Chapter 5
Legitimacy Is for Losers: The Interconnections of Institutional Legitimacy, Performance Evaluations, and the Symbols of Judicial Authority

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Politicians and scholars worldwide have long been impressed with the fragility of judicial power. When it comes to securing compliance with their decisions, courts are said to have neither the power of the "purse"—the ability to raise and expropriate money to encourage compliance—nor the power of the "sword"—the ability to coerce compliance. In the absence of these assets, courts really have only a single form of effective political capital: legitimacy.[1]

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[1] Useful reviews of Legitimacy Theory can be found in Tyler (2006), Levi, Sacks, and Tyler (2009), and Gibson and Nelson (2014a).

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Compliance with court decisions is often contingent upon judicial institutions being considered legitimate. Legitimacy is a normative concept, basically meaning that an institution is acting appropriately and correctly within its mandate.[2] Generally speaking, a great deal of social science research has shown that people obey the law more out of a felt normative compunction deriving from legitimacy than out of instrumental calculations of the costs and benefits of compliance (e.g., Tyler, 1990, 2006). As a consequence, social scientists have paid considerable attention to the legitimacy of courts.

The empirical analysis of legitimacy dates back to Easton's (1965) work on "systems theory", with Easton substituting the concept "diffuse support" for judgments of legitimacy. Diffuse support is a fundamental commitment to an institution that manifests in a willingness to support the institution that extends beyond mere satisfaction with the institution's performance at the moment ("specific support"). This distinction between institutional support and performance satisfaction is a fundamental element of Legitimacy Theory.

According to the democratic theory that undergirds American liberal democracy, institutions—especially courts—must be free to make decisions in opposition to the preferences of the majority; indeed, it is specifically a function of courts (at least in the American case, and in many European cases, where the judiciary is vested with the power of having the last say on the meaning of the constitution) to overturn the actions of the majority when those actions infringe upon the fundamental rights of minorities. Courts must on occasion make hard decisions that are greatly displeasing to the majority, as in freeing obvious criminals due to violations of due process, restraining the majority from imposing its religious beliefs on the entire society, and spying on dissenters and malcontents who are thought to threaten the political security of the majority. If democracy can be simply defined (following Dahl, 1971) as "majority rule, with institutionalized respect for the rights of the minority, especially rights allowing the minority to compete for political power", then the judiciary clearly represents the "minority rights" half of the equation. If courts are dependent upon majority approval for their decisions to be accepted, then one of the most important political functions of the judiciary is in jeopardy. According to this view of democracy, the legitimacy of the judiciary cannot be too heavily dependent upon the majority being pleased with the short-term performance of its courts.

This approach to legitimacy led Easton to coin a telling phrase: institutions require a "reservoir of goodwill" in order to function effectively. Gibson and Caldeira (2009) liken this reservoir to loyalty, even to the loyalty between two friends. One may disappoint a friend without necessarily destroying the friendship.

[2] Tyler (2006, p. 375) provides a useful definition of legitimacy: "Legitimacy is a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation of reward. Being legitimate is important to the success of authorities, institutions, and institutional arrangements since it is difficult to exert influence over others based solely upon the possession and use of power. Being able to gain voluntary acquiescence from most people, most of the time, due to their sense of obligation increases effectiveness during periods of scarcity, crisis, and conflict."

Loyalty to another requires standing by that other even when one might disapprove of the other's actions. Indeed, it is easy to be loyal to another who acts in an approving fashion; the test of loyalty involves disapproval or discontent. In similar fashion, institutions do not require legitimacy when they are pleasing people with their policies. Legitimacy becomes crucial in the context of dissatisfaction; legitimacy therefore requires an "objection precondition" (e.g., Sullivan, Piereson, & Marcus, 1982)—it becomes most relevant when citizens object to something the institution has done. Problems of compliance do not typically arise when court decisions align with the preferences of their constituents; rather, when they do not align, legitimacy or institutional loyalty provides the rationale for accepting or acquiescing to an unwanted ruling of a court. In this sense, *legitimacy is for losers*. Thus, it is not difficult to understand why scholars are so interested in the legitimacy of courts.

With this renewed interest in judicial legitimacy has come some important intellectual debates and controversies. Foremost among these is the fundamental question of how connected diffuse and specific supports are. Some scholars—whom Gibson and Nelson (2014b) have dubbed "the specific-support revisionists"—claim to have unearthed evidence of a far closer connection than heretofore believed, with the consequence that diffuse support might be more fragile than earlier research has indicated. Debated as well is the question of how disappointment in a court ruling translates, or does not translate, into acquiescence to an unwanted judicial ruling. The mechanisms of this connection are not currently well understood. Finally, what is it about courts that sustains and propels their legitimacy? Here, there is less controversy, but mainly because there has been less thinking about the question of how legitimacy becomes activated and empowered. Thus, some of the most fundamental attributes of Legitimacy Theory are being re-thought and reconsidered.

The purpose of this chapter is to investigate these questions, in part using existing data and research, and in part by presenting some new empirical evidence. I then turn to a synthesis of theories of information processing in an effort to explain how the symbols of judicial authority structure the connection between performance evaluations and institutional support. I begin with the question of how strongly diffuse and specific supports are intertwined.

The Specific Support – Diffuse Support Linkage

Those studying public opinion toward the U.S. Supreme Court have of late become concerned that the legitimacy of the institution may be on the retreat.[3] Spurred by highly salient and unpopular Court decisions such as *Kelo*, *Citizens United*, and the

[3] I use the term "concerned" to indicate renewed interested in the topic, without expressing any normative view on whether it is desirable for the Court to possess large stores of institutional legitimacy. Empirical research on judicial legitimacy need not make any normative judgment about whether legitimacy is desirable or undesirable. From the perspectives of some, having a weak Court may be beneficial. My research is agnostic on this issue. For some thoughts on whether the U.S. Supreme Court can have *too much* legitimacy, see Gibson and Nelson (2015a).

Obamacare ruling,[4] some have speculated that the institution's "reservoir of goodwill" is facing (or beginning to face) a California-sized drought. This view has been forcefully stated in the scholarly literature (e.g., Bartels & Johnston, 2013), and has even made its way into the *New York Times* (Liptak, 2011) and into the research agenda of the Pew Research Center for the People and the Press (2013).

The question of the stability of the Court's legitimacy is a matter of practical as well as theoretical import. A fragile Court is likely to act more timidly than a secure Court; or, more precisely, justices with heightened concerns about institutional legitimacy might even alter their votes in highly salient cases so as to protect their institution.[5] More generally, if an elemental function of the Supreme Court is to check majority opinion when it runs amok, then the so-called countermajoritarian dilemma may be quite a dilemma indeed.[6] Without a reservoir of goodwill, the Court is even more vulnerable than indicated by the many formal weaknesses of the institution.

