

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

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Version 51, August 29, 2015

©

Prepared for delivery at the Annual Meeting of the American Political Science Association,
San Francisco, CA, September 3-6, 2015.

Abstract

Judicial politics scholars have re-discovered the theory of institutional legitimacy, with a vengeance. With reinvigorated attention to the theory has come a number of vexing unsettled controversies, none of which is more important than that of whether the U.S. Supreme Court's legitimacy is dependent upon satisfying the ideological expectations of its constituents, the American people. Some research indicates that ideological dissatisfaction undermines institutional legitimacy, but challenges to that finding exist. In addition, the debate has recently been enlarged by hypotheses about whether the influence of ideological dissatisfaction is dependent upon the beliefs citizens hold about legal realism and processes of judicial decision-making. Unfortunately, nearly all of this literature is clouded by serious issues of measurement validity, a problem exacerbated by the use of decidedly unrepresentative samples. Our purpose in this paper is to reconsider these questions with a nationally representative sample. We first show that ideological dissatisfaction has practically no impact on legitimacy, irrespective of which measure of dissatisfaction is used. We then test hypotheses from Positivity Theory, especially the hypothesized conditional effects of citizens' beliefs about judicial decision-making, politicization, and ideological disagreement on legitimacy. In general, we conclude that the influence of ideological disagreement has been vastly overstated; a far greater threat to legitimacy lies in the belief that judges are similar to ordinary politicians.

*We greatly appreciate the support of Steve Smith and the Weidenbaum Center for this research. We also acknowledge the assistance of Patrick Tucker in preparing these data for analysis, and we appreciate the comments of Markus Neumann, Jeffrey Ziegler, and Miguel Maria Pereira on an earlier version of this paper.

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

How this dispute gets resolved is of enormous theoretical and normative importance. Classical legitimacy theory¹ holds that public support acts as a “reservoir of goodwill” that allows an institution to make unpopular decisions without public reprisal (Caldeira and Gibson 1992). If ideological satisfaction and legitimacy are as strongly linked as Bartels and Johnston (2013) and Christenson and Glick (2015) maintain, then legitimacy theory may be in need of serious revision. More tangibly, a Court whose legitimacy is so strongly connected to its policy outputs would be wise to become cautious about issuing unpopular decisions, which might threaten the role of the judiciary as an equal and independent partner in governance.^{2 3}

¹ For an exposition of classical legitimacy theory, see Gibson and Nelson (2014).

² Some claim that Chief Justice Roberts acted strategically out of concern for the Court's institutional legitimacy during the opinion-writing process for *National Federation of*

The quality of the existing empirical evidence is not, however, commensurate with the importance of the research question. This is in large part because the measures of the Court’s perceived ideological location are so different across the various studies as to be non-comparable. Moreover, G&N challenge the validity of the B&J/C&G measure, and, not surprisingly, B&J challenge the validity of the G&N measure. Thus, two explanations (at least) of the differences of their findings exist: truth and differences in the measures used.

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

Independent Business v. Sebelius, changing his vote from one to strike down the Affordable Care Act to one that preserved the constitutionality of the legislation (Crawford 2012). In short, legitimacy is a concept with both practical and scholarly importance.

³ We take no position in this paper on the normative question of whether it is desirable or not for the U.S. Supreme Court to have a large store of institutional legitimacy. For a discussion of the normative issues see Gibson and Nelson (2015b).

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

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

Summarizing the Earlier Findings

All agree that the conventional wisdom shows that institutional support for the U.S. Supreme Court (diffuse support) is only weakly related to evaluations of the outputs of the institutions (specific support). The relationship between evaluations is “sticky” in the sense that diffuse support does not respond much to dissatisfaction with individual decisions – as in *Bush v. Gore* (Gibson, Caldeira, and Spence 2003).⁴

The revisionist view is that Court support does respond to decisional dissatisfaction, mainly through a two-step process: (1) citizens evaluate the decision, and then (2) recalculate the ideological distance between themselves and the Court, as revealed by its new decision. For example, citizens see that the Supreme Court allowed the ACA to stand. Because government-sponsored health care is a liberal position, citizens update their views and understand the Court to be relatively liberal. They then re-measure the distance between themselves and their new perception of the Court. If the ideological distance between the citizen and the Court increases, then support for the institution declines. Both B&J and C&G advocate this view of how citizens update their attitudes toward the Supreme Court.⁵

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

⁴ 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 (the correlation for the United States is .46).

⁵ We acknowledge that Bartels and Johnston’s analysis is cross-sectional in nature, while Christenson and Glick’s analysis is longitudinal. Still, both sets of authors envisage the same process of updating.

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

We acknowledge, of course, that ideological dissatisfaction is simply one component of specific support. Specific support refers to approval of the performance of the institution, and policy outputs are obviously a significant part of such evaluations (although there are other aspects of performance that may be important as well). Conventional wisdom holds that the relationship between specific and diffuse support is a gradual, incremental one. The Court’s diffuse support could suffer once some accumulated threshold level of dissatisfaction is reached. Conversely, specific support can be transformed into obdurate diffuse support through a string of pleasing policy decisions; such change is gradual, underscoring the varied and varying relationships observed between indicators of the two concepts (Gibson, Caldeira, and Baird 1998; Baird 2001). The findings of B&J and C&G seem to fundamentally challenge this understanding of how performance evaluations and institutional support are connected.

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

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

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

Thus, reconsidering the question of how ideological dissatisfaction and institutional

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

support are connected, if at all, is a crucial theoretical and empirical question (and is a debate that has consumed a number of pages of one of our discipline's most prestigious journals). Because the substantive research findings – whether institutional support is dependent on policy outputs, a question absolutely fundamental to Legitimacy Theory – are highly dependent upon measurement strategies, determining whether findings are an artifact of measurement is therefore of central theoretical importance. That is one of the purposes of our research.

Adding “Legalistic Priors” to the Mix

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

institution should be distinctive in that (1) their ideological assessments are largely irrelevant to their institutional support, but (2) behaviors such as the Roberts Flip should undermine support, according to C&G.

C&G's analysis fails to consistently support their hypotheses concerning the role of "Legalistic Court Priors." C&G hypothesize that the effect of the Roberts Flip on diffuse support should vary based upon whether one holds legalistic views. However, the multiplicative interaction term is not statistically significant in their analysis, indicating that the effect of the flip did not depend on whether one held legalistic views or not.⁷ Apparently, those with legalistic views of the Court were not particularly or distinctively offended by overt politicization, as embodied by Roberts's behavior.

At the same time, their analysis is said to support the hypothesis that these legalistic priors affect the relationship between ideological distance and change in institutional support, although not in the way originally formulated. Their hypothesis is that "the legitimacy assessments of people who initially view the Court as legalistic will be relatively *less* affected by new information about the Court's ideology" (Christenson and Glick 2015, 414, emphasis added). Put differently, those with legalistic expectations will (a) perceive the ideological direction of the decision, (b) draw inferences about the ideological location of the Court, and (c)

⁷ Their analysis actually leads to even stronger rejection of their hypothesis than the null results indicate. The direct effect of the Roberts Flip is strongly negative ($b = -.608$) and highly statistically significant: Those exposed to the Flip decreased their support for the Court. However, the coefficient for the interaction term is $+.453$, which indicates that the effect of the Flip on those with legalistic expectations was *less* than the effect of the Flip ($-.608 + .453 = -.155$) on those without legalistic expectations. This is strongly contrary to their hypothesis, and reinforces their decision to reject the hypothesis. Their measure of legalistic expectations does not at all perform the way it was hypothesized to perform.

re-measure the distance between themselves and the Court (while ignoring the Roberts Flip). But, this entire process is expected to have little impact on whether they increase or decrease their support for the institution, presumably because ideology is thought to be irrelevant.

