey. It is not exactly clear to us why Bartels and Johnston did not include this measure of specific support in their analysis. Perhaps they reject our conceptualization of ideological dissatisfaction as simply one component of performance dissatisfaction.

consider the operationalization carefully.

The items used, the percentage of respondents giving a reply supportive of the institution (irrespective of whether that requires an "agree" or "disagree" answer), the loading on the first unrotated factor extracted by Common Factor Analysis,[4] and the amount of shared variance between the item and the rest of the items in the set, are:

The Supreme Court can usually be trusted to make decisions that are right for the country as a whole. (75.8 % support; loading = .55; R^2 = .26)

The decisions of the Supreme Court favor some groups more than others. (24.1 % support; loading = .60; R^2 = .31)

The Supreme Court gets too mixed up in politics. (25.0 % support; loading = .66; R^2 = .34)

If the Supreme Court started making a lot of rulings that most Americans disagreed with, it might be better to do away with the Court altogether. (75.3 % support; loading = .37; R^2 = .09)

Generally speaking, how much do you trust the Supreme Court to operate in the best interests of the American people—a great deal, a fair amount, not too much or not at all?[5] (74.8 % support; loading = .55; R^2 = .26)

As can be seen from the percentages of respondents giving supportive answers to these questions, there are two clusters of items – those attracting a very high level of support and those

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[4] We conduct this analysis, and the analysis of our own data (below), using Classical Test Theory. Thus, we posit an underlying latent construct (institutional support) and conceptualize the variance in each indicator as stemming from its relationships to the construct (validity) and an error term, with the error term including random and systematic variance.
[5] To our knowledge, this item has not heretofore been used as a measure of institutional support.

attracting a very low level of support. None of these items sharply divided the American people.

Factor analyzing these indicators produces a unidimensional structure, with an eigenvalue of the second extracted factor of .98 (which is uncomfortably close to the conventional threshold of 1.00). Only the "do away with" item has a weak (.37) loading on the first extracted factor. As documented by an R^2 of only .09, this item is poorly connected to the rest of the measures in the set. Cronbach's alpha is .67 with a mean inter-item correlation of .29.[6]

Close examination of the correlation matrix for these five items reveals two unusually strong correlations. First, the "favors some groups" item is strongly correlated with the "too mixed up" item: r = .54. Second, the "can be trusted" and "trust to operate" items are correlated at .48. None of the other correlations in the matrix exceed .29.

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

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

If the correlation of ideological disagreement and the Bartels and Johnston dependent variable is via a specific support route – that is, the relationship is spurious because both the

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[6]For the experiment they report in the second portion of the paper, a four-item index of lesser reliability (alpha = .62) was used. It too includes one of the "trusted" items.

independent and dependent variables are correlated with specific support – then their findings

take on vastly different theoretical and practical consequences. Ideological disagreement with the

Court's policies would quite naturally lead to greater displeasure with the policies the Court is

making. This does not necessarily mean, however, that ideological disagreement plays a

legitimacy-threatening role when it comes to the U.S. Supreme Court.

Measuring Ideological Disagreement

As reported in Bartels and Johnston's Table 1 (p. 189), the Annenberg survey uses the following

item to measure perceptions of the ideological location of the Supreme Court: "Judging by its

recent decisions, do you think the Supreme Court is generally liberal, generally conservative, or

is it making decisions more on a case-by-case basis?" About 21 % of the respondents view the

Court as generally liberal, with 26 % seeing it as generally conservative. The problem, however,

is that about 53 % say that the Court is "making decisions more on a case-by-case basis." This is

a very curious way to measure perceptions that the Court's decisions are "moderate" (as

indicated in Table 2, p. 191: "Case-by-Case (Moderate)").

What does it mean to say that decisions are made "on a case-by-case basis?" The context

of the question itself may have helped the respondents understand the meaning of the phrase; this

last option is implicitly posited as being different from generally liberal and generally

conservative. But to use this wording as an operationalization of the concept "moderate" is to use

an indicator of questionable validity and reliability.

An alternative to the view that respondents selecting this response category judge the

Court's decisions as ideologically moderate is that this "case-by-case" response category

attracted those who reject the premise that Court decisions are made on the basis of ideology; a

"case-by-case" approach could well be one in which, devoid of ideology, the justices decide the

cases as dictated by the law. The response category may also have been a safe haven for those

without an opinion, which, of course, may be why such a large percentage of the respondents

selected this option.[7] Whatever the interpretation of this phrase, there can be little doubt that the

53 % of the respondents selecting this response option are quite heterogeneous in their views of

the Court, and therefore that the indicator is heavily contaminated with measurement error –

most likely, systematic and random.

Conclusions

Our purpose in this article is not to offer a full-blown critique of the analysis of Bartels and

Johnston, in part because they obviously did the best they could with the measures at hand.

Instead, we regard the measure of the independent variable as deeply flawed, and therefore

conclude that the Annenberg data set cannot sustain additional analysis of this theoretical

question. Consequently, we turn to a different data set to try to get better leverage on the

relationship between institutional support and ideological disagreement.

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

New Evidence On Ideological Disagreement And Institutional Support

This analysis is based primarily upon a survey of a representative sample of the American people conducted in the summer of 2011 (see Appendix A for details). Since similar surveys were conducted in 2005, 2007, 2008, 2009, and 2010, and since some of the measures used in these surveys were also used in representative surveys conducted in 1987, 1995, and 2001, we also take advantage of the available data to draw conclusions about change over time.

Measuring the Court's Ideological Location

Our survey uses an alternative measure of perceptions of the ideological location of the Supreme Court: "Thinking about the United States Supreme Court in Washington and the decisions that it has been making lately, would you say that the Supreme Court is a very liberal court, a somewhat liberal court, a somewhat conservative court, or a very conservative court?" This item followed a question in which the respondents were asked to identify their own ideological location. About 35.4% of the American people rate the Supreme Court as either very or somewhat liberal, while 46.5% judge the Court to be somewhat or very conservative. There seems to be little consensus in American politics today about the ideological location of the current Supreme Court.

It is instructive to compare these results to those of Bartels and Johnston. Table 1 reports how the American people view the Supreme Court according to the two surveys. Before considering the differences, recall that the Annenberg survey was conducted in 2005, and the Freedom and Tolerance Survey was conducted in 2011. Also, the Annenberg survey uses three

response categories; the Freedom and Tolerance survey uses four response categories.[8] The

Annenberg sample is nearly twice as large, and the percentage of respondents unable to judge the

ideological location of the Court is somewhat smaller than the percentage in the Freedom and

Tolerance Survey. Despite these methodological differences, the substantive differences between

the two surveys are remarkable.

[PLACE TABLE 1 ABOUT HERE]

Collapsing the 2011 figures to make them somewhat more compatible with the 2005

figures, 55.0 % of the American people judged the Court to be at least somewhat conservative in

2011, compared to 26.0 % in 2005. The comparable figures for perceptions of a liberal Court are

42.1 % and 20.1 %. These are remarkable differences.[9]

In addition, an important difference in these two surveys pertains to the middle category

– between liberal and conservative. As noted above, the Annenberg survey uses the "making

decisions more on a case-by-case basis" response category,[10] while the Freedom and Tolerance

survey did not offer the respondents a middle category. The results are dramatically different.