That support for the Supreme Court would be so volatile runs counter to the conventional wisdom on the sources of legitimacy for the Court. Court attitudes are typically thought of as obdurate because they are grounded in slow-moving attributes of citizens: more general support for democratic institutions and processes, levels of information and knowledge about the Court, and, to a much lesser degree, overall satisfaction with the institution's performance (Gibson & Caldeira, 2009; Gibson & Nelson, 2014a). Moreover, according to the theory of "value-based regeneration"—the process by which performance dissatisfaction recedes and Court attitudes revert to their grounding in support for democratic institutions and processes (Mondak & Smithey, 1997)—short-term detours do not last long. Court support is not invariant—the literature reports a number of instances in which institutional support for a court has changed.[7] So, we have a conundrum; a growing literature now reports a direct empirical and theoretical conflict on the question of whether diffuse support is or is not highly responsive to changes in specific support.

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

[5] Crawford (2012) reports that Chief Justice Roberts acted strategically to protect the Court's legitimacy during the opinion-writing process for *National Federation of Independent Business v. Sebelius*, changing his vote from one to strike down the Affordable Care Act to one that preserved the constitutionality of the legislation.

[6] Pildes (2010, p. 157) declares "*Citizens United* is the most countermajoritarian decision invalidating national legislation on an issue of high public salience in the last quarter century."

[7] To list just a few such reports: see Gibson and Caldeira (1992), on change in the attitudes of African Americans toward the U.S. Supreme Court; Gibson and Caldeira (2009), on change in support for the Supreme Court that resulted from the controversy over the Alito nomination; Gibson (2012), on change in support for the Kentucky Supreme Court over the course of an election; and Gibson, Gottfried, Delli Carpini, and Jamieson (2011), on similar electoral-cycle change in support for the Pennsylvania Supreme Court.

The key to answering this question has to do with understanding the connection between performance evaluations and institutional support. The conventional wisdom is that the relationship is "sticky," with diffuse support (a "reservoir of goodwill") only diminishing after a sustained series of performance disappointments (e.g., Baird, 2001; Gibson & Caldeira, 1992).

However, it turns out that the specific-support revisionists have questioned whether diffuse support really is resistant to alteration by changes in specific support. Initiated largely by Bartels and Johnston (2013), and joined more recently by Christenson and Glick (in press) (and, to a lesser and somewhat different degree, Nicholson & Hansford, 2014), this view posits a far stronger relationship between specific and diffuse supports than heretofore imagined.[8] For example, Bartels and Johnston claim to have discovered a strong effect of disappointment in a decision of the Court, with those learning that the Court had ruled against their position on the issue of whether the government can monitor the internet expressing less institutional support than those who were told the Court had ruled in favor of the respondents' position. 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" (p. 196, emphasis in original).[9] It is one thing to argue that *accumulated grievances* can undermine judicial legitimacy, as Gibson and Caldeira (1992) suggested happened among African Americans, or to suggest that blockbuster Supreme Court rulings, like *Bush v. Gore*, could have consequences for the Court's diffuse support (although Gibson, Caldeira, & Spence, 2003b, suggest they do not). It is quite another to claim that *each unpopular Court decision*—even each run-of-the-mill decision—may be dangerous to the institution's health. If legitimacy cannot protect the institution when it makes unpopular decisions, then the U.S. Supreme Court loses its independence in the sense that its support is tied too closely to satisfying the policy preferences of its constituents.

In a similar vein, Christenson and Glick (in press) investigated the effects of the Supreme Court's decision on Obamacare (*National Federation of Independent Business v. Sebelius*), searching in particular for possible consequences of ideological disagreement with the Court and of the switch in vote by Chief Justice Roberts from finding the law unconstitutional to judging it constitutional. The basic hypotheses of their research are that citizens would use the Court's ruling to reassess the ideological location of the institution, and that the American people would judge Roberts' action as strategic and politicized behavior, thereby undermining the view that the Court is not an ordinary political institution (a bedrock belief of institutional legitimacy).

[8] In their analysis of the legitimacy of high courts worldwide, Gibson, Caldeira, and Baird (1998) report an average correlation of diffuse and specific supports of .33.

[9] For a direct challenge to many of the conclusions of Bartels and Johnston, see Gibson and Nelson (2015b).

Like Bartels and Johnston, Christenson and Glick conclude that "the decision provides new information that people can use to update their assessments of the Court's ideology, and that these updates affect assessments of legitimacy" (p. 21).[10] Their assumed process goes something like: (1) citizens perceive and categorize the decision; (2) on the basis of their understanding of the decision—and their projection of the ruling onto an ideological continuum—they reevaluate their perception of the ideological location of the Court; (3) they then recalculate the distance between their own ideological location (assuming they have one) and the Court's newly revealed location; and (4) on the basis of this new distance score, citizens reconsider whether to extend legitimacy to the Court as an institution. Thus, their approach is much like that of Bartels and Johnston; according to Christenson and Glick, it is not so much disagreement with the policy that is important to citizens, but is rather what the decision reveals about the overall ideological position of the U.S. Supreme Court.[11] Ideological distance from the Court is crucial to determining whether to support the institution.

Christenson and Glick go a step beyond the ideological disagreement analysis initiated by Bartels and Johnston by also considering the procedural aspects of Supreme Court decision-making. As I have noted, they employ what they call a "quasi-experiment" to assess the impact of Chief Justice Roberts' strategic voting in the case. Their hypothesis is that strategic behavior is thought by the Court's constituents to be insincere and political, and, as a consequence, support for the institution will decline.[12] Thus, their model suggests that citizens learn about ideology and

[10] Christenson and Glick test this hypothesis with a decidedly unrepresentative nonprobability sample of opt-in respondents—a Mechanical Turk sample. This sample's attributes differ markedly from those of probability-based samples (e.g., Table A1, p. 28), with about one-half of the opt-in sample reporting having a college degree (a characteristic not even true, of course, of college sophomores), and with those having some college adding another 37 % to the sample. Moreover, unlike many internet surveys, the authors included in their solicitation of participation in the survey a description of its content (a "survey about politics and health care" – p. 27), a practice further creating selection bias and unrepresentativeness. Finally, the authors were extremely lenient in how they used the results of three screener tests (e.g., Berinsky, Margolis, & Sances, 2014), allowing respondents who failed two of the three screening questions into their sample (p. 27). The consequence of this latter decision is of course to boost the power of their sample while simultaneously introducing measurement error associated with the respondents who did not pay attention to the questions asked.