What C&G find is that those with legalistic priors are actually considerably *more* influenced by their reassessments of the Court's ideological position. Regarding change in ideological proximity, change in institutional support for *both* those with legalistic and non-legalistic priors was affected by change in proximity, although the effect was significantly *greater* for those with legalistic views of Supreme Court decision making. C&G therefore argue that their analysis supports doubts about the Positivity Theory of Gibson and his colleagues.⁸

Why are people with legalistic expectations more sensitive to change in the Court's ideological position? C&G offer no substantive explanation of this finding. They claim that legalistic beliefs are "ineffectual in protecting the Court's legitimacy from potentially damaging information that the Court is political" (Christenson and Glick 2015, 414-415), but they do not explain why legalistic priors exacerbate the effects of ideological updating. To paraphrase their position: in terms of changes in the Court's institutional support, the effect of empirical predictions that the Court will base its decision on the law was unaffected by contrary information that the Court in fact based its decision on factors other than the law (strategic or "political" considerations), but was affected by ideological objections to the decision.

⁸ For examples: "In sum, these findings are contrary to the expectations laid out in Hypothesis 4 and, thus, one of the central tenets of positivity theory" (Christenson and Glick 2015, 414). "Indeed, the fact that prior legality exacerbates ideological updating raises questions about an important element of positivity theory" (Christenson and Glick 2015, 415).

One way to make sense of these findings would be to suggest that the empirical predictions were actually normative expectations, that learning of Roberts's strategic behavior did not violate these expectations, at least insofar as the Court was concerned, but that being able to derive enough information to change one's perceptions of the ideological location of the Court was tantamount to understanding that the Court was basing its decision on ideology and politics, thus violating the normative expectations and resulting in decreased support for the institution. From this perspective, C&G's findings at least support the expectancy sub-theory that is integral to the larger Positivity Theory (e.g., Gibson 2012). Still, one might very well have thought that insincere strategic behavior would have a greater influence than (apparently) sincere ideological decision making (which legalistic types should tend to ignore anyway).

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

This is obviously a difficult question for respondents to answer, in part because it asks them to make a prediction about the future, before the Court had ruled, in part because it ignores

any individual differences among the justices in how they make their decisions, and in part because it requires a very high level of information about the decision-making processes within the Court. Further, ranking questions such as this have a variety of known limitations (e.g., how strong is the effect of the criterion rated as “most influential”).⁹ And, obviously, as a single-item indicator, no evidence of the validity or reliability of this operationalization is provided by the authors.¹⁰ To the possible advantage of C&G, however, the item probably measures the respondent’s standing expectations, rather than anything very specific to the ACA decision.

Perhaps most important, this is an empirical measure rather than a normative one – it asks the respondents about what *will happen* in the ACA decision, not what *should happen* (nor what *actually happened*).¹¹ Nonetheless, to make sense of the use of the variable by C&G, one must assume that expectations about what *will happen* are closely connected to normative expectations about what *should happen*. Their hypothesis is that the Roberts Flip – an operationalization of

⁹ As an easy example, of the South African, English, and Australian cricket clubs, some would certainly rank the South African team as their most favored. However, of all possible sports, some would also rank cricket as their least favored, so their ranking of South Africa as most favored is a very different score than the ranking of a South African cricket enthusiast.

¹⁰ We note as well that there is most likely considerable asymmetry in the amount of measurement error in the C&G measure of legalistic priors. Those who rate “the Justices’ analysis and interpretation of the law” as the most important empirical factor in the decision have a reasonably high probability of harboring legalistic expectations. However, those who rate some other factor as highest (e.g., “the Justices’ past personal experiences”) are most likely quite heterogeneous in their views. Consider those who think of “past experiences” and “the law” are roughly equally influential. To break the tie by putting “past experiences” first surely does not mean that “the law” is of no or little consequence. Rating questions such as this always suffer from a great deal of measurement error.

¹¹ Recall that their dependent variable is a measure of change, from before the decision to after, so that the post-decision support score may well be influenced by perceptions of what actually happened, even if those perceptions differ from what the respondent predicted would happen.

strategic, insincere (or overtly political) decision making – should interact with beliefs about the basis of judicial decision-making to affect change in institutional support. More specifically, those with legalistic expectations should be upset by the Roberts Flip and, as a consequence, should decrease their support for the Supreme Court (presumably because the behavior of Roberts somehow rubs off on the institution itself). These are all normative processes.

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

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

Also following the logic of C&G, we hypothesize that insincere “political” behavior will have a greater influence than (apparently) sincere ideological decision-making. Politicized activity—judges acting like regular politicians—is highly suspect behavior, flying against the normative role of the Court in the American political system. Hence, we suggest that the effect of perceived politicization on diffuse support should trump that of either ideological disagreement or legal realism. Such an analysis, of course, requires valid measures of both perceptions of legal realism and of judicial politicization.

The TAPS Survey Design

This paper relies on survey data collected by the American Panel Study (TAPS), a monthly online survey of about 2000 people. Panelists were first recruited as a national probability sample with an address-based sampling frame in the fall of 2011 by Knowledge Networks for the Weidenbaum Center at Washington University. Individuals without internet access were provided a laptop and internet service at the expense of the Weidenbaum Center. Two sample replenishment efforts have kept the panel at approximately 2000 panelists. In a typical month, about 1700 of the panelists complete the online survey. More technical information about the survey is available at taps.wustl.edu.

The Experimental Conditions

The respondents in the TAPS survey were randomly assigned to one of four conditions¹²: (1) Respondents were given the Bartels and Johnston version of the ideological location question, with follow-up questions: N = 678 (2) Respondents were given the Gibson and Nelson version, with follow-up questions: N = 342. (3) Respondents were first given the Bartels and Johnson questions, then the Gibson and Nelson version: N = 257. (4) Respondents were first asked the Gibson and Nelson questions, followed by the Bartels and Johnston measure: N = 276. Each of these conditions is designed to test a specific hypothesis. For certain analytical purposes, we combine some of these categories of respondents. We only do so when the respondents were asked the same questions in the same order. Note that one of our goals is to derive from each condition a measure of the perceived ideological location of the Court. Ultimately, we seek to determine how ideological disagreement with the Court, measured variously, connects to institutional support.

Measures of Key Concepts

Institutional Support

We have measured the diffuse support of our respondents so as to be able to correlate that support with various measures of ideological distance from the U.S. Supreme Court and other variables. Appendix A reports the indicators of institutional support and their univariate frequencies; our measurement approach follows closely the conventional wisdom on

¹² The number of respondents per condition was designed to vary according to the theoretical importance of the condition.

operationalizing this construct (e.g., Gibson, Caldeira, and Spence 2003).

This set of indicators has very strong psychometric properties. Reliability is high – Cronbach’s alpha = .89. So too is validity. The item set is strongly unidimensional (the second eigenvalue from a Common Factor Analysis (CFA) is a mere .74), and all items load well on the first unrotated factor (minimum loading = .55). Because a summated index is very strongly correlated with the factor score from the CFA ($r = .996$), we will use that index as the criterion variable for our analysis.¹³ Our measurement results clearly indicate that this dependent variable is quite high in terms of both validity and reliability.