According to the Annenberg survey, 53.4 % of the respondents thought the Court made decisions

on "case-by-case" basis. But according to the Freedom and Tolerance Survey, only 2.6 % of the

respondents volunteered a response judging the Court to be partly conservative and partly liberal.

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[8]We anticipated the response "partly conservative and partly liberal" and therefore included it in the response set as a pre-coded volunteered response – i.e., it was not offered to the respondents, but was available to the interviewers to record volunteered responses.

[9] If we were to treat the "case-by-case" response as missing data, justifying that decision by considering these respondents to have rejected the ideological premise of the question, then the results of the two surveys converge markedly. Very roughly, the Bartels and Johnston figures double: the 26 % conservative becomes 52 %, the 20 % liberal becomes 40 %.

[10]Note that the original Annenberg survey did not use the word "moderate." Bartels and Johnston added "moderate" as a parenthetical expression to their Table 2 (p. 191).

We believe the primary difference between the two questions has to do with the "case-by-case" response alternative used in the Annenberg study. One could easily imagine that the Court makes its decision on a case-by-case basis, but that, in the aggregate, the Court's decisions are still somewhat liberal or somewhat conservative – which is not "moderate."[11] At a minimum, the Freedom and Tolerance formulation provides for dramatically better discrimination among the respondents, inasmuch as the Annenberg formulation places over one-half of the respondents in this highly ambiguous response category.[12]

Ideological Distance

We measured the ideological distance between the respondent and the Supreme Court, based on the respondent's self-identification and the perceived location of the Court.[13] Using a fairly rough categorization of the index, only 15.7% of the respondents place the Court in very close ideological proximity to themselves.[14] At the same time, however, 27.9% see the Court as quite a bit more liberal than themselves and 21.0% see the Court as quite a bit more conservative than

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[11] The consequences of "case-by-case" decision making most likely vary with the nature of the law. For example, if we assume that speech protections in the 1st amendment are fairly liberal, and gun protections in the 2nd amendment are fairly conservative, then "case-by-case" decisions in the former would tend to be liberal, but in the latter they would tend to be conservative.

[12] A Pew survey conducted in July 2007 (the closest date we could find to the date of the Annenberg survey) found that 36 % of the American people rated the Court at the time as conservative, 35 % middle of the road, 14 % liberal, and 15 % did not know where the Court stood. It is always hazardous to make strict comparisons across surveys, but there is about a 20 percentage point difference between Pew's "middle of the road" and Annenberg's "case-by-case" findings.

[13] Following convention, self-identifications were collected on a nine-point scale, ranging from extremely conservative to extremely liberal. In terms of perceptions of the Court's position, we used a four-point scale graduated from very conservative to somewhat conservative to somewhat liberal to very liberal. Appendix B provides a discussion of how we used these two variables to create a measure of ideological dissatisfaction.

[14] For a small number of respondents who could not locate the Court in ideological space, we used theoretical imputation to create an ideological proximity score. Appendix B details this methodology.

themselves. It is always difficult to characterize how large or small differences are on a scale such as this, but even by fairly loose standards, a considerable proportion of the American people see the Supreme Court as an institution ideologically dissimilar to themselves.

Measuring Institutional Legitimacy

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

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

It is inevitable that the U.S. Supreme Court gets mixed up in politics; therefore, we ought to have stronger means of controlling the actions of the U.S. Supreme Court. (31.4 %

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support; loading = .75; R^2 = .45)

The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. (29.6 % support; loading = .68; R^2 = .40)

Judges on the U.S. Supreme Court who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge. (47.2 % support; loading = .67; R^2 = .37)

Supreme Court Justices are just like any other politicians; we cannot trust them to decide court cases in a way that is in the best interests of our country. (57.2 % support; loading = .60; R^2 = .30)

If the U.S. Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court altogether. (70.3 % support; loading = .58; R^2 = .29)

The U.S. Supreme Court gets too mixed up in politics. (27.9 % support; loading = .55; R^2 =.26)

The right of the Supreme Court to decide certain types of controversial issues should be reduced. (44.9 % support; loading = .52; R^2 = .26)

In order to rigorously assess the hypotheses concerning the variability in institutional support, we require a summary index of loyalty toward the institution. Our analysis reveals that these 2011 measures of legitimacy are quite reliable, with a Cronbach's alpha of .81. The average inter-item correlation is .39, which is moderately strong given categorical data that only approximate an interval-level scale and given some degree of degenerate variance in a few of the items. In addition, Common Factor Analysis strongly supports the conclusion that responses to

these statements are valid indicators of the legitimacy of the U.S. Supreme Court – the seven-

item set is strongly unidimensional (the eigenvalue for the second extracted factor is only .81);

all factor loadings are greater than .50. Because the mean of the responses to these seven items is

so strongly correlated with the factor score (r = .99), we use as the dependent variable for this

analysis the average response to the institutional support items (scaled to vary from 0 to 1).[15]

Performance Satisfaction

In general, the American people are reasonably satisfied with how well the Court does its job,

with 70.7% of the respondents rating the Court as doing a pretty good or great job. Only about

one quarter of the American people believe the Court is doing a not very good or poor job. We

use this item as our measure of specific support for the Supreme Court. The correlation of

specific support and ideological disagreement with the Court is −.13.

Multivariate Analysis of the Sources of Institutional Support

So as to be able to compare our results to those of Bartels and Johnston, we have conducted an

analysis similar to that reported in their Table 3, using institutional support as the dependent

variable.[16] There are differences in the analytical approach we take and the variables we include

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

[16] All variables in this analysis (independent and dependent) are scaled to vary from 0 to 1 based

and do not include.

Bartels and Johnston use nominalized versions of their measures of ideological distance and of party identification. This, of course, increases the influences of these variables because they are not penalized for deviations from the constraints of linearity.[17] We have continuous measures of both variables and therefore employ these as interval-level independent variables.

We include in our analysis a major set of predictors of legitimacy, support for democratic institutions and processes. These include: (1) support for the rule of law, (2) political tolerance, and (3) support for liberty versus order. Appendix B reports details on the measurement of these concepts.

However, we do not have in our analysis measures of "political trust" or of "differential media exposure." Both variables are significantly related to institutional support in their results.[18]

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on the observed frequency distributions.

[17] Linear relationships are always less than or equal to curvilinear relationships. This is especially so when the curvilinear relationship has no specified functional form (e.g., a quadratic relationship), but is instead the sort of "connect the dots" form of curvilinearity of a set of dummy variables.

[18] While differential media exposure has a statistically significant effect in their model, according to our analysis of their data, the variable adds less than .01 to the adjusted R^2 from the equation predicting legitimacy. Moreover, it fails to affect the sign, substantive magnitude, or statistical significance of any other predictor in the model. In addition, in the bivariate case, differential media exposure has practically no relationship with legitimacy. We conclude that media exposure may have a statistically distinguishable effect, but excluding it from their model does not appear to have any substantive consequences.