[11] My analysis of the Bartels and Johnston experiment (see below) is relevant to this assumption. In particular, I find that ideology played a confused role in structuring reactions to the experimental stimulus (the decision), in part because the policy did not map (in the minds of the respondents) neatly onto the ideological continuum. Policy disagreement performed much better in their experiment than did ideological disagreement. It is important not to assume that policy preferences and ideology are the same thing (as decades of research on public opinion has shown).

[12] This hypothesis is similar to that of Gibson and Caldeira (2009), with the difference being that the exogenous event for Gibson and Caldeira is the politicization of the Court via the campaigns for and against the confirmation of Samuel Alito to a seat on the Court.

process from rulings by the Supreme Court, and that both are important for assessments of institutional legitimacy.[13]

A crucial question arising from the work of Bartels and Johnston and Christenson and Glick thus concerns the stability of institutional support attitudes. The specific-support revisionists seem to believe that extant theory posits little change in legitimacy attitudes over time, as if the attitudes were completely impervious to exogenous influences. Empirically, it is true that the literature provides only the most limited evidence of change in legitimacy attitudes, mainly because no long-term panel data that include such measures exist. Still, using cohort analysis on cross-sectional data, Gibson and Caldeira (1992) show that the attitudes of African Americans toward the U.S. Supreme Court seemed to change over time (with the exception of what might be termed the "Warren Court/Civil Rights" cohort), most likely owing to the slow accumulation of dissatisfactions with Court decisions that seemed to turn against the interests of African Americans. In addition, while Gibson and Caldeira (2009) have argued that legitimacy attitudes are obdurate, they meant *resistant* to change rather than *impervious* to change. Indeed, their panel data reveal that the confirmation battle over Samuel Alito took a swipe out of the Supreme Court's legitimacy. Furthermore, the mere fact that specific support and diffuse support are typically moderately correlated indicates that change in one attitude is to some degree associated with change in the other attitude. Few observers of American politics believe that many political attitudes are fixed and entirely unchangeable.

Where scholars differ seems to be on the degree of "stickiness" in the relationship between change in performance satisfaction and institutional support. A simple instrumental model would suggest little stickiness; a change in performance satisfaction would lead directly to a change in support, in what is essentially a one-to-one relationship. "Stickiness" means that institutional support responds to changing satisfaction in considerably less than a one-to-one manner (and perhaps nonlinearly as well). Indeed, there may be many processes by which change occurs, perhaps change is a step-function, with readjustment of Court attitudes only taking place after a certain quantity of pleasing or displeasing decisions accumulates. Gibson and Caldeira (2009) have likened institutional support to loyalty. The very definition of loyalty is that attitudes toward another are not strictly a function of "what you have done for me lately." Loyalty can be undermined and can change, but typically loyalty is not altered by a single disappointing transaction. But neither is loyalty completely unaltered by the actions of the other; repeated disappointments can cause loyalty to dissolve, reinstating an instrumental, quid-pro-quo calculus.

[13] Some of their empirical findings run contrary to their expectations, requiring post-hoc explanations that are not entirely persuasive (e.g., the Roberts strategic treatment actually *increased* support for the Court—Christenson and Glick, p. 16). In light of having practically no external validity, and with internal validity that is to some degree compromised by the study's research design (as they acknowledge, theirs is not a true experimental research design), the question of the impact of the ruling on this case must be considered to be unanswered by their analysis.

Thus, the empirical question of the degree of linkage between decisional dissatisfaction and institutional support is a matter of great theoretical import. Indeed, in some fundamental sense, Legitimacy Theory *requires* that the connection not be overly strong (see, e.g., Easton, 1975, p. 442). As Gibson and Caldeira (1992) 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" (p. 1127, emphasis in original). Given the importance of the theoretical question, additional empirical analysis is essential. Providing a new test of the revisionist hypothesis is therefore one of the purposes of this chapter.

Reconsidering the Bartels and Johnston Data

Beyond the Gibson and Nelson critique of the Bartels and Johnston analysis, it is perhaps useful to return to the evidence Bartels and Johnston produced in support of their thesis. In this section, I will look carefully at their experimental evidence to determine just how well their data fit with their claims and conclusions.

A central contention of my theoretical perspective is that "legitimacy is for losers." It is therefore important to re-examine their evidence from the point-of-view of whether the respondent is learning about a decision of which he or she approves or disapproves.

In their experiment, all 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.[14] 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). Bartels and Johnston report no evidence that liberals uniformly favor a prohibition on the government monitoring citizen communications or that conservatives uniformly oppose such a prohibition; they simply assume that allowing monitoring is a conservative decision. Thus, according to their set-up, some of the respondents were told about a decision with which they were satisfied, while another portion was told about a decision with which they were dissatisfied.

[14] The criteria by which this issue was selected are not clear. Based on an analysis by Gibson et al. (2014) of similar issues, it seems that the policy on which Bartels and Johnston focused is not unusually salient to more than one-half of the American people.

Table 5.1 The conditional effect of ideological self-identification on the influence of policy dissatisfaction on institutional support (Bartels and Johnston experimental data)

	Institutional support		
Ideological self-identification/policy manipulation	Mean	SD	*N*
Extremely liberal ($p = .098$; eta = .32)			
Loser (conservative)	.58	.23	18
Winner (liberal)	.73	.17	10
Liberal ($p = .027$; eta = .20)			
Loser (conservative)	.61	.18	61
Winner (liberal)	.68	.20	65
Slightly liberal ($p = .975$; eta = .00)			
Loser (conservative)	.66	.19	56
Winner (liberal)	.66	.16	57
Moderate ($p = .124$; eta = .08)			
Unknown (conservative)	.56	.17	189
Unknown (liberal)	.59	.16	189
Slightly conservative ($p = .682$; eta = .04)			
Loser (liberal)	.60	.21	77
Winner (conservative)	.59	.20	62
Conservative ($p = .408$; eta = .06)			
Loser (liberal)	.57	.21	102
Winner (conservative)	.60	.22	111
Extremely conservative ($p = .188$; eta = .21)			
Loser (liberal)	.55	.19	23
Winner (conservative)	.63	.19	17

Note: Following each type of ideological self-identification (above) is the probability from a student's *t*-test of the difference of means for institutional support under the null hypothesis of no difference in support scores. Eta is the measure of association between the manipulation (dichotomous) and the institutional support index

I have examined how the manipulation interacts with the pre-existing ideological self-identifications of the respondents. That is, *within* each category of ideological self-identification, some were told about a satisfying decision while others were told about a dissatisfying decision. If Bartels and Johnston were correct, one would expect that the dissatisfied would express lower levels of institutional support than the satisfied. Table 5.1 reports the analysis necessary to test that expectation.[15] The table reports the results of a student's *t*-test of the difference in court support across experimental conditions within each category of ideological identification.

[15]There data are from a "national probability sample" fielded by Knowledge Networks. No response rate or other details are presented about the survey. The data set is available at the supplemental materials site of the *American Journal of Political Science*.