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

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

¹³ We have scored all variables to range from 0 to 1.

Supreme Court Knowledge

We also measured knowledge of the Court with five conventional items. As with many internet surveys, knowledge is quite high,¹⁴ ranging from 91 % knowing that the justices are appointed to the Court to 68 % knowing that the Court currently makes less than 100 decisions per year. More than 36 % of the respondents got all five knowledge questions correct; 3.8 % missed all five.

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

Belief in the Myth of Legality/Legal Realism

As we have noted, an important theoretical contribution of the C&G article is to test the hypothesis that prior legal beliefs condition the relationship between ideological dissatisfaction and institutional support. As we argued above, their measure of these beliefs is a simple dichotomy, one, we suspect, that suffers from low validity and reliability. We therefore rely on a better measure of the construct.

C&G measure legalistic attitudes from an empirical perspective: the survey asks about how the ACA decision will be made. The question does not ask whether the respondents approve

¹⁴ Internet surveys, of course, have no control over respondents who look up the question on the internet so as to be able to answer knowledge questions correctly.

or disapprove of the decision-making process they expect to unfold. In this sense, then, the measure has little to do with the expectancy theory embedded in Positivity Theory.

Still, so as to be able to address the C&G hypothesis, we also included three indicators of perceptions of how decisions are made. These measures, which can be considered as indicating whether the respondent embraces legal realism or a legalistic view of judicial decision making, are all empirical, requiring no normative evaluations from the respondents. The statements are:

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

This three-item set is reasonably reliable (Cronbach's $\alpha = .72$), especially given that only three indicators are included in the scale. And when subjected to Common Factor Analysis (CFA), the item-set is shown to be strongly unidimensional ($\text{eigenvalue}_2 = .67$), with strong validity loadings for each of the three items. We created an index measuring belief in legal realism, and scaled it to range from 0 to 1 (with high scores indicating a more realistic understanding of judicial decision making).¹⁵

We also measured perceptions of politicized judicial decision making. Legal realism may

¹⁵ This index is correlated with the factor score from the CFA at $r = .96$, so it makes practically no difference which measure is used.

include beliefs that court decision making is politicized, but does not necessarily do so. The three items indicating judicial politicization are:

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

In essence, these items measure judgments about whether judges are sincere in their methods of deciding cases, in contrast to acting strategically, as do normal politicians. This item-set is slightly less reliable (Cronbach's $\alpha = .66$), even though the mean inter-item correlation is .39. Strong evidence of unidimensionality emerges from the CFA ($\text{eigenvalue}_2 = .67$), and the validity loadings on the first unrotated factor range from .53 to .70.¹⁶ High scores indicate perceptions that judges are not too dissimilar to ordinary politicians. While we cannot directly claim that all respondents disapprove of politicized decision making, we suspect that the vast majority does.¹⁷

¹⁶ The summated index we employ is correlated with the factor score from the CFA at .99.

¹⁷ Note that, while C&G discuss politicized courts, arguing that legalistic beliefs are "ineffectual in protecting the Court's legitimacy from potentially damaging information that the Court is political" (2015, 414-415), they actually include no direct measures of perceived

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

What we find more interesting, however, is that legal realism and politicization are far from identical. This no doubt reflects the fact that some may believe that judges rely on their own values, etc., to make decisions, but that they do so in a principled way, which is quite different from ordinary politics.¹⁸ Our empirical analysis will provide the evidence necessary for deciding whether it is worth differentiating between citizen perceptions of realism and politicization. As mentioned above, we hypothesize that belief in legal realism has less impact on institutional support than perceptions of the Court as politicized.¹⁹

Measures of the Perceived Ideological Location of the Supreme Court

Indicators of ideological dissatisfaction with the Court are a function of the respondent's own ideological position and her or his perception of the ideological location of the Court. Because the former has played no role in this controversy, we focus on measuring the perceived ideological location of the Court. The three papers under consideration here use different measures: (1) B&J use a trichotomy, (2) C&G extend this basic trichotomy to a seven-point variable, and (3) G&N use a four-category measure.

politicization in their analysis.

¹⁸ At the same time, it seems unlikely that non-realists would view the courts as politicized, which would also drive up the correlation of the two concepts.

¹⁹ To the extent that C&G's Roberts Flip variable is an indication of politicized decision-making, we note that the unconditional effects of Roberts Flip and legality in their model are nearly identical: $-.557$ and $-.548$, respectively.

Both B&J and C&G begin their analysis with a question that reads: “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?” C&G used the B&J “case-by-case” measure of the perceived ideological location of the Court, but, unlike B&J, they also employed a follow-up question “asking those with responses in the middle category whether they perceive themselves and/or the Court [as] ‘more on the liberal side or the conservative side.’” (Christenson and Glick 2015, 408). For those perceiving the Court as liberal or conservative, a follow-up question was asked about whether the Court is “extremely” or “somewhat” liberal/conservative. Thus, their measure of the Court’s location is a 7-point variable.²⁰ As noted, G&N use a four-category measure ranging from judging the Court to be “very liberal” to “very conservative.”

We have constructed several measures of the perceived ideological location of the Supreme Court from these various questions: (1) the original, three-category B&J measure; (2) that measure supplemented by questions about how liberal or how conservative the Court is (five categories); and (3) the three-category measure with the “case-by-case” responses replaced by both the follow-up ideology question and the follow-up to the case-by-case response using additional details (nine categories). These three measures are all intercorrelated at about .94. We use these three variables to create three measures of ideological dissatisfaction with the U.S. Supreme Court.

²⁰ From their description of the measure, it is not exactly clear why this is not a six-point measure. We suspect that the “case-by-case” follow-up question was actually a trichotomy, not a dichotomy.

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

Among those judging the Court to be “somewhat liberal” (N = 121), 53.7 % said in the follow-up question that the Court made more liberal than conservative decisions and 46.5 % thought that the Court made about the same number of liberal and conservative decisions. Among those thinking the Court was “somewhat conservative” (N = 127), 56.7 % said the Court was more conservative than liberal; 43.0 % viewed the balance of liberal and conservative decisions to be equal. Thus, very roughly speaking, the true views of those rating the Court as “somewhat” are divided, with nearly one-half seeming to prefer a more centrist position than indicating by their “somewhat” responses. Put differently, had a different question been asked, the answers could well have been different. We therefore include in our analysis a variant of the original G&N four-category measure – the five-category indicator created from the follow-up question that allowed the respondents a “middle-of-the-road” response alternative.

Measuring ideological dissatisfaction with the Court for the C&G and G&N measures is straightforward (although the location measures must all be fitted onto the 9-category ideological self-identification measure). For B&J, the approach is less straight-forward, as they explain in detail in their Table 2 (Bartels and Johnston 2013, 191). Although G&N criticize their use of the category “Tacit Agreement,” we replicate their methodology precisely for the purposes of

comparison. The comparison of our respondents with theirs is revealing: strong disagreement, 27.0 % versus 27.8 %; moderate disagreement, 12.9 % versus 13.3 %; tacit agreement, 27.2 % versus 32.9 %; and strong agreement, 32.9 % versus 26.1 %, for our survey versus their survey, respectively.²¹ Thus, our findings regarding the distribution of ideological dissatisfaction are remarkably similar to theirs, providing some evidence of stability in the American people's perceptions of their ideological disagreement with the Court between 2005, when the B&J survey was conducted, and 2014, when the TAPS survey was fielded. Though journalists and scholars have documented a conservative turn in the Court's jurisprudence over the past decade, it appears that the public sees itself as equally distant from the Court today as it did a decade ago.