According to their paper, political trust is only included in their model in the absence of better predictors of democratic values: "Also, past research argues that evaluations of the Supreme Court are connected to more peripheral factors, such as democratic values and broader governmental orientations (Caldeira and Gibson 1992; Gibson 2007; Hetherington and Smith 2007). While the survey does not include democratic values measures, it does include an indicator of political trust, therefore capturing feelings toward the government writ large." It occurs to us that, given the inclusion of two trust items in the dependent variable, problems with endogeneity most likely arise from this decision. More theoretically, if Bartels and Johnston are in effect using trust as a "surrogate" for a measure of support for democratic institutions and processes, then the substitution of our measures for a trust measure (which is

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

[PLACE TABLE 2 ABOUT HERE]

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

Second, there are some quite notable non-relationships reported in the table. The bivariate correlation of ideological disagreement and support is −.03; for party identification, the coefficient is .04.[19] Several of the control variables (e.g., whether one is an African American) are almost totally unrelated to institutional support. Some significant differences exist in these variables between our data and those of Bartels and Johnston, the most noticeable of which are their observed effects of being African American and of being female. We attribute these differences to specific support linkages built into their measures.

Third, following earlier research, the democratic values indicators are strong predictors of institutional support. Those who support the Court are stronger supporters of the rule of law, are

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not available in our survey) results in conceptually equivalent model specifications in their analysis and ours.

[19]Note that Bartels and Johnston report a finding consistent with ours with regard to partisanship (and consistent with Gibson 2007). From their Table 3, their analysis indicates that Republicans do not differ from Democrats in levels of legitimacy; nor do independents differ. That ideological disagreement is said by the authors to play such a prominent role in shaping Court support, while partisanship does not, is curious given the close connection of partisanship and ideology in contemporary American politics.

more tolerant, and are more likely to favor liberty when liberty and order conflict. The magnitude of the effect is not entirely obvious in the table, however, inasmuch as the multivariate coefficients represent only the independent effects of each of the components of the democratic values set.[20] It is noteworthy that when these three variables are added to an equation including only ideological disagreement and job performance satisfaction, the explained variance jumps from 7 % to 30 %. By any statistical measure, willingness to grant legitimacy to the U.S. Supreme Court is very closely connected to more general support for democratic institutions and processes. No comparison to the Bartels and Johnston data is possible because no direct democratic values measures were available to them.

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

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

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

It is important to note that the influence of performance satisfaction as shown in Table 2 is independent of and considerably stronger than the impact of ideological dissatisfaction. This means that the bulk of the influence of performance satisfaction has little to do with ideological disagreement with the Court (the variable's coefficient represents its influence apart from that of ideological disagreement). This finding should be emphasized inasmuch as it is new to the literature on institutional support. Judgments of how well the Supreme Court does its job seem to be formed in part by ideological agreement or disagreement with the Court, but in considerably larger part by judgments of other aspects of the Court's performance.

If we assume for a moment that the ideological disagreement measure used by Bartels and Johnston is really a measure of specific support, we might be able to compare our Table 2 with the results they report in their Table 3. They nominalize "subjective ideological disagreement," treating it as a set of four dummy variables and excluding the variable demarcating those in "Strong Agreement" with the Court from their analysis. This confuses the comparison a bit, although it is still fruitful to try to draw some comparative conclusions.

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

None of these effects is particularly strong, however. The 27.8 % of their sample in strong disagreement differ from the 26.1 % of those in strong agreement by at most −.139. On a

dependent variable that varies from 0 to 1, the substantive difference in the expected value of support between those in strong disagreement with the Court ($\hat{y} = .46$) and those in strong agreement ($\hat{y} = .60$) seems small to us. For the 1,502 respondents with an index score, we find a mean score of .54 (median = .55), with a standard deviation of .21. Furthermore, 35.7 % of the respondents score lower than .46 on the index; 32.9 % score higher than .60. Those who register at maximal dissatisfaction with the ideological direction of Court score slightly below the mid-point of the index. These do not seem to us to be findings that threaten the Court's legitimacy.

Our coefficient for job performance satisfaction (.19) is larger than the coefficient representing the difference between strong agreement and strong disagreement ($-.139$). Thus, while we find practically no relationship between our measure of ideological disagreement with the Court and institutional support, our measure of specific support is more strongly connected to diffuse support than found by Bartels and Johnston. We attribute this difference to the fact that performance satisfaction includes evaluations other than those based on ideological disagreement (and what we consider to be large amounts of measurement error in their indicator of subjective ideological disagreement). So, in the end, one interpretation of the Bartels and Johnston findings is that they fit nicely with existing (and contemporary) findings on the connection between specific and diffuse support, except that their findings are attenuated by significant quantities of measurement error. This interpretation, it should be noted, is quite contrary to their view that their findings represent a major break with earlier research.

As we have argued above, we consider a bivariate coefficient of .26, accompanied by an unstandardized multivariate regression coefficient of .19, to indicate a moderate degree of relationship, just as predicted by the theory of institutional support. Were this coefficient much

lower, it would question the validity of the measure of institutional support. Were it much higher, it would also question the validity of the measure of institutional support. And job performance satisfaction accounts for only a fraction of the variance that can be explained by the (three) democratic values indicators. From our viewpoint, these relationships are precisely as expected according to the theory.

Skeptics might dismiss our efforts to compare our findings to those of Bartels and Johnston. Different measures are used, different variables are included in the equation, their data come from 2005, ours from 2011, etcetera. Our most certain conclusions have to do only with our own data and analysis. From these, we conclude that democratic values are the best predictors of institutional support, that job performance satisfaction covaries with support, while subjective ideological disagreement (and partisanship, by the way) do not. Some additional findings from earlier research are also confirmed; for example, our data indicate that "to know the Court is to love it," which replicates the well-known finding of the research by Gibson and Caldeira (e.g., 2009).

We return to Legitimacy Theory for our final comment about these findings. There are undoubtedly some Americans whose support for the Court is entirely contingent upon satisfaction with its decisions. For most, however, performance satisfaction and legitimacy are only loosely interconnected. Because this is so, the Court enjoys a "reservoir of goodwill." While the Bartels and Johnston conclusions may be that this reservoir is shallower than suggested by our findings (although we do not even believe that characterization to be empirically precise), there can be little doubt that the Court's contemporary reservoir is wide and deep, and not overly dependent upon pleasing people with its decisions.

Experimental Evidence

This, then, takes us to the results of an experiment conducted by Bartels and Johnston, which is reported in the last section of their paper. The authors rely on this experiment to assuage endogeneity concerns, namely that an individual's perception of the Court's legitimacy may color her perception of the ideological distance between the Court and herself.[21] In this section, we briefly critique the survey experiment. Then, taking Bartels and Johnston's findings as given, we note that their conclusions contradict a broad swath of the existing literature on the public's evaluations of the Supreme Court. We also present evidence drawn from a number of surveys to demonstrate that a major implication of their findings—that the legitimacy of the Supreme Court should not be stable—is not borne out by the data.