Table 5.2 The conditional effect of policy preferences on the influence of policy dissatisfaction on institutional support (Bartels and Johnston experimental data)

	Institutional support		
Policy preference/policy manipulation	Mean	SD	*N*
Strongly oppose monitoring ($p = .000$; eta = .33)			
Loser (conservative)	.54	.23	64
Winner (liberal)	.70	.22	63
Oppose monitoring ($p = .003$; eta = .20)			
Loser (conservative)	.57	.19	129
Winner (liberal)	.64	.15	106
Support monitoring ($p = .280$; eta = .06)			
Loser (liberal)	.60	.17	197
Winner (conservative)	.58	.17	185
Strongly support monitoring ($p = .000$; eta = .23)			
Loser (liberal)	.56	.20	163
Winner (conservative)	.65	.19	139

Note: Following each type of policy preference (above) is the probability from a student's *t*-test of the difference of means for institutional support under the null hypothesis of no difference in support scores. Eta is the measure of association between the manipulation (dichotomous) and the institutional support index

The first conclusion the table supports is that the experimental manipulation does not perform uniformly as predicted by the Bartels and Johnston hypothesis. For example, self-identified liberals support their hypothesis: winners (those told of a liberal court decision) express more support for the institution than those told of a conservative Court decision, and the difference across treatments is statistically significant at .027. Self-identified conservatives, however, violate the Bartels and Johnston expectations: their legitimacy levels do not differ at all according to the type of decision to which they were exposed. Indeed, while I acknowledge that the within-identification category *N*s are sometimes small, *only* among liberals is there a difference that approaches conventional levels of statistical significance. Bartels and Johnston place a great deal of emphasis on ideological disagreement with the Court in the first portion of their article. From their experimental data, it appears that ideologically unwelcomed decisions have very little impact indeed on the willingness of most citizens to extend legitimacy to the U.S. Supreme Court.

Even if Bartels and Johnston do not, I recognize a difference between ideological disagreement with the institution and policy disagreement in the context of a single case. Their experiment is about policy disagreement, not ideological disagreement. I therefore report the same analysis of differences in legitimacy by experimental treatment, but this time using the respondents' policy preferences on government monitoring as the controlling variable.[16] These results are reported in Table 5.2.

[16]The absence of "don't know/uncertain" responses to this policy question is highly unusual. Typically, representative samples of the American people include large proportions of respondents unable to form a preference on any given issue of public policy. That is not so in their data set.

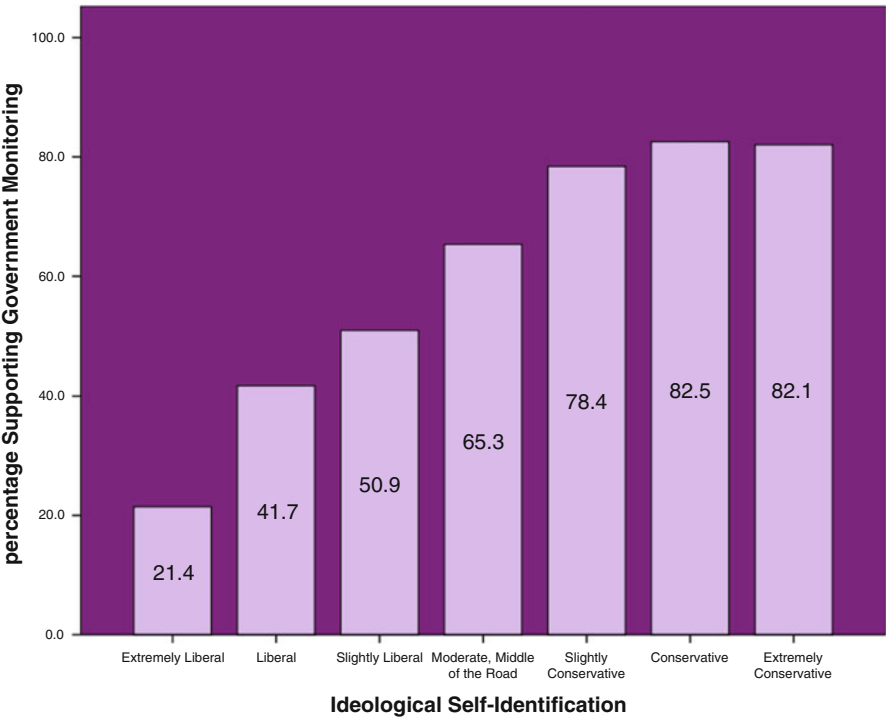

Fig. 5.1 Connecting policy preferences with ideological self-identifications, Bartels and Johnston data (2009)
Note: $N = 1{,}035$. As to the relationship between ideological self-identification and policy views, $r = .31$, $p < .001$. *Source*: Bartels and Johnston (2013)

These results are more favorable to the Bartels and Johnston hypothesis. For instance, among strong opponents of government monitoring, legitimacy is considerably higher among those told that the Court made a satisfying decision as compared to those told that the Court made a decision allowing monitoring. Similar confirming relationships are found among those opposing monitoring and those strongly supporting monitoring.

Table 5.2 does, however, report a disquieting conflict with their hypothesis. Among those supporting monitoring ($n = 382$), no difference in institutional support levels is observed. Indeed, were one inclined to examine nonsignificant differences, as I am not, one would find a mean of .60 among losers and a smaller mean of .58 among winners (opposite of the expectation). These data present an important challenge to the hypothesis, among the modal preference category in their data.

Why is it that ideology performs so poorly as a conditioning variable in comparison to policy preferences? One answer is fairly simple, the respondents had considerable difficulty mapping their ideological preferences onto this particular policy area (or vice versa). The correlation between ideological self-identification and positions on this issue is not particularly strong: $r = .31$ (see Fig. 5.1). 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). For slight conservatives, conservatives, and extreme conservatives, the percentages of respondents favoring government monitoring are 78.4, 82.5, and 82.1 %, respectively. Thus, there is little difference according to intensity of conservatism, and consensual majorities of conservatives support the "conservative" position. Among liberals, the data are more cooperative. The percentages of respondents supporting monitoring are 50.9, 41.7, and 21.4 %, for slight liberals, liberals, and extreme liberals, respectively. Thus, preferences do vary, but at least among slight liberals in the sample, more respondents hold "conservative" preferences than "liberal" views. The failure of ideology to map clearly onto policy preferences stands as a reasonable explanation of why the relationship I depict in Table 5.2 is stronger than that in Table 5.1. This evidence means that the Bartels and Johnston experiment is relevant only to policy satisfaction and dissatisfaction, not more general ideological agreement and disagreement.