Analysis: Connecting Diffuse and Specific Support

Table 1 reports basic correlations between the various measures of ideological dissatisfaction and diffuse support and the two measures of specific support.²² As the table shows, the B&J measure of ideological dissatisfaction is correlated with diffuse support at .03 – an entirely trivial correlation (in the wrong direction). Even the nine-category measure (Christenson and Glick,

²¹ As noted above, we asked the respondents whether the Supreme Court's decisions are too liberal, too conservative, or about right. We created the traditional specific support dichotomy from this measure (about right, not about right). However, we can use the unrecoded responses to the question as a means of validating the ideological distance measures we create from other variables. For disagreement based on the B&J trichotomy, the relationship is strong: $r = .66$. It is interesting to note that the mean ideological distance for those judging the Court as too conservative is 2.13; for those thinking it is too liberal, the mean distance is -4.35. These findings clearly indicate that conservatives are more disaffected with the Supreme Court's decisions than liberals.

²² Note that, in general, the correlations are drawn from different portions of the database, reflecting the experimental nature of our research design. To reiterate, however, respondents were randomly assigned to the question-wording conditions.

variant 1) reveals a correlation not much stronger: $r = -.08$. Exactly the same conclusion is supported by the G&N measure and the C&G measure. Ideological dissatisfaction clearly does not drive institutional support, no matter how dissatisfaction is measured.

[PLACE TABLE 1 ABOUT HERE]

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

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

Predicting Diffuse Support

Table 2 reports the regression of diffuse support on ideological disagreement,²³ the two conventional measures of specific support, the legal realism variables, and Court knowledge.

²³ We use in our analysis the five-point measure of ideological dissatisfaction (B&J, Variant 1), which (as Table 1, above, reports) is correlated with diffuse support at the same level as the C&G (7) measure. Note that our findings are robust to the use of either the C&G measure

Because some may regard the specific support dichotomy as another measure of ideological disagreement, we present two models, one including the specific support measure, the other excluding it.

[PLACE TABLE 2 ABOUT HERE]

The most obvious conclusion to be drawn from Table 2 is that neither ideological disagreement, measured by comparing the respondent's location with the perception of the Court's location (Model I), nor the specific support ideological evaluation of Court outputs is at all related to institutional support (Model II). Instead, institutional support is strongly related to perceived judicial politicization, with those holding more strongly politicized perceptions expressing considerably less support for the Court. Perceived legal realism is also significantly connected to institutional support, but much less strongly so. Moreover, those who perceive the Court in realistic terms are more supportive of the institution, not less. Overall, a considerable amount of the variance in institutional support is explained by these predictors.

In sum, three important conclusions emerge from this analysis: (1) Diffuse support and specific support are connected, but not strongly so. (2) Ideological disagreement has practically nothing to do with institutional support. (3) Perceptions of realism and politicization have dramatically different effects on institutional support. Realism contributes to support. Politicization, which is not the same thing as realism, substantially detracts from support.

It remains to consider the important interactive hypothesis put forth by C&G.

or the variant of that measure.

Testing the Positivity Hypothesis

Relying on Positivity Theory, C&G argue that legalistic views of the Court should inoculate the institution from any negative consequences of growing ideological distance between the institution and the citizen. They find, however, that the effect of legalistic priors is exactly the opposite of that predicted: the institutional support of those with legalistic views is actually more sensitive to ideological dissatisfaction than those without legalistic views. We have suggested above that one way in which these findings make sense is to assume that the legalistic priors are actually normative expectations favoring legalism, that highly salient cases like ACA reveal information that the Court is not acting legalistically, thereby subtracting from institutional support. We recognize that not all of the C&G evidence makes sense within this model, but no other explanation of their findings has been put forth.

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

Our data provide no evidence of such an interactive effect. In a model that adds the realism/ideological dissatisfaction interaction term to the equation reported in Table 2 (above), the increment in R^2 is not statistically significant (and, by definition, neither is the coefficient on the interaction term significant – the test is the same). When legal realism is at its lowest, the effect of ideological dissatisfaction is .045 ($p = .504$, coefficient in the wrong direction). When realism is at its highest, the coefficient is $-.058$, an entirely trivial effect. Thus, with our measure

of perceived legal realism – which we consider to be more reliable and more valid – we cannot reproduce the C&G findings.

However, the story is quite different for our measure of judicial politicization. When its interaction term is added to the equation in Table 2, the increment in R^2 is significant at .005. When perceived politicization is at its lowest, the effect of ideological dissatisfaction is $-.22$, which is significant at $p = .004$. When perceived politicization is at its highest, the coefficient is $+.11$, implying that greater ideological dissatisfaction is associated with *more* institutional support; however, this effect is *not* distinguishable from zero. In general, the results suggest that, for those who do not view the Court as politicized, ideological disagreement has a statistically significant and negative effect on diffuse support, but that the magnitude of that effect declines as respondents increasingly believe the Court to be politicized. Once a respondent believes the Court is politicized (passing roughly the halfway point on the scale), ideological disagreement no longer has a statistically significant effect. More documentation of this analysis is available in Appendix B.²⁴

To the extent that one views C&G's Roberts Flip variable as a measure of perceived politicization, because it addresses strategic behavior directly, some comparisons between our findings and theirs are in order. Recall that C&G found that exposure to the Roberts Flip exacerbated the role that ideological dissatisfaction played in evaluations of diffuse support. Our

²⁴ As discussed in Appendix B, the exception is the less than 2% of respondents who scored at the highest value on perceived judicial politicization; for these individuals, ideological disagreement is predicted to have a statistically significant, though slight, positive effect.

findings suggest the direct opposite: ideology plays no role in the evaluations of those who perceive the Court as politicized. Views of judicial politicization dominate.

Finally, we consider the hypothesis that the effect of ideological disagreement is conditional upon the interaction of *both* perceived legal realism and perceived judicial politicization. This hypothesis relies on the theory that the extent to which ideological disagreement affects evaluations of the Court's legitimacy is conditioned by the interplay of one's views of both how the Court makes decisions and how politicized the institution is. After all, if someone views the Court in starkly non-realist terms, then ideological disagreement has a profoundly different meaning than it does for those who believe the justices' votes reflect their personal views. To compound the matter, legal realists may believe the Court is a fundamentally nonpolitical institution—perceiving that justices are sincere in their decisions, even though those decisions are based on personal preferences and values—while other legal realists may believe that the justices are both making decisions on the basis of their personal beliefs *and* behaving as “regular politicians.” To test this hypothesis, we augment Model 1 in Table 2 with the three-way multiplicative interaction between perceptions of legal realism, judicial politicization, and ideological disagreement. Table 3 reports the results of this regression and Figure 1 illustrates the various relationships further.

[PLACE TABLE 3 ABOUT HERE]

[PLACE FIGURE 1 ABOUT HERE]

We first note that all of the interactions pass the basic significance tests associated with the change in R^2 . The hypothesis that no interactions exist can be rejected. Moreover,

performance evaluations and political knowledge continue to have a positive and statistically significant relationship with diffuse support.