Bartels and Johnston's experiment is an attempt to "[*manipulate*] rather than [measure] perceptions of the Court's ideology" (195, emphasis in original). To this end, survey respondents were provided a short vignette describing the outcome of a single Supreme Court decision involving the ability of the federal government to monitor citizen communications.[22] Respondents were randomly assigned to one of two groups; one group received a liberal Court decision (not allowed to monitor) while the other group received a conservative Court decision (allowed to monitor).[23] The success of the manipulation relies on the validity of the assumption

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[21] As a logical matter, if two variables are reciprocally related, then an experiment that manipulates X and generates an effect on Y does not necessarily lead to the conclusion that Y does not also cause X.

[22] The criteria by which this issue was selected are not clear to us. Based on an analysis by Gibson, Lodge, and Woodson (2012) of similar issues, it seems that the issue on which Bartels and Johnston focused is not unusually salient to more than one-half of the American people.

[23] Bartels and Johnston report no evidence that liberals uniformly favor a prohibition on the

that the outcome of a single decision can change respondents' views of the Supreme Court's

ideology. However, Bartels and Johnston provide no measure of the respondent's perceptions of

the Supreme Court, and there are no validity checks to demonstrate that the manipulation

successfully altered the respondents' perceptions. In the absence of a validity check, it is unclear

whether the manipulation—again, just a single decision—has the requisite weight to change the

perceptions of the respondents, especially those who hold the "case-by-case" view. Similarly,

there is no way to determine whether a single case is a strong enough stimulus to change the

perceptions of those who previously felt that the Court was liberal and conservative.

Indeed, the concept being measured is not ideological disagreement but policy

disagreement on a single case. A respondent may disagree with the outcome of a single case

even though she does not perceive a broader ideological turn in the Court's outputs. A single

"mistake" may do little harm to an individual's overall perceptions of the Court while an

ideological shift implies longer-lasting disappointment that covers multiple issues and results

from principled disagreements over policy. Thus, an important disjunction exists between the

survey and experimental halves of their paper.

Bartels and Johnston find that legitimacy is depressed among respondents told that the

Court decided the case in a way contrary to their policy preferences, and they conclude that

"ideological disagreement depresses Supreme Court legitimacy" (Bartels and Johnston 2013,

196). This finding is inconsistent with at least some existing research findings. Perhaps the acid

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government monitoring citizen communications or that conservatives uniformly oppose such a
prohibition. The correlation between ideological self-identification and positions on this issue is not
particularly strong: $r = .31$. It is especially noteworthy that slight conservatives, conservatives, and
extreme conservatives differ very little in their support for government surveillance (even while slight
liberals, liberals, and extreme liberals do differ in their degrees of opposition).

test of this hypothesis is the Supreme Court's ruling in *Bush v. Gore*.[24] Indeed, in a comparison

of data from a survey conducted at the height of the controversy with survey data from 1987 and

1995, Gibson, Caldeira, and Spence (2003a) found no evidence whatsoever that the Court's

legitimacy took a dip owing to its decision. Other scholars report similar findings; for instance,

Price and Romantan (2004, 953, emphasis added) draw the following conclusion: "On the whole

our findings are consistent with the hypothesis that the election – even with the vituperative

disputes in its wake – served to *boost* public attachment to American political institutions."

Others (e.g., Yates and Whitford 2002, Kritzer 2001, Gillman 2001, and Nicholson and Howard

2003) reach a similar conclusion. In short, scholarly investigations of the effects of *Bush v. Gore*

demonstrate that support for the Court is fairly resistant to effects from individual unpopular

decisions.[25]

Still, the size of results they report are claimed to be impressive,[26] and the implications of

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

[25] Or, it is possible that unpopular Court decisions actually *boost* institutional legitimacy, as suggested by the Positivity Theory of Gibson and Caldeira (2009). Recent research (Gibson, Lodge, and Woodson 2012) suggests that attention to Supreme Court decisions is typically accompanied by exposure to the powerful legitimizing symbols of judicial authority (e.g., judges in robes). Perhaps one explanation of the Bartels and Johnston findings is that the report of the Court's decision did not include any accompanying judicial symbols. Gibson, Lodge, and Woodson argue specifically that the presence of symbols negates the disappointment generated by the Court making an unwanted policy decision.

[26] Some recent research questions how experimental effects should be understood. For example, Barabas and Jerit (2010, 238) note, "[a]lthough the real world does not look so different as to throw into doubt the validity of survey experiments, there is drop-off in terms of both the size of treatment effects and the population experiencing those effects" when comparing real-world treatment effects to experimental effects. This attenuation could happen for any number of reasons; to take one example, every respondent in the treatment group of a survey experiment is exposed to the exact same stimulus whereas, outside of the "laboratory," the public differs widely in the extent to which it pays attention to (and therefore is exposed to) the effects that serve as experimental stimuli. In short, Barabas and Jerit's

their findings—particularly the fact that each countermajoritarian decision may have a

disproportionate effect on citizen evaluations of the Court—bear closer scrutiny. For example,

Bartels and Johnston write that "[f]or respondents who 'strongly oppose' monitoring (liberals)[27],

moving from the conservative to the liberal decision condition produces a statistically significant

increase in Court legitimacy ($B = .15$, $p < .01$) which is a movement just under one-seventh of

the entire scale" (Bartels and Johnston, 2013, 196).[28] If this is the case, a string of seven

unpopular decisions could turn even the Court's most ardent supporters strongly against it, a

finding of extraordinary importance to the study of the Supreme Court and public opinion.[29]

But, if this were in fact the case, then this level of displeasing decisions should create a

downward spiral in institutional support. The Supreme Court produces dozens of decisions each

year that contradict the ideological views of members of the public. For example, according to

the Supreme Court Database, the Supreme Court decided 35 cases in a liberal direction and 48

(2010) research indicates that experiments capture the *maximum possible treatment effect*. Thus, even if one accepts the Bartels and Johnston's results, one must remember that the magnitude of their effects represents the maximum influence one would expect to see, and that the effect in "nature" is almost certainly substantially smaller.

[27] Note that this is 12.6 % of the sample (N = 65).

[28] We have examined how the manipulation interacts with the pre-existing ideological self-identifications of the respondents. In particular, we conducted a student's t test within each category of identification. The significances of the differences across the experimental conditions (liberal or conservative Supreme Court decision) are: extremely liberal, .098; liberal, .027; slightly liberal, .975; moderate, .124; slightly conservative, .682; conservative, .408, and extremely conservative, .199. We acknowledge that the within-identification category Ns are sometimes small, but only among liberals is there a difference that approaches conventional levels of statistical significance. The differences in legitimacy are greater within the policy views categories: strongly oppose monitoring, .000; oppose, .003; support, .280; and strongly support, .000. Still, that the 382 respondents supporting government monitoring do not differ in their levels of support for the Court after being told of either a liberal or a conservative Court ruling reinforceS the conclusion that the relationship in their data is fairly weak. Moreover, we note that Bartels and Johnston are largely silent on the benefits the Court receives from making decisions pleasing to its constituents.