On the basis of their policy preferences and the manipulation to which they were exposed, all respondents can be characterized as either "winners" or "losers" in the Bartels and Johnston experiment (as in Table 5.2, above). Across all respondents, winners (slightly less than one-half of the sample) have a mean support score of .63; the score for losers is .57. With an overall standard deviation of .19, this difference seems small. It is statistically significant, given an *N* of 1,052, but eta is only .14, which indicates that the experimental treatment accounts for 1.9 % of the variance in institutional support. This hardly seems like compelling evidence that specific support and diffuse support are so connected as to threaten the legitimacy of the U.S. Supreme Court.

I note as well that the logic of the Bartels and Johnston experiment is that losers express lower legitimacy because they lost on this case. Conversely, of course, winners express higher legitimacy because they won. Without some sort of control condition, the experiment cannot distinguish between a lift in support among winners and a knock in support among losers.[17] Moreover, it is noteworthy that Bartels and Johnston are largely silent on the *benefits* the Court receives from making decisions pleasing to its constituents. Thus, their research design has some inherent limits. In particular, we do not know whether the Court profits from satisfying decisions or whether it is harmed by dissatisfying decisions.

Gibson and Nelson on the Legitimacy of Losers

One more bit of evidence on the specific support/diffuse support connection is available. In a new analysis, Gibson and Nelson (2014b) have reported an experiment directly connected to the thesis that "legitimacy is for losers." They investigate

[17] Six respondents have a diffuse support score but no preference on the policy issue (only a total of 12 respondents had no opinion on the issue, which seems very small for a nationally representative sample). These respondents had a mean support score of .53. Compared to them, winners and losers both have higher institutional support scores.

the hypothesis that institutional support for the U.S. Supreme Court is diminished by disappointment with the Court over its ruling in a case. Their analysis introduces several important innovations to the study of this relationship. First, their research design reflects that fact that *legitimacy is for losers*—that is, legitimacy is most relevant to those who hold views contrary to the ruling of the Court. Consequently, all respondents learn of a Supreme Court decision of which they disapprove. Second, they employ a survey-based design that includes both a true experiment and a quasi-experiment (a "one-group pretest-posttest" design) using data collected from a nationally representative sample by TESS/KN. Third, to provide a demanding test of the hypothesis, they focus on a legal issue *selected by the respondent* as being important to him or her. Finally, tipping their hat to verisimilitude, they incorporate the symbols of judicial authority (e.g., justices in robes) into their analysis (more on this below). Thus, their test of the dissatisfaction/ legitimacy hypothesis is a demanding, but nonetheless important and realistic, one.

The findings of Gibson and Nelson run dramatically counter to those of the specific-support revisionists. Even when faced with an objectionable decision on legal issues of some importance to the respondents, support for the U.S. Supreme Court actually *grew* over the course of the survey. These empirical findings lead Gibson and Nelson to conclude that the Court's legitimacy is not overly sensitive to its constituents' dissatisfaction with its decisions—and that perhaps the specific-support revisionist theory is in further need of revision.

Reconsidering the Obamacare Ruling

The conclusions of the specific-support revisionists are further challenged by research on the effects of the *Bush v. Gore* decision; after all, if a salient Supreme Court decision can move public support, that effect should be most likely to appear in cases, like *Bush*, that are particularly prominent. As Gibson and Nelson (2014a) note, *Bush v. Gore* is, in many ways, the "acid test" of the "single decision can have deleterious effects on institutional legitimacy" theory.[18] Important for this controversy, Gibson, Caldeira and Spence (2003b) compared evaluations of the Court's diffuse support at the pinnacle of the public controversy surrounding the decision with similar cross-sectional evidence from 1987 to 1995. Their results provide absolutely no support for the theory that this decision undermined aggregate perceptions of institutional legitimacy. These results have been echoed in a number of other studies of the case (e.g., Kritzer, 2001; Nicholson & Howard, 2003; Yates & Whitford, 2002).

[18] *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 et al. (2003b).

A Supreme Court ruling that some consider to be nearly equivalent to *Bush v. Gore* is the 2012 blockbuster on the constitutionality of Obamacare. As with *Bush v. Gore*, the substantive issue is important to many people, the Court's decision was widely broadcast, and the decision carried with it the potential to harm the legitimacy of the Court itself (or at least so believed Chief Justice Roberts). It is not surprising, therefore, that the specific-support revisionists would find this opinion interesting.

Recall that Christenson and Glick (in press) investigated the effects of the Supreme Court's decision on Obamacare, searching in particular for possible consequences of ideological disagreement with the Court and of the switch in the vote by Chief Justice Roberts. It is noteworthy, however, that their analysis did not test the simple hypothesis that those who got the ruling they wanted from the Court increased their support for the institution, while those who got an adverse ruling decreased their institutional support. This is the basic hypothesis of the specific-support revisionists. It is useful therefore to consider this hypothesis with some new data from a nationally representative survey.

The TAPS survey fielded at Washington University in St. Louis asked a small battery of Supreme Court support items in May (t_1) and July (t_2) of 2012, which is shortly before and after the Supreme Court ruling on Obamacare (late June, 2012).[19] These items are derived from the set recommended by Gibson, Caldeira, and Spence (2003a), and have been used widely in measuring Supreme Court legitimacy (e.g., Gibson & Caldeira, 2009; Gibson & Nelson, 2015b). Table 5.3 reports the frequencies for the items in the May and July surveys.[20] In order to avoid any confounds due to analyzing different respondents at the two points in time, I confine this analysis to those who answered the questions in both the May and July surveys.

[19] The American Panel Survey (TAPS) is modeled on the KN KnowledgePanel. The survey is a monthly online survey of about 2,000 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. Two replenishment efforts have kept the panel at approximately 2,000 panelists. Individuals without internet access were provided a laptop and internet service at the expense of the Weidenbaum Center. In a typical month, more than 1,700 of the panelists complete the online survey. More technical information about the survey is available at taps.wustl.edu. Panel respondents are regularly asked to complete surveys over the internet. Like the KnowledgePanel, the compound response rate for any given survey is low (typically in the single digits). Moreover, as part of an on-going series of surveys, the respondents become experienced if not semi-professional questionnaire takers.

[20] Care must be taken with the TAPS data, as with all data sets relying on semi-professional respondents who (a) agree to be questioned repeatedly over months and years, and (b) learn from their experience how to engage in satisficing behavior when answering surveys. One of the consequences of this is that semi-professional respondents learn that there are no consequences of answering questions with a "don't know" reply, or even not answering questions at all. As Table 5.3 depicts, a fairly sizable portion of the respondents either had no attitudes toward the Supreme Court or were unwilling to put in the cognitive effort to match their attitudes to the questions asked. RDD samples typically report considerably fewer "don't know" responses, although some believe that this is a function of social desirability pressures that mitigate against admitting ignorance to a live interviewer. Still, in the case of panel analysis such as that presented here, there is no reason to believe that satisficing behavior is any more prevalent within one wave of the survey versus another.