Because our primary relationship of interest is the potentially varying relationship between ideological disagreement and diffuse support, Figure 1 plots the marginal effect of ideological disagreement as perceptions of both legal realism and judicial politicization vary. The first conclusion we draw from Figure 1 is that some belief in legal realism appears to be a prerequisite to the expected relationship between ideological disagreement and diffuse support materializing. Indeed, as the lower-left panel shows, there is no relationship between ideological disagreement and diffuse support—at any value of perceived politicization—for those respondents who are not legal realists. In other words, for individuals who view the Court as a fundamentally legalistic institution, ideological dissatisfaction with the Court’s outputs is a non-sequitur. To put it simply, those who view the Court as fundamentally legal give the institution a free pass if it makes disagreeable decisions.²⁵

Second, the relationship between ideological disagreement and diffuse support is especially strong among those who are the most certain observers of legal realism. As the top two panels show, ideological disagreement has the strongest deleterious effects on diffuse

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

support among those individuals who hold the most unequivocal perceptions of legal realism. Just as those individuals who fail to perceive the Court as ideological do not hold the Court into account when it makes decisions they dislike, the segment of the American people who views the Court's decisions as ideological considers ideology when evaluating the institution's performance.

Thus, these first two conclusions stand in direct opposition to the findings of C&G. Their analysis suggests that increased support for legal realism is associated with a reduced role of ideological disagreement. We reach the opposite conclusion. As one becomes a stronger and stronger legal realist, the deleterious effects of ideological disagreement on diffuse support also increase.

The final conclusion we draw from this figure is that the level of politicization conditions realism's effect on the relationship between ideological disagreement and diffuse support. As the panel in the lower-right demonstrates, the strongest relationship between ideological disagreement and diffuse support materializes when belief in politicization is at its lowest, and the relationship attenuates until respondents begin to see the Court as politicized. Once legal realists believe that the Court is politicized, there is no longer a statistically significant relationship between diffuse support and ideological disagreement: views on politicization take over.

Again, this finding is at odds with that of C&G. Our data suggest that politicization trumps ideology. Even legal realists—who would otherwise judge the Court on the basis of ideological satisfaction—do not punish the Court based on their ideological disagreements with the institution if they believe that the Court is politicized. Among legal realists who view the

Court as non-politicized, ideological disagreement with decisions is associated with a modest discount in their support for the Court. Yet, among legal realists who believe the Court is politicized, individual-level evaluations of diffuse support are driven by distaste for politics as usual rather than ideological compatibility. Ideology and politics are not the same.

By focusing on the connection between ideological disagreement and diffuse support, Figure 1 obscures other important relationships between the three concepts of interest and diffuse support. The simplest way to see the pre-empting effect of politicization is to view the predicted values from the equation reported in Table 3 (as shown in Table 4). Table 4 reveals that the highest predicted levels of diffuse support are found among those individuals who ascribe to legal realism, view themselves as close to the Court ideologically, and perceive the Court as not politicized; conversely, the lowest levels of diffuse support are among individuals—*regardless of their ideological distance to the Court*—who do not subscribe to legal realism but who perceive the Court as politicized.

[PLACE TABLE 4 ABOUT HERE]

Table 4 also enables us to compare the relative change in diffuse support as one moves from a “low” to “high” value of a variable, holding the values of the other two constituent terms to the interaction constant. Such comparisons make clear that the effect of politicization far outweighs the effects of either legal realism or ideological disagreement. While the largest differences between “low” and “high” values in Table 4 for perceived realism is a difference of .07, the largest difference based upon ideological disagreement is a paltry .04. The smallest change as one varies perceived politicization across the interquartile range is nearly twice that of the largest effect of legal realism: .12. And, in two cases, the effect of moving from a low to

high view of judicial politicization (again, from the 25th to the 75th quantile) results in a movement of .16 or .17—nearly one-fifth of the entire range of diffuse support! This is a powerful role for politicization to play.

Taken together, our three conclusions highlight the primacy of perceptions in conditioning the role of ideological disagreement on diffuse support, largely as predicted by Positivity Theory. Figure 2 displays these findings in the form of a flowchart that clearly illustrates the limited conditions under which ideological disagreement is connected to diffuse support for the Court. Ideological disagreement only affects judgments of judicial legitimacy once individuals accept the premise that ideology matters. Moreover, among those who accept that premise, ideological disagreement only affects legitimacy to the extent that individuals view the Court as a different type of political institution, namely one that is divorced from politics as usual. Once someone views the Court as just another political institution dominated by strategic, rather than sincere, decision-making, the role of ideological disagreement is again negated and instead replaced by a heretofore discounted—but extraordinarily powerful—factor: perceptions of the politicization of the Court. More than ideological disagreement or legal realism, perceptions of politicization play the strongest role in affecting individual-level judgments of legitimacy. To summarize, ideology only plays a role for those who believe the Court makes principled, non-political, decisions on the basis of ideology rather than law.

[PLACE FIGURE 2 ABOUT HERE]

But how many of the American people meet this condition? As an estimate, Table 4 also reports the percentages of the American people who populate each cell. Since ideological disagreement has an effect among only those legal realists who believe the Court is not

politicized, we are interested in the lower-left hand cells in Table 4. Here, we see that about 20% of the American people are expected to judge the Court on ideological terms, and only a minority of those people—8.2 % of the public—are individuals who perceive the Court as fairly distant from themselves. For the remaining segment of those people, ideology may matter in principle, but they are fairly satisfied with the Court’s outputs, thus providing them little reason to penalize the Court for its decisions.

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

Discussion and Concluding Comments

This analysis supports several major conclusions. First, as in earlier research, diffuse support and specific support are connected, but not inordinately so. Second, one component of specific support – ideological dissatisfaction – has practically nothing to do with diffuse support among a large majority of the American people. Third, that conclusion is entirely robust to alternative measures of ideological dissatisfaction. From the analysis of these new data, based on a representative national sample, we strongly reinforce the conclusions of Gibson and Nelson (2015a).

Fourth, we do not find evidence supporting the C&G findings regarding perceived legal realism. Where C&G found that increases in perceived legalism are associated with a more substantial role for ideology, we find the opposite: among those who perceive the Court through a legalist lens, ideology has no role to play. Perceived realism has few consequences for institutional support, most likely, we suspect, because some perceive realism and applaud it, others see and condemn it, while some see it and judge it inevitable and therefore are agnostic as to its desirability. A careful reading of Positivity Theory would never have led to the hypothesis and measures adopted by C&G.

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

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

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

We must also acknowledge some important limitations to this research. For instance, as Bartels, Johnston, and Mark (2015) have recently argued, the causal interconnections of all of these variables are complex, to say the least. These authors put forth the notion that the framing attitude is not legalistic priors, but is instead legitimacy itself: "... legitimacy may serve as a powerful lens or frame through which perceptions of a political versus apolitical Court are assessed" (2015, 766). Legitimacy serves a motivated reasoning function, with those seeing an institution as legitimate deriving views about politicization, etc., that are compatible with their legitimacy stance (for an early statement of this viewpoint, see Gibson 1991). We have shown

that perceptions of politicization are negatively associated with legitimacy: those seeing more politicization judge the Court as less legitimate. But the same relationship can be (and perhaps should be) recast: those who see the court as more legitimate are likely to see it as less politicized. Even the question of the causal status of ideological disagreement may be unclear, as those granting the Court legitimacy tending to minimize disagreements through cognitive dissonance reduction processes.²⁶ Teasing out the causal interconnections among the various attitudes discussed in this research agenda is as daunting as it is essential.²⁷

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

We include in this criticism our own measures of perceived realism and politicization. Perhaps one reason why our results on this score are complicated is that we still have not fully

²⁶ Bartels and Johnston (2013) seem to estimate the disagreement → legitimacy causal linkage in their experiment, but their experiment nonetheless cannot rule out reciprocal causation.