[29] Indeed, 7 decisions x .15 effect for each decision = 1.05, which is a value greater than the entire range of the dependent variable (which is measured from 0 to 1).

cases in a conservative direction during the 2010 term—far more than the number of decisions Bartels and Johnston suggest would be necessary to turn even the Court's most ardent supporters against it.

These findings require an answer to an even broader question not addressed by Bartels and Johnston: what are the long-term effects of displeasing decisions on individual-level evaluations of the Supreme Court? Do "good" decisions balance out "bad" decisions in the minds of the public, or do the effects of displeasing decisions overwhelm those of pleasing decisions? Using the figures from the 2010, is this term scored as a +13 for conservatives and a −13 for liberals? We recognize that some research on the effects of individual decisions on public evaluations of the court has found that single opinions—particularly countermajoritarian ones—can affect public confidence in the Court. Indeed, conventional wisdom on the psychology of negativity suggests that displeasing judicial decisions have a stronger negative impact than the positive impact of pleasing judicial decisions (Mondak and Smithey 1997). For example, Grosskopf and Mondak (1996), analyzing public response to two highly publicized Supreme Court decisions, found that confidence in the Court declined both among individuals who disapproved of both decisions as well as among individuals who approved of one decision while disapproving of the other. Displeasing decisions seemed to have greater consequences than pleasing decisions.

At the same time, even the strongest proponents of negativity bias concede that negativity effects do not necessarily cause a precipitous long-term drop in support for the institution. For instance, Mondak and Smithey (1997) argue that, even in the face of negativity bias, individual-level support for the Supreme Court gradually returns to its original, relatively high, level. In

other words, even if individuals perceive a single decision negatively, the effect of that decision is short lived.[30] This proposition has received additional empirical support; Durr, Martin, and Wolbrecht (2000) demonstrate that the effect of short-term shocks to Supreme Court support is "relatively short lived" (774) – in short, support rebounds, and does so fairly quickly.

Why should these effects be short lived? Extant research implies three possible pathways through which public support may increase over time even in the face of countermajoritarian policies. We sketch each of the theories and leave for future research the determination of the comparative explanatory power of each.

First, Mondak and Smithey argue that public support for the Court gradually returns to its normal level over time because of the influence of political values. They claim that "[a] person's confidence in the Supreme Court can be shaken by controversial rulings, but the eventual reassertion of democratic values means that the individual's confidence in the Court may be restored" (1997, 1124). Thus, while individuals may disagree with individual judicial decisions, their more durable democratic values restore their confidence in the Court to its level prior to the displeasing decision. By this view, the Supreme Court can make occasional unpopular decisions so long as the citizenry maintains its support for democratic institutions and processes.

Second, as Bartels and Johnston begin their paper by reminding us, the current U.S. Supreme Court is decidedly mixed in the ideological make-up of its policymaking. Moreover, their respondents are equally split between those who believe that the Court is liberal (20.52 %) and those who think the Court is conservative (26.09 %). This finding is reinforced by our own

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[30] As Mondak and Smithey (1997, 1139) assert, "[i]ndividuals who are vehemently opposed to a decision this year may back the Court next year when memory of the case fades, and either value-based regeneration or a favorable ruling wins them over."

analysis of Supreme Court outputs at the time of our 2011 survey. The evidence indicates that the Court made decisions that should be pleasing to liberals, just as it has made decisions that should be pleasing to conservatives. Indeed, according to the Supreme Court Database, for the 2010 term—the term overlapping our 2011 survey—the Court decided 58 % of its cases in a conservative direction and 42 % in a liberal direction. Thus, any given individual will dislike approximately half of the Court's decisions, but those "losses" are balanced out by the other half of the Court's decisions: the "wins." For most Americans, this is a wash: the good is evenly balanced by the bad. The running tally may be repeatedly changed by Supreme Court decisions, but its results stay nearly the same from the beginning to the end of each Court term and from one term to the next.

The positivity theory of Gibson and Caldeira (2009) provides another possible explanation. This theory argues that whenever people pay attention to the Supreme Court they are simultaneously exposed to powerful symbols of judicial authority and legitimacy that can increase support for the Court even among those who are displeased with the Court's decision. Gibson, Lodge, and Woodson (2012) have discovered something of the process by which this takes place. Their findings indicate that when displeasing decisions are accompanied by exposure to the symbols of judicial authority (the building, the justices in robes, etc.), citizens are more likely to accept the unwanted outcome than when the symbols are absent.[31] If this is the case, then any attention to the Court—even if that exposure is the result of learning about a displeasing decision—exposes individuals to those symbols, and thereby blocks the negative effect of the unwanted policy. In this way, positivity bias counteracts negativity bias.

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[31] This is a bit of a caricature of their findings because most of the effects of the symbols are conditional, not direct, effects.

Thus, whether we believe that (1) the mixed nature of the Supreme Court's decisions balances the effect of policy dissatisfaction on the Court's legitimacy with the effect of policy satisfaction, or (2) merely assume that positivity negates some of the effect of displeasing decisions, reducing the negative impact to about the same level as the positive impact of pleasing decisions, or (3) believe that individual-level democratic values restore support for the Supreme Court over time, the aggregate-level prediction is one of stasis in Court support, a prediction quite contrary to the implications of Bartels and Johnston's experimental results. Fortunately, some data are available that allow us to test this hypothesis.

The Stability of Supreme Court Support

How much has support for the Supreme Court changed over time? Based on the finding that support for the Court is not much dependent upon the short-term policy outputs of the institution, we hypothesize that change is minimal. Instead, attitudes toward the Court are likely shaped by larger and much more slowly moving forces.[32]

The analysis of change is complicated somewhat by unavailability of complete data over long periods of time. Consequently, we begin with consideration of change in attitudes over the period from 1987 to 2011, using the handful of available measures, and then turn to a broader-based analysis of change in the last half-decade.

Figure 1 contains historical evidence for the "do away with" and "limit the jurisdiction"

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[32] This analysis focuses on aggregate-level change and does not deny that aggregate stasis is compatible with considerable individual-level change. Our argument is simply that, if negative decisions have such a drastic impact on Court support, and if about half of the decisions are judged to be negative by virtually all of the American people, one would expect to see a diminution of aggregate support over time.

statements—the two measures for which the greatest amount of data is available. Both of these items support the same conclusion about change: From the two earliest time points until 2011, support for the Court has wavered little, with the range of percentages bounded by 68.9% to 82.7% for the "do away with" item and from 44.7% to 60.7% for the jurisdiction variable. If there is an exception to the general picture of constancy, it is the 2001 survey, conducted shortly after the Court's ruling in *Bush v. Gore*. For both time series, the apogee is 2001, with the periods prior to 2001 and after 2001 appearing to be quite similar.

[PLACE FIGURE 1 ABOUT HERE]

Data availability permits a closer investigation of change over time in the recent era. The Freedom and Tolerance surveys fielded during the period 2007 through 2011 contained six identical questions measuring institutional support for the Supreme Court. These are valid and reliable measures of the legitimacy of the Supreme Court, and therefore these data allow us to consider whether the Court's support has changed in recent times. Figure 2 reports the percentage of respondents expressing support for the Court for each item for each survey from 2007 to 2011.