Table 5.3 Change in loyalty toward the United States Supreme Court, 2012 TAPS data

	Level of diffuse support for the Supreme Court					
	Percentage					
Indicator	Not supportive	Undecided	Supportive	Mean	SD	*N*
Do away with the court						
t_1	13.3	28.6	58.1	3.67	1.05	1,362
t_2	12.6	29.0	58.4	3.70	1.12	1,363
Reduce jurisdiction						
t_1	21.9	34.7	43.4	3.34	1.07	1,365
t_2	21.3	33.2	45.4	3.39	1.14	1,358
Too mixed up in politics						
t_1	40.2	38.5	21.3	2.77	.99	1,359
t_2	47.2	33.3	19.6	2.63	1.03	1,358
Remove judges who rule against majority						
t_1	26.7	36.6	36.7	3.16	1.10	1,360
t_2	21.0	33.7	45.3	3.35	1.14	1,357
Make court less independent						
t_1	39.1	23.7	37.2	3.05	1.20	1,362
t_2	31.2	26.5	42.3	3.19	1.25	1,347
Control the actions of the Supreme Court						
t_1	32.9	34.1	33.0	3.07	1.09	1,364
t_2	30.8	33.6	35.6	3.10	1.16	1,360

Note: The percentages 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 necessarily of the statement itself. The means and standard deviations are calculated on the uncollapsed distributions. Higher mean scores indicate more institutional loyalty.

The propositions (t_1 followed by t_2) are:

Do away with the Court:

If the Court started making decisions that most people disagree with, it might be better to do away with the Court.

If the Supreme Court started making a lot of decisions that most disagree with, it might be better to do away with the Court altogether.

Reduce jurisdiction:

The right of the Supreme Court to decide certain types of controversial issues should be reduced.

The right of the 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.

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

Remove judges who rule against majority:

Justices who consistently make decisions at odds with what a majority of the people want should be removed.

Justices on the Court who consistently make decisions at odds with what the majority want should be removed from their position.

Make 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.

The 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:

We ought to have stronger means of controlling the actions of the U.S. Supreme Court.

It is inevitable that the Court gets mixed up in politics; we ought to have stronger means of controlling the Court.

The overwhelming aggregate pattern of the data in this table is one of stasis.[21] For instance, on the "do away with the Court" item, 58.1 % of the respondents supported the Court in May; in July, the percentage was 58.4 %. The responses to the items at the two interviews are all strongly correlated, with correlations ranging from .50 to .63.

At the same time, however, whatever change is indicated by the data seems to reflect increased support for the Court. If one simply compares the "% Support" column for t_1 and t_2, one sees that for five of the six items, institutional support increases, even if the changes are far from large.

Of course, aggregate data on change can (and typically do) obscure individual-level change. On a simple index of the number of supportive replies given to the six items at the two time points, the t_2 replies indicate an average of .16 more supportive replies than at t_1, with 25.9 % of the respondents giving fewer supportive answers at t_1 than at t_2 and 32.0 % giving more supportive answers at t_2. Taking the intensity of replies into account via a simple summated index, 45.8 % of the respondents expressed more support for the Court at t_2 than at t_1 (compared to 38.7 % who expressed less support).[22] To the extent that the sample changed its views of the Court from before to after its ruling on Obamacare, it seems that the legitimacy of the institution rose slightly. Or at least that Court support did not decline.[23]

Adding Winners and Losers to the Analysis

A key argument of Legitimacy Theory is that "legitimacy is for losers." It therefore is necessary to consider the respondents' views on healthcare to determine whether winners and losers in the litigation changed their views of the institution at equal rates. Although support for the plan was asked in the July survey, confounding the analysis a bit, the data indicate a moderate relationship between support and changes in legitimacy ($r = .31$). Those who favored health care increased their institutional support; the support of opponents declined.

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[21] For reasons that are not at all clear, there are some slight (and minor) changes in the question wording of the items across the surveys. I doubt that differences are sufficient to affect the responses, but, of course, have no evidence for that view.

[22] Thus, there is more change in this data set than in the Christenson and Glick M-Turk data set inasmuch as their mean change score is very close to 0.

[23] I have created an index of change in support that is simply the difference in summated indices calculated at t_2 and t_1. Within each time period, the six-item sets of items are quite reliable: at t_1, Cronbach's alpha = .88; mean interitem correlation = .55; at t_2, alpha = .90; mean interitem correlation = .61. Common Factor Analyses of each set strongly confirm the unidimensionality of the measures (with trivial eigenvalues for the second extracted factor). Strong loadings are observed for all of the items. At t_1, the correlation of the factor score from the CFA and a simple summated index is .995; at t_2, it is .994. The correlation of the factor scores across interviews is .70; the correlation of the indices is also .70. Consequently, it really makes no difference which measure of Court support is used for my analyses; by selecting the summated indices, the natural metric of the measures is maintained, and no confounding influence of different factor loadings (and hence factor score coefficients) at t_1 and t_2 is possible.

The pattern of change in Court legitimacy is revealing beyond this basic correlation. The mean change score for those who oppose Obamacare is −.17 (SD = .76, $N = 568$). For those supporting Obamacare, the mean is .27 (SD = .63, $n = 395$). So the first conclusion is that, to the extent that attitudes changed owing to the ruling, the Court garnered considerably more support (on average) from the winners than it lost from the losers (although, as I have noted, there were somewhat more losers than winners, at least in terms of the objective outcome of the litigation). Among those with an opinion on Obamacare, the ruling of the Court worked to the net benefit of the institution.

A considerable number of respondents was uncertain of their views of the health care law. Among these respondents, some change in Court support took place ($M = .15$; SD = .59; $n = 400$), indicating that support for the Court increased somewhat. Thus, the simple conclusion from this analysis is that winners on the litigation threw more support to the Court, losers withdrew support, and those without a stake in the outcome became marginally more supportive of the institution, looking more like the winners than the losers.[24]

But did the Supreme Court's ruling really cause these changes? To do so, I hypothesize that the respondents must know that they had won or lost on the issue by the Supreme Court's ruling.[25] Fortunately, TAPS asked whether the respondent knew that the Court had ruled on the constitutionality of Obamacare, and, in a follow-up, whether the respondent could say how the Court ruled. A large majority (69.1 %) said they knew the Court had ruled on the matter, and of those, 82.1 % said they thought the Court had ruled the law constitutional.[26]

At this point in my analysis, the picture painted by these data begins to change. I first find no relationship ($p = .318$, $N = 1{,}364$, $r = .04$) between knowing that the Court had ruled and change in legitimacy.[27]

Combining the two questions about awareness of the Court's ruling allows me to assess change in institutional support according to knowledge that the Court had ruled and the accuracy of that information. After all, a nontrivial portion of the

[24] A follow-up question was asked of the opponents of the law that allows differentiation of those who opposed the law because it went too far and those opposed it because it did not go far enough. The latter group is small ($n = 24$), but their support for the Court actually declined more than those who opposed the law because it went too far. Given this unexpected pattern in these data, I have ignored the responses to this question in my analysis.