²⁷ By introducing a slew of new attitudinal variables in their analysis Bartels, Johnston, and Mark (2015) significantly raise the bar on the issue of complex and intertwining causal relationships.

understood the context in which the American people perceive and understand their highest court. We are certain that some believe the Court ought to strictly follow the law no matter the consequences, while others are more interested in achieving fairness. We are certain that normative and empirical views often get confused. We are certain that large gaps in the empirical knowledge of the American citizenry exist, especially when it comes to the question of how judges actually make decisions. And, we are certain that the measures we put forth in this paper can benefit from considerable additional psychometric improvement.

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

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Cases

Bush v. Gore, 531 U.S. 98 (2000)

National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)

Table 1. Ideological Disagreement and Court Attitudes

Ideological Disagreement	Diffuse Support	Specific Support ₁	Specific Support ₂
Bartels & Johnston (3)	.03 (672)	-.10 (671)	-.38 (652)
Variant 1 (5)	-.06 (674)	-.23 (672)	-.36 (653)
Gibson & Nelson (4)	.01 (328)	-.14 (328)	-.28 (328)
Variant 1 (5)	-.05 (328)	-.18 (328)	-.33 (328)
Christenson & Glick (7)	-.06 (655)	-.19 (654)	-.39 (648)
Variant 1 (9)	-.08 (655)	-.20 (654)	-.40 (648)

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

The dependent variables are:

Diffuse Support: Index, high = greater support

Specific Support₁: Job approval, high = greater approval

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

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

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

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

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

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

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

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

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

	OLS Regression Results: Model I	
	b	s.e.
Ideological Disagreement (5 category)	-.02	.03
Specific Support: Performance Evaluations	.13***	.03
Court Knowledge	.21***	.02
Perceived Legal Realism	.15***	.04
Perceived Judicial Politicization	-.57***	.04
Specific Support: Just Right	—	—
<i>Equation</i>		
Intercept	.55***	.04
Standard Deviation – Dependent Variable	.20	
Standard Error of Estimate	.15	
R ²	.44***	
N	647	
<p>Note: All variables are scored from 0 to 1.</p> <p>b = unstandardized regression coefficient</p> <p>s.e. = standard error of unstandardized regression coefficient</p> <p>R² = coefficient of determination</p> <p>Significance of regression coefficients: *** p < .001 ** p < .01 * p < .05</p>		

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

	OLS Regression Results: Model II	
	b	s.e.
Ideological Disagreement (5 category)	-.02	.03
Specific Support: Performance Evaluations	.14***	.03
Court Knowledge	.21***	.02
Perceived Legal Realism	.14***	.04
Perceived Judicial Politicization	-.57***	.04
Specific Support: Just Right	-.01	.01
<i>Equation</i>		
Intercept	.56***	.04
Standard Deviation – Dependent Variable	.20	
Standard Error of Estimate	.15	
R ²	.45***	
N	647	
<p>Note: All variables are scored from 0 to 1.</p> <p>b = unstandardized regression coefficient</p> <p>s.e. = standard error of unstandardized regression coefficient</p> <p>R² = coefficient of determination</p> <p>Significance of regression coefficients: *** p < .001 ** p < .01 * p < .05</p>		

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

	OLS Regression Results	
	b	s.e.
Ideological Disagreement (5 category)	.51 [*]	.24
Specific Support: Performance Evaluations	.16 ^{***}	.03
Court Knowledge	.20 ^{***}	.02
Perceived Legal Realism	.09	.11
Perceived Judicial Politicization	-.81 ^{***}	.11
Perceived Realism X Perceived Politicization	.31	.20
Perceived Realism X Ideological Disagreement	-1.19 ^{**}	.38
Perceived Politicization X Ideological Disagreement	-.47	.38
Perceived Realism X Perceived Politicization X Ideological Disagreement	1.21 [*]	.55
<i>Equation</i>		
Intercept	.61	.07
Standard Deviation – Dependent Variable	.20	
Standard Error of Estimate	.15	
R ²	.47 ^{***}	
N	647	

Note: All variables are scored from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

Significance of regression coefficients: *** p < .001 ** p < .01 * p < .05

Significance of change in R² from adding the interaction terms:

Perceived Legal Realism X Perceived Judicial Politicization: p < .000

Perceived Legal Realism X Ideological Disagreement: p = .006

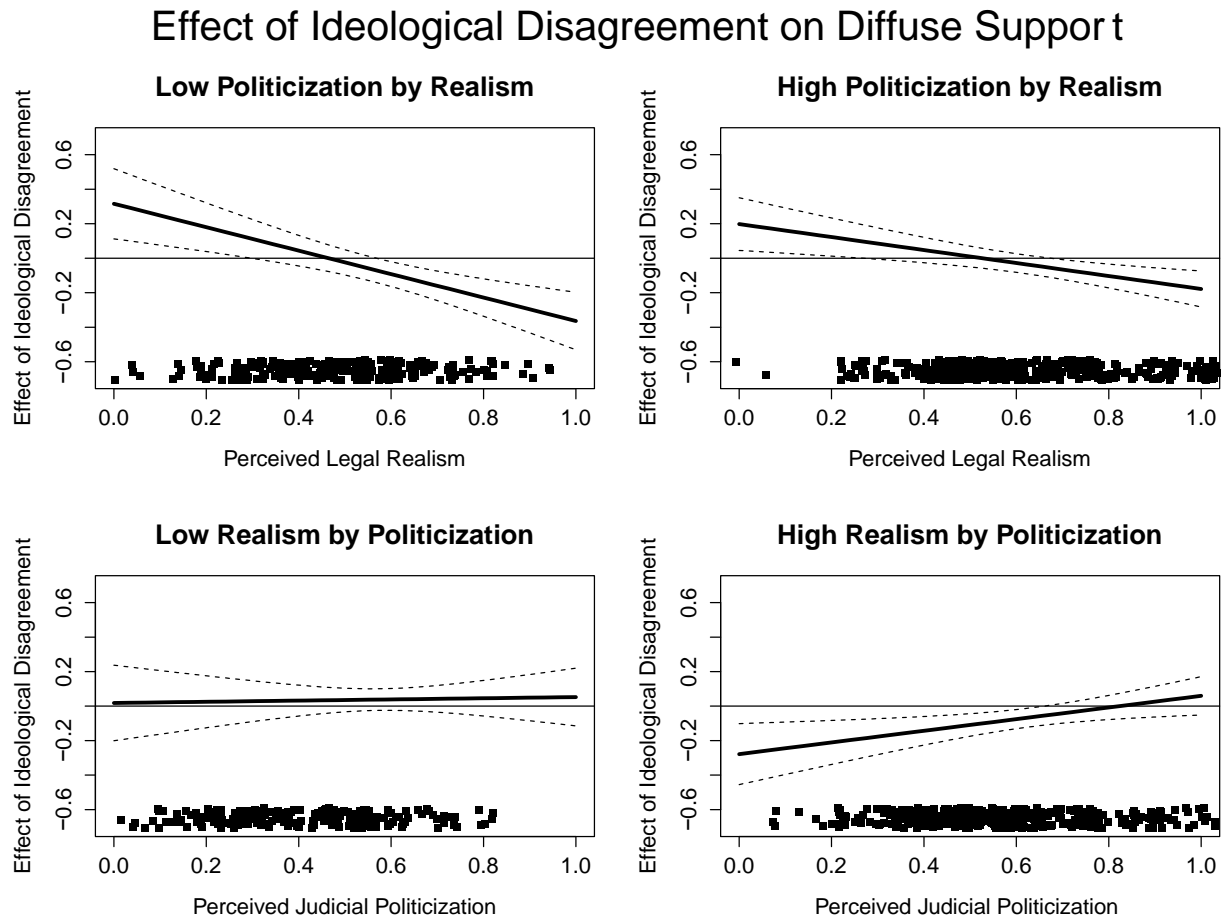
Perceived Judicial Politicization X Ideological Disagreement: p = .020