[PLACE FIGURE 2 ABOUT HERE]

The most obvious conclusion required by the data in this figure is that support for the Court has changed little over this time period. Whatever minor variation exists in the percentages is most likely a function of sampling error.

Data on the stability of the Supreme Court's legitimacy are certainly far from dispositive on the question of how much policy disagreement undermines institutional support. Nonetheless, using the best available survey measures, the inescapable conclusion is that attitudes toward the Supreme Court are remarkably resistant to change. The institution does indeed enjoy a

substantial "reservoir of goodwill" among the American people, and, contrary to the obvious implication from Bartels and Johnston's survey experiment, population-wide support simply does not respond very strongly to the decisions the Court makes from year-to-year.

Discussion and Conclusions

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

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

Perhaps a court closely divided on ideology cannot produce the consistent decisional fuel needed to ignite a threat to the institution's legitimacy. Some worry that an ideologically divided Court undermines the institution's legitimacy (e.g. Liptak 2011). Perhaps the truth is exactly the opposite: an ideologically divided Court is able to please both liberals and conservatives with its

decisions, and therefore decisional displeasure does not build to the point of challenging the institution's legitimacy.

This then takes us to the Court's so-called countermajoritarian dilemma, a problem in which many legal scholars are currently interested. At least a portion of this rekindled interest has been stimulated by the Court's decision in *Citizens United*. Pildes (2010) declares that "*Citizens United* is the most countermajoritarian decision invalidating national legislation on an issue of high public salience in the last quarter century" (157). The countermajoritarian nature of the decision is reflected in evidence that the American people, by a fairly substantial majority, disagree with the substance of the Court's ruling.

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

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

conservative opinions, may provide a clue as to why the Court's legitimacy is currently so stable.

The Supreme Court is a majoritarian institution, not in the sense that it is typically in substantive policy agreement with its constituents, the American people, but rather in the sense that it is dependent upon a majority granting legitimacy to the institution. And, as Clark (2009; 2011) has so ably shown, the Court seems aware of this requirement and acts to protect its core legitimacy. Thus, the Supreme Court need not make decisions pleasing to the majority all or even most of the time, and in that sense it is not a majoritarian institution (unlike, for instance, a legislature). But because the Court currently attracts legitimacy from the majority, its ability to rule against the people's preferences, even up to one-half or so of the time, is secure. Thus, this "new math" of institutional legitimacy goes some considerable distance toward accounting for the efficacy and the seeming invincibility of the current Supreme Court.

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Table 1. A Comparison of Perceptions of the Ideological Location of the U.S. Supreme Court

Location	Annenberg Survey	Freedom & Tolerance Survey	Location
		11.5 %	Very Conservative
Conservative	26.1 %		
		43.5 %	Somewhat Conservative
Case-by-Case	53.4 %	2.6 %	Partly Conservative/ Partly Liberal
		34.5 %	Somewhat Liberal
Liberal	20.5 %		
		7.6 %	Very Liberal
Total	100.0 %	100.0 %	
N	1,311	628	
% of Total Unable to Judge (N)	12.8 (1,504)	15.9 % (747)	% of Total Unable to Judge (N)

The Annenberg question read: "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?"

The Freedom and Tolerance question read: "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?"

Table 2. Multiple Predictors of Institutional Support for the U.S. Supreme Court

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

Equation

Intercept		.07	.04	
Standard Deviation – Dependent Variable		.19		
Standard Error of Estimate		.15		
R^2				.39 ***
N		683		

Note: Significance of standardized regression coefficients (β): *** $p < .001$ ** $p < .01$ * $p < .05$

All variables have been recoded to range from 0 to 1 (including the dependent variable). Higher sores on the dependent variable indicate greater degrees of institutional support. The coefficients reported are the bivariate correlation coefficients, the unstandardized OLS coefficients, the standard errors of those coefficients, and the standardized OLS coefficients.
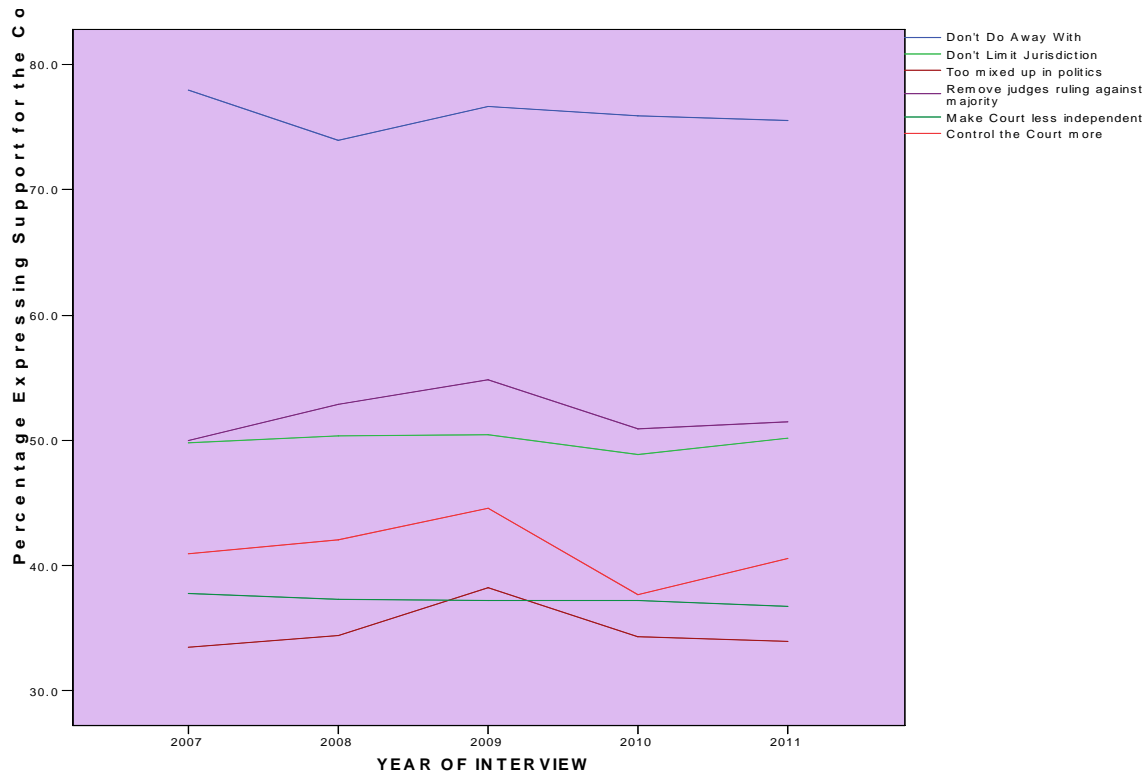
Source: Freedom and Tolerance Survey, Washington University in St. Louis, 2011.