[25] I concede that some respondents probably learned about the decision, updated their views of the Court, but then forgot that they had learned about the decision. No data are available to estimate the size of this group; given the salience of the health care debate, it seems unlikely that the group is very numerous.

[26] Of course, the respondents could simply have searched the internet for the answers to the TAPS questions while they were completing the interview. Internet surveys invariably overestimate true levels of political knowledge.

[27] Those who say they do not know whether the Court ruled and those who say they "don't know" whether they know have the same average change score. Thus, I have collapsed these two categories of respondents, creating a simple dichotomy of whether the respondent knew or did not know that the Supreme Court had ruled in the matter.

sample thought that the Court had ruled the law unconstitutional. In terms of attitude change, it is more useful to know what the respondents believed about the Court's decision than the truth about that decision. Figure 5.2 reports these results.

The greatest decline in Court legitimacy took place among those who thought the Court had ruled the law *unconstitutional*. However, the greatest increase occurred among those claiming to know the Court had ruled, but who admitted not knowing the direction of the ruling (although the number of such respondents is small). Those oblivious to the Court's ruling changed their support not at all. Thus, these data are a bit confused, perhaps because the analysis does not control for the respondent's own preference on the law.

Figure 5.3 reports change by the respondent's position on the law and awareness of the decision. The first portion of the figure shows that, among opponents of the law—losers in the litigation—change in support was generally negative. However, those who understood that the Court had ruled in favor of their position (unconstitutional) became the *least* supportive (changed most) of all of the opponents of the law. This is a surprising finding in that these respondents thought the Court had decided in favor of their position. Indeed, those who thought the Court had ruled against their position (constitutional) became less supportive of the Court, as

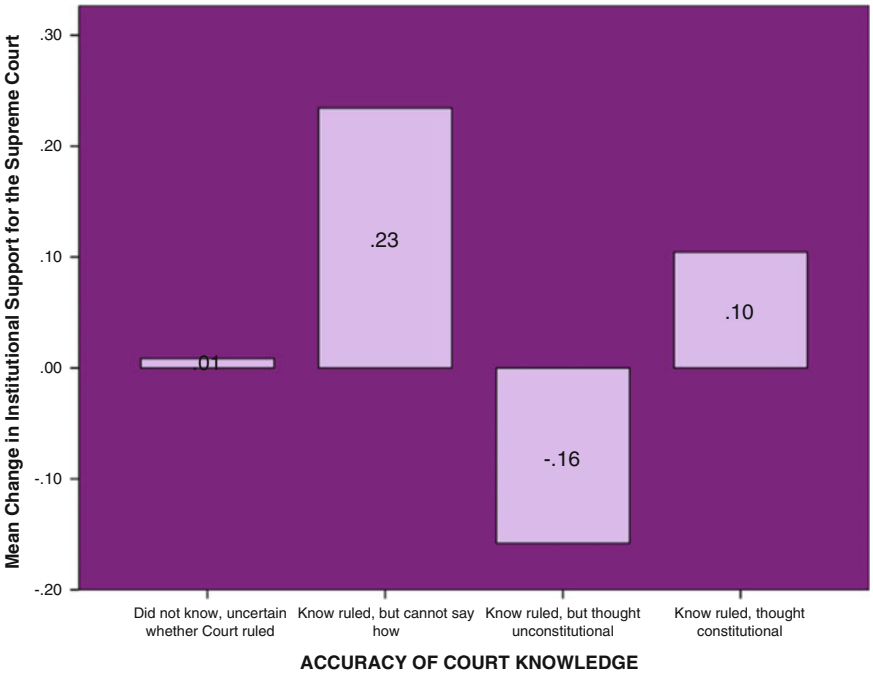


Fig. 5.2 Change in Court support as a function of the accuracy of one's knowledge of the Supreme Court's ruling on Obamacare

Note: The numbers of cases across the four categories of court knowledge are 422, 37, 130, and 770. The difference of mean changes in support for the Court across these categories is significant at $p < .001$, with $r = .06$ and eta = .12. *Source*: TAPS

expected, but at a substantially lesser rate than those who thought they got from the Court what they wanted. This is a confusing finding, to say the least. Moreover, there is not much difference in changing attitudes between those who did not know the Court ruled and those who thought the Court ruled against their preferences. The overwhelming conclusion from this portion of the figure is that the Court's ruling seemed to have little systematic effect on the Court's institutional support.

Among supporters of the legislation (winners), the results are a little better behaved. For instance, those who did not know the Court had ruled changed their attitudes the least, although they became slightly more positive toward the institution. Those who thought the Court ruled in favor of their position became significantly more supportive of the institution, but not as supportive of those who could not recall how the Court ruled (although the number of such respondents is quite