Perceived Legal Realism X Perceived Judicial Politicization X Ideological Disagreement: p = .028

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

Ideological Distance							
Low				High			
Perceived Politicization				Perceived Politicization			
		Low	High			Low	High
Perceived	Low	.63	.47	Perceived	Low	.64	.48
		[.62, .65]	[.44, .50]			[.62 .66]	[.45, .50]
		30.1%	8.9%			6.0%	2.5%
		.69	.54			.65	.53
		[.66, .72]	[.51, .57]			[.63, .67]	[.51, .55]
Realism	High	13.1%	12.6%	Realism	High	8.2%	18.6%

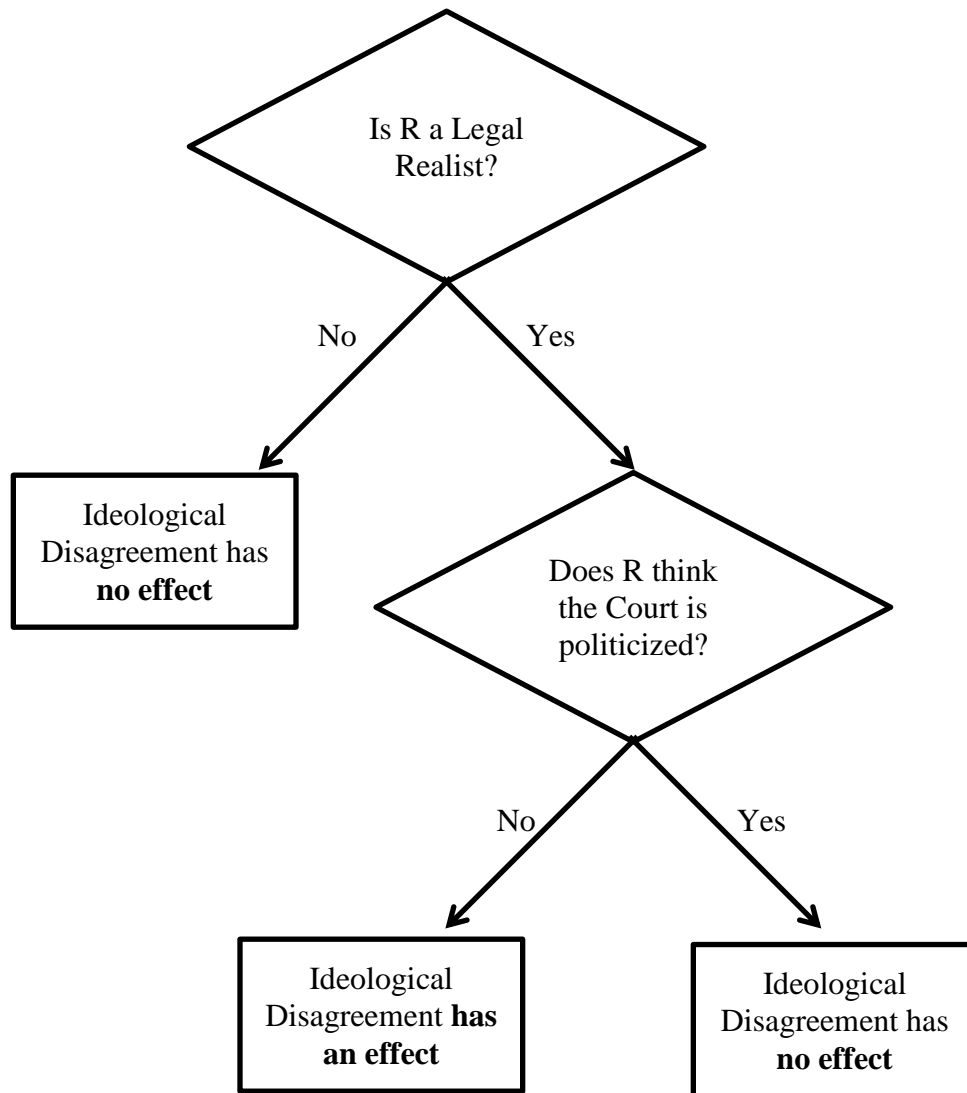
Figure 1. The Effect of Ideological Disagreement on Diffuse Support at Varying Levels of Perceived Legal Realism and Perceived Judicial Politicization



Note:

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

Figure 2. The Conditions Under Which Ideological Disagreement Has an Effect on Diffuse Support for the U.S. Supreme Court



Note:

Ideological disagreement is only related to diffuse support among those individuals who are both legal realists and believe the Court is politicized.

APPENDIX A: THE MEASUREMENT OF INSTITUTIONAL SUPPORT

Table 1. Loyalty Toward the United States Supreme Court

Indicator	Level of Diffuse Support for the Supreme Court					
	Percentage					
	Not Supportive	Undecided	Supportive	Mean	Std. Dev.	N
Do away with the Court	13.1	26.9	60.0	3.7	1.1	1533
Restrict Court’s Jurisdiction	24.8	32.3	43.0	3.3	1.1	1526
Too mixed up in politics	45.0	34.9	20..1	2.7	.9	1530
Remove judges who rule against majority	23.6	30..9	45.5	3.3	1.1	1531
Makes Court less independent	31.6	28.5	39.9	3.2	1.2	1521
Control the actions of the Supreme Court	34.4	31.8	33.7	3.0	1.1	1531

Note: The percentage are calculated on the basis of collapsing the five-point Likert response set (e.g., “agree strongly” and “agree” responses are combined), and sum to 100 % across the three percentage columns (except for rounding errors). The percentage “Supportive” is the percentage of respondents giving a reply supportive *of the Court*, not the statement itself. The means and standard deviations are calculated on the uncollapsed distributions. Higher mean scores indicate more institutional loyalty.

The propositions (asked with a five-point Likert response set) are:

Do away with the Court: 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 Court altogether.

Restrict Court's Jurisdiction: The right of the U.S. Supreme Court to decide certain types of controversial issues should be reduced.

Too mixed up in politics: The U.S. Supreme Court gets too mixed up in politics.