Figure 1. Change in Institutional Support, U.S. Supreme Court, 1987 – 2011
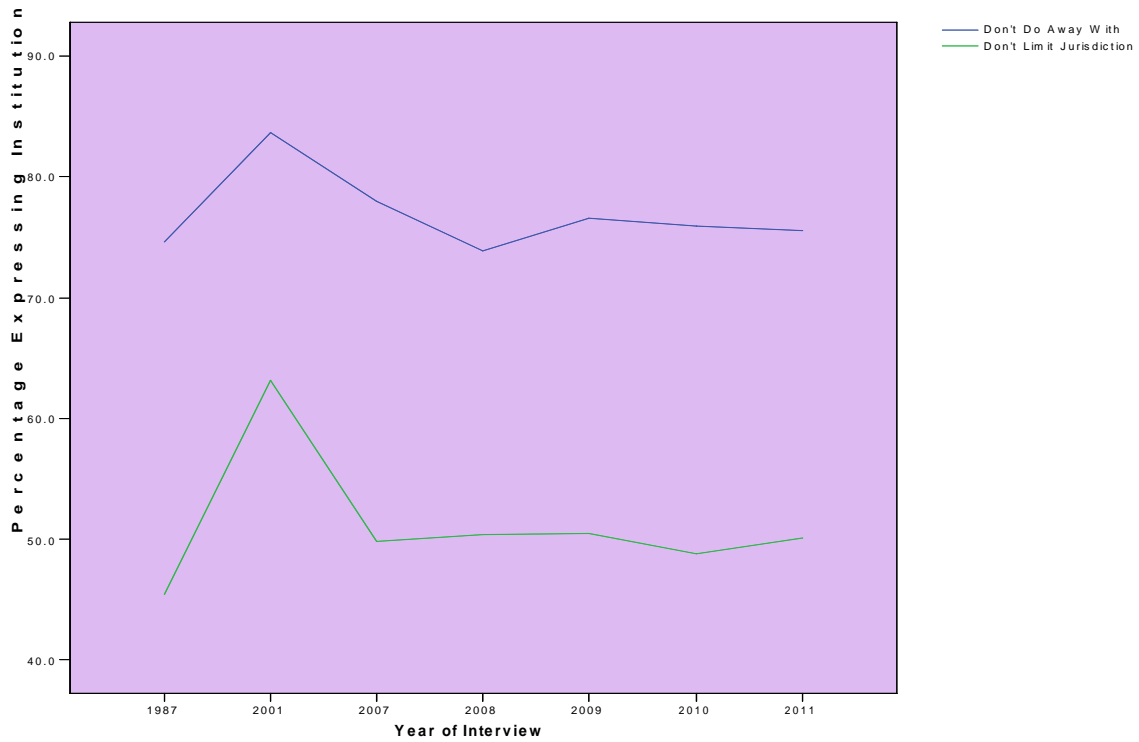
Note: See pp. 16-17 for the text of the questions asked.

Figure 2. Change in Institutional Support for the U.S. Supreme Court, 2007 – 2011

Note: See pp. 16-17 for the text of the questions asked.

Appendix A: Survey Details

Sample Design
The 2011 Freedom and Tolerance Survey, fielded for Washington University in St. Louis by Abt SRBI, obtained telephone interviews with a representative sample of 750 adults living in the United States. Some 600 respondents were interviewed on a landline telephone and 150 were interviewed on a cell phone. Samples were drawn from both the landline and cell phone national random digit dial (RDD) frames. Persons with residential landlines were not screened out of the cell phone sample. Both samples were provided by Survey Sampling International, LLC, according to Abt SRBI specifications. Numbers for the landline sample were drawn with equal probabilities from active blocks (area code + exchange + two-digit block number) that contained one or more residential directory listings. The cellular sample was drawn through a systematic sampling from 1000-blocks dedicated to cellular service according to the Telcordia database. For the landline portion of the sample, the respondents were selected randomly within household.

The survey was fielded during the summer of 2011 using Computer Assisted Telephone Interviewing. The interviews averaged around twenty-eight minutes in length. The difference in interview length by mode of interview (landline versus cell) is not statistically significant (p > .05). All respondents were offered a post-paid reimbursement of $10 for their participation.

The overall AAPOR Cooperation Rate #3 was 43.7% and the overall AAPOR Response Rate #3 was 29.6%, which is about the average of telephone surveys these days. For the RDD stratum, the AAPOR Cooperation Rate #3 was 43.3% and the overall AAPOR Response Rate #3 was 30.3%. The rates within the cell-phone stratum are similar: the AAPOR Cooperation Rate #3 was 45.5% and the overall AAPOR Response Rate #3 was 27.0%.[33]

Weighting
The survey weight was created in two stages. The first stage addresses unequal selection probabilities. It includes an adjustment for number of adults in the household (for landline respondents) and an adjustment for the overlap in the landline and cell sample frames (because people with both a landline and cell phone are included in both frames). The second stage then post-stratifies the sample to match national population parameters using an iterative technique that simultaneously balances the distributions of all weighting parameters.

First Stage Weighting. We include a first stage adjustment for landline respondents to correct for unequal probabilities of selection based on the number of adults in the household. Cell respondents are given the average adjustment of the landline respondents. We also include a first stage adjustment to account for the fact that dual users (people with a landline and cell phone) are included in both sampling frames and thus have twice the probability of selection. By comparison, respondents who only have landlines or only have cell phones would be covered in either the landline or cell frame but not both. These two first stage adjustments are multiplied together for the final first stage weight.

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[33] Bartels and Johnston report a response rate of 41 % on the Annenberg survey (footnote 11, p. 188). Readers should be aware that this is not AAPOR Modified #3. For the KN survey in which the experiment is embedded, no response rate is reported. KN surveys typically have response rates in the single digits.

Second Stage Weighting. The second stage of weighting balances the sample demographics to match national population parameters. The post-stratification uses an iterative technique that simultaneously balances the distributions of all weighting parameters. The demographic weighting parameters (gender x age, gender x education, education x age, race/ethnicity, and region) are derived from the 2009 American Community Survey (ACS). The phone usage parameters are based on the most recent estimates from the 2010 National Health Interview Survey (NHIS) conducted by the Centers for Disease Control and Prevention. The final weight is trimmed to avoid any particular case having too much influence on the overall estimates. Finally, the weight is scaled so that it sums to the total unweighted number of completed interviews.

Appendix B: Measurement

Measuring Ideological Dissatisfaction
Following convention, self-identifications were collected on a nine-point scale, ranging from extremely conservative to extremely liberal. In terms of perceptions of the Court's position, we felt that it would be too onerous to ask respondents to identify the ideological location of the Court on such a fine-grained continuum—such a strategy would only invite measurement error— and therefore used a four-point scale graduated from very conservative to somewhat conservative to somewhat liberal to very liberal. (A handful of respondents answered our question by volunteering that the Court is liberal on some issues, conservative on others. We placed these respondents between somewhat conservative and somewhat liberal.) The analytical task is to map these categories onto the nine-point scale. We did so by scoring "very liberal" at the mid-point between liberal and extremely liberal, and similarly for "very conservative." "Somewhat liberal" mapped directly onto the score for "somewhat liberal" on the self-identification continuum, and similarly for "somewhat conservative." The part-liberal and part-conservative responses were scored as "middle of the road." Thus, with this measure, perfect matches (zero distance) are impossible for a considerable portion of the sample. We therefore treat as "minimal ideological distance" all scores within +/- .5 units. The categorization of the continuous index is useful for descriptive purposes only; for all analytical purposes, the continuous measure is used.