Remove judges who rule against majority: Justices on the U.S. Supreme Court who consistently make decisions at odds with what the majority wants should be removed from their position.

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

Control the actions of the Supreme Court: It is inevitable that the U.S. Supreme Court gets mixed up in politics; we ought to have stronger means of controlling the Court.

Source: TAPS Survey, 2014

APPENDIX B: ADDITIONAL INTERACTIVE ANALYSES

Our paper discusses additional analyses of interaction terms between pairwise combinations of perceived legal realism, perceived judicial politicization, and ideological disagreement. This appendix reports these analyses in full.

As discussed in the text of the paper, when the model includes only an interaction between perceptions of legal realism and perceived ideological disagreement (Model 1 in Table B1), the interaction term is not statistically significant, suggesting that ideological disagreement does not have a differential effect on diffuse support based on the respondent's beliefs about the extent to which judges rely on their personal policy preferences.

However, ideological disagreement does vary in the extent to which it predicts diffuse support according to respondents' beliefs in legal realism, as shown in Model 2. As Figure B1 depicts, the effect of ideological disagreement is statistically significant and negative among those who believe the Court to be non-politicized; among those who believe the Court to be politicized, ideological disagreement has no effect on diffuse support.

Model 3 presents both pairwise interactions in the same model. Here, ideological disagreement varies according to the values of both perceived legal realism (the left-hand panel in Figure B2) and perceived judicial politicization (the right-hand panel in Figure B2). As individuals become stronger believers in legal realism, the relationship between ideological disagreement and diffuse support increases, though there is no relationship between the two concepts among individuals who do not subscribe to legal realism.

The relationship is reversed when perceptions of judicial politicization are considered. Here, ideological disagreement has the expected relationship with diffuse support among those individuals who do not believe the Court to be politicized. However, as beliefs in politicization increase, the relationship between ideological disagreement and diffuse support dissipates, eventually disappearing. Still, among the handful of respondents who score very highly on the politicization scale, ideological disagreement actually has a *positive* relationship with diffuse support.

Table B1. The Conditional Effects of Ideological Disagreement on Diffuse Support

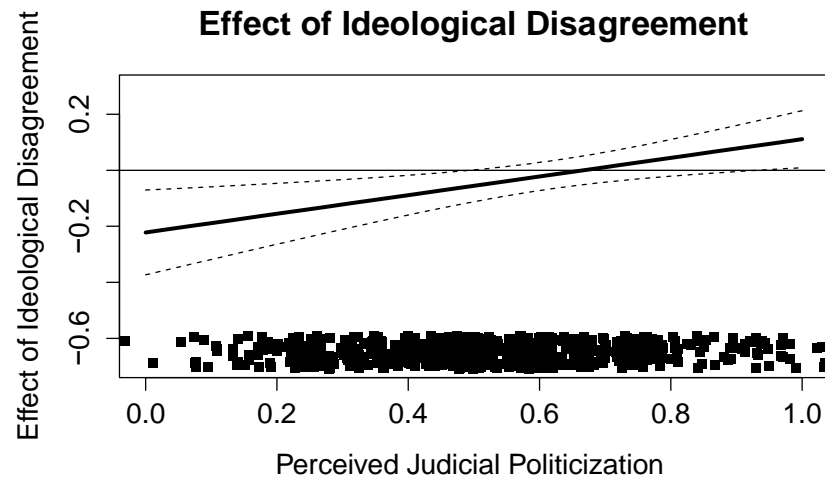
	(1)	(2)	(3)
Performance Evaluations	.14*	.14*	.15*
	(.03)	(.03)	(.03)
Court Knowledge	.21*	.20*	.20*
	(.02)	(.02)	(.02)
Ideological Disagreement	.05	-.22*	-.14
	(.07)	(.08)	(.08)
Perceived Legal Realism	.18*	.15*	.23*
	(.05)	(.04)	(.05)
Ideological Disagreement X Realism	-.10		-.28*
	(.10)		(.11)
Perceived Politicization	-.56*	-.64*	-.67*
	(.04)	(.05)	(.05)
Ideological Disagreement X Politicization		.33*	.47*
		(.12)	(.13)
Intercept	.53*	.60*	.56*
	(.04)	(.04)	(.04)
R ²	.45	.45	.46
Adjusted R ²	.44	.45	.45
N	647	647	647

* indicates statistical significance at the $p < .05$ level.

Note:

The entries in the main body of the table are unstandardized regression coefficients, followed by (in parentheses) the standard errors of the coefficients.

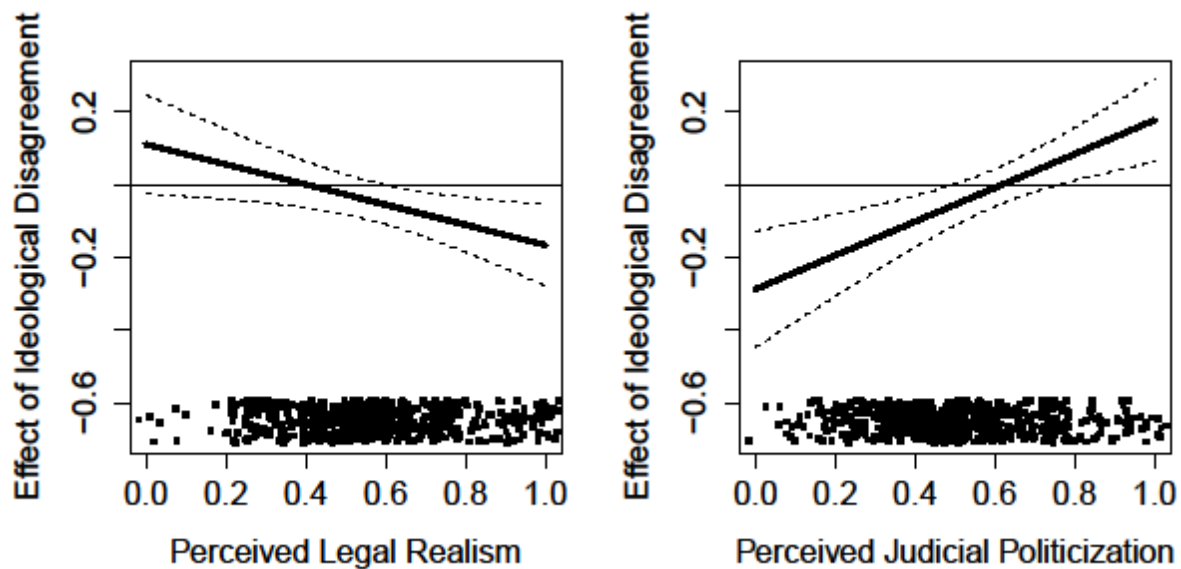
Figure B1. The Marginal Effect of Ideological Disagreement on Diffuse Support Across Values of Perceived Judicial Politicization



Note:

The estimates come from Model 2 in Table B1. The figures include 95% confidence intervals surrounding the marginal effect and a rug showing the distribution of perceived judicial politicization across the range of the x-axis.

Figure B2. The Marginal Effect of Ideological Disagreement on Diffuse Support Across Values of Perceived Legal Realism (Left Panel) and Perceived Judicial Politicization (Right Panel)



Note:

The estimates come from Model 3 in Table B1. The figures include 95% confidence intervals surrounding the marginal effect and a rug showing the distribution of perceived judicial politicization across the range of the x-axis.