Imputing Values of Ideological Dissatisfaction
Nearly sixteen percent (15.9%) of the respondents could not locate the Court in ideological space, and therefore no direct ideological proximity measure could be calculated. For descriptive purposes, we report the responses of the approximately 84 % of the sample who could place the U.S. Supreme Court on the liberal–conservative ideological continuum. For analytical purposes, however, at least some proportion of the missing data on the ideological distance between the respondent and the Court can be recovered via the specific support item asking whether the Court is too liberal, too conservative, or about right in its policy making. Several steps are involved. (1) The easiest imputation is to score those respondents who answer that the Court is "about right" at zero ideological distance from themselves. This results in scoring 52 of the 119 missing cases. (2) For those who said they "don't know" whether the Court is too liberal or not, no imputation strategy makes sense. These 41 respondents continue to be coded as missing on the ideological distance measure. (3) For those who judge the Court to be either too liberal or too conservative– and who can also place themselves on the ideological continuum – we pursued an imputation strategy of assigning the mean ideological distance score of those with the same characteristics (perception of the Court, placement of themselves). For instance, there are two respondents who are extremely conservative and view the Court as too liberal, but who could not place the Court on the ideological scale. The mean distance of those who are extremely conservative and who could locate the Court is −5.23 (N = 31). Therefore, these two people were scored at −5.23. At the other end of the continuum, there were 3 respondents who described themselves as "liberal" (no extremely liberal respondents have missing ideological distance scores) and who see the Court as too conservative. These 3 people were assigned a distance score of 5.56, the observed mean of the 18 respondents who are liberal and who see the Court as too

conservative. This strategy recovers distance scores for 26 respondents.

These various imputation strategies result in assigning ideological distance scores to 79 of the 119 missing cases. The mean and standard deviation of the original variable are -.44 and 3.68; for the variable after imputation, they are −.43 and 3.52. Both variables have a median of 0. This strategy almost certainly introduces no bias into our analyses, while contributing significantly to minimizing any consequences of selection bias were no imputation strategy used.

Support for Minority Political Liberty
This scale, used often in earlier research, measures the degree to which the respondent favors social order when it conflicts with the liberty of political minorities. The three items in the scale are:

> Society should not have to put up with those who have political ideas that are extremely different from the majority. (21.1% adopt the order position: agree)
> It is better to live in an orderly society than to allow people so much freedom that they can become disruptive. (45.5% adopt the order position: agree)
> Free speech is just not worth it if it means that we have to put up with the danger to society of extremist political views. (23.7% adopt the order position: agree)

When the three items are factor analyzed, a single dominant factor emerges (eigenvalue$_1$ = 1.81, accounting for 60.5% of the common variance; eigvenvalue$_2$ = .65, accounting for 21.8% of the residual common variance). The best indicator of the concept is the last statement (free speech is just not worth it). The item set is at least fairly reliable (especially for a scale with only three indicators), with a Cronbach's alpha of .67 and a mean inter-item correlation of .41.

We have created a measure of support for minority political liberty that is simply the average response to the three statements. This index correlates with the factor score from the factor analysis at .99. For some descriptive purposes, we also use an index indicating the number of pro-liberty responses to the three items. On this measure, 28.3% of the respondents gave pro-liberty responses to all three of the items; 18.2% gave no pro-liberty responses. Thus, we see in these data a substantial tilt in favor of protecting individual liberty.

Support for the Rule of Law
Support for the rule of law is conceptualized as ranging from universalism to particularism. Some hold strong commitments to law, believing that law ought to be strictly enforced even when the consequences are not necessarily positive, whereas others believe that law ought to be obeyed only to the extent that the outcome is desirable. In this sense, support for the rule of law is a procedural commitment. This scale has been used widely in earlier research. The items are:

> It is not necessary to obey a law you consider unjust. (75.6% adopt the rule of law position: disagree)
> Sometimes it might be better to ignore the law and solve problems immediately rather than wait for a legal solution. (63.0% adopt the rule of law position: disagree)
> The government should have some ability to bend the law in order to solve pressing social and political problems. (54.9% adopt the rule of law position: disagree)
> It is not necessary to obey the laws of a government I did not vote for. (84.9%

adopt the rule of law position: disagree)
> When it comes right down to it, law is not all that important; what's important is that our government solve society's problems and make us all better off. (62.3% adopt the rule of law position: disagree)

As has been found in earlier research, Americans are remarkably strongly committed to the rule of law.

When the three items are factor analyzed, a single dominant factor emerges (eigenvalue$_1$ = 2.10, accounting for 42.0% of the common variance; eigvenvalue$_2$ = 1.04, accounting for 20.9% of the common variance). The best indicator of the concept is the last statement (not obey laws from government I did not vote for); all indicators load on the first unrotated factor at .40 or higher. The item set is at least somewhat reliable, with a Cronbach's alpha of .65 and a mean inter-item correlation of .27.

We have created a measure of support for the rule of law (universalism) that is simply the average response to the four statements. This index correlates with the factor score from the factor analysis at .99. For some descriptive purposes, we also use an index indicating the number of pro-liberty responses to the five items. On this measure, 26.4% of the respondents gave pro-rule of law responses to all five of the items; 2.3% gave no rule of law responses. Once more, we see in these data a substantial preference for the rule of law.

Political Intolerance
The survey asked four questions about whether particular groups should be allowed to hold a public demonstration. The question stem read:
> Next, let's suppose that [THE GROUP] wanted to hold public rallies and demonstrations in your community to advance their cause, but that the authorities decided to prohibit it. How would you react to such a ban by the authorities of a public demonstration by [THE GROUP]? Would you strongly support the ban, support the ban, oppose the ban, or strongly oppose the ban"

The groups about which we asked are radical Muslims, a group of people who are against all churches and religion, U.S. Communists, and religious fundamentalists. Willingness to tolerate the demonstration ranged from 66.2% for religious fundamentalists to 46.3% for radical Muslims. When the responses to these four items were analyzed using Common Factor Analysis, a single dominant factor emerged, with an eigenvalue of 2.37 and accounting for 59.2% of the common variance. The second extracted factor had an eigenvalue of .72 and accounted for 18.1% of the residual common variance. The strongest loading on the factor was from the item regarding Communist demonstrations; the weakest was for religious fundamentalists. The item set is quite reliable, with a Cronbach's alpha of .77 and a mean inter-item correlation of .45.

We have created a measure of political tolerance that is simply the average response to the four statements. This index correlates with the factor score from the factor analysis at .97. For some descriptive purposes, we also use an index indicating the number of tolerant responses to the four items. On this measure, 31.9% of the respondents gave tolerant responses to all four of the items; 20.2% gave no tolerant responses.