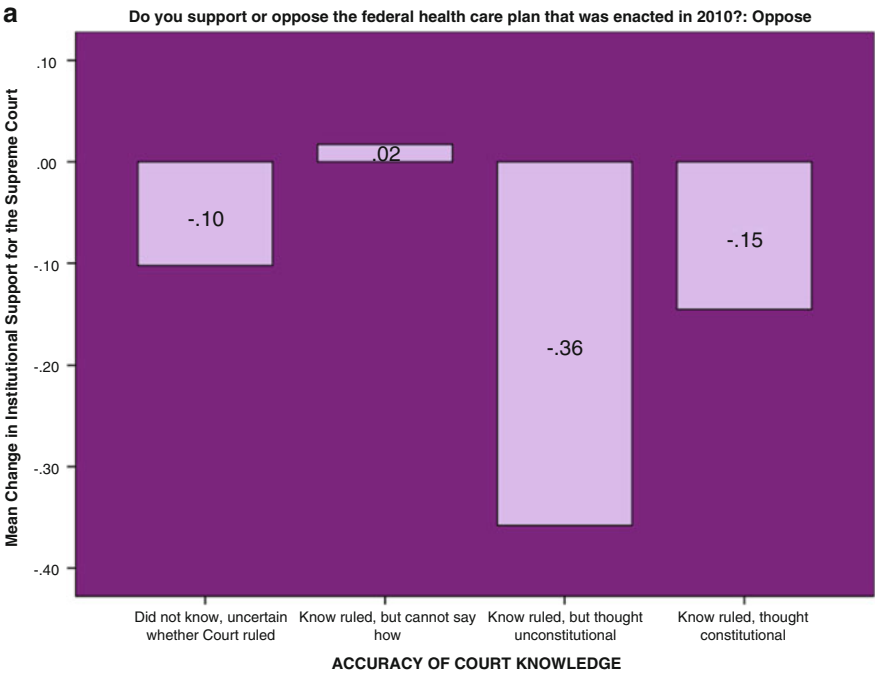
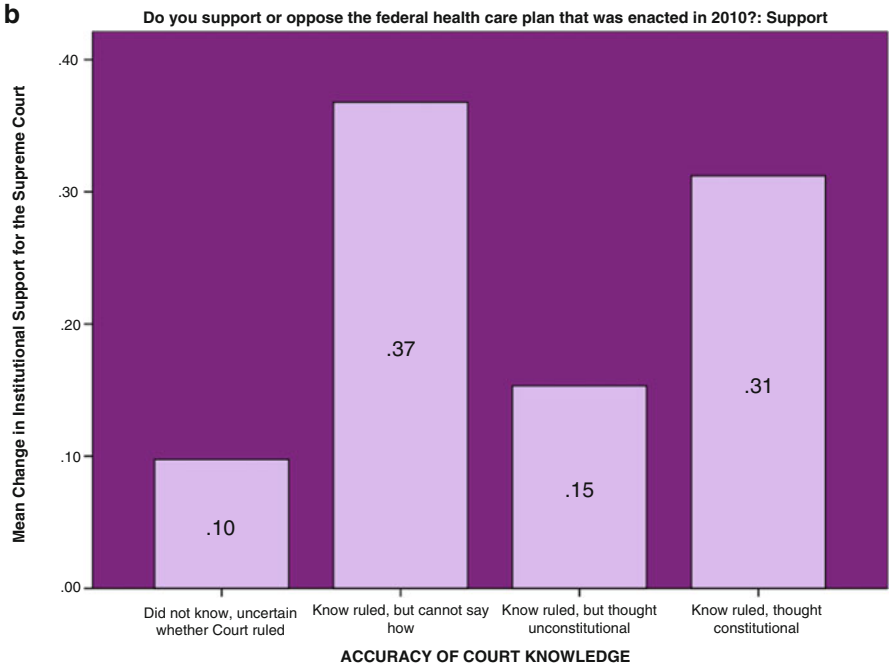


Fig. 5.3 Court support as a function of the accuracy of one's knowledge of the Supreme Court's ruling on Obamacare, controlling for the respondent's policy preference. (**a**) *Note*: The numbers of cases across the four categories of court knowledge are 231, 21, 27, and 121. The difference of mean changes in support for the Court across these categories is significant at $p < .001$, with $r = .20$ and eta = .22. *Source*: TAPS. (**b**) *Note*: The numbers of cases across the four categories of court knowledge are 126, 5, 95, and 339. The difference of mean changes in support for the Court across these categories is significant at $p = .056$, with $r = -.02$ and eta = .12. *Source*: TAPS. (**c**) *Note*: The numbers of cases across the four categories of court knowledge are 65, 11, 9, and 308. The difference of mean change in support for the Court across these categories is not significant at $p < .05$, with $r = .12$ and eta = .13. *Source*: TAPS



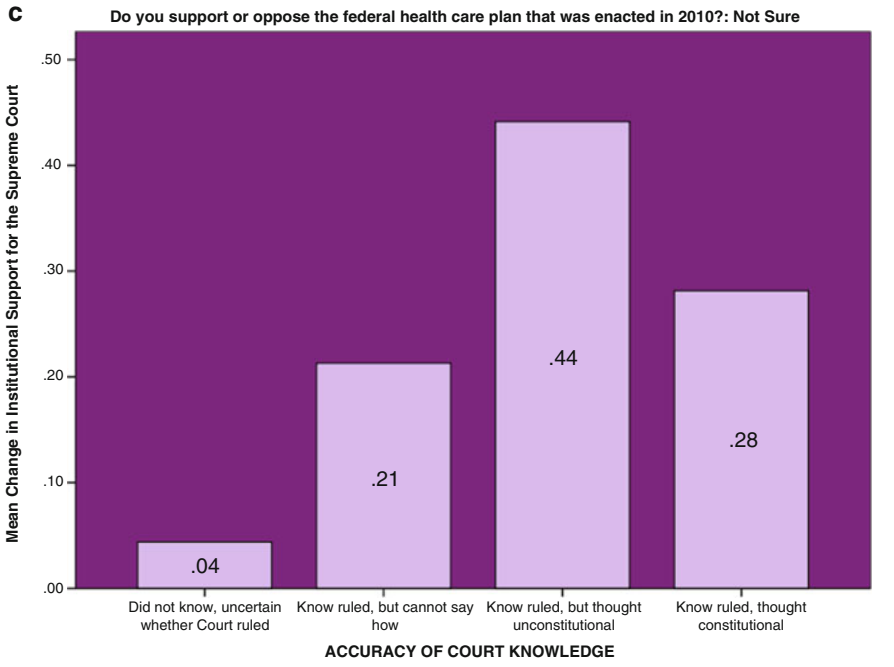


Fig. 5.3 (continued)

small for the latter group). Indeed, the group that increased its support for the Court the most is those who said they knew the Court had ruled, but who could not say how the Court decided the case. Furthermore, change in Court support is more positive for the losers in the litigation than for those who could not say how the Court ruled. Again, these data do not make a great deal of sense.

The final group is those without a position on the health care legislation. It is comforting that those who could not say how the Court ruled changed their views very little. However, it is unclear why simply knowing that the Court had ruled, but not knowing how it ruled, would be associated with a significant increase in Court support, as the data reveal. Moreover, in light of their lack of preference on the matter, it is also surprising to see that those thinking the Court had ruled the law unconstitutional increased their support more than those who thought the Court had declared Obamacare constitutional. Since these respondents could not be pleased or displeased with the Court's decision, it is unclear why these two categories of respondents increased their support for the Court over the course of the two-month period bracketing its ruling.

Putting all of the components of the figure together, the Court experienced the greatest *loss* of support from those who opposed the law and who thought the Court had ruled it *unconstitutional* (winners), and the greatest *gain* in support among those who *did not know* how the Court ruled. These results are difficult to square with the view that the ruling on the Affordable Health Care Act fundamentally changed the respondents' views toward the Court.

One more figure is perhaps useful. Figure 5.4 examines the effect of policy preferences among those with clearly accurate and inaccurate views of the outcome of the case.

Among those accurately understanding the Supreme Court's ruling, some relationship between approving the ruling (the respondent's position on the law) and change in legitimacy exists. Winners increased their support; losers decreased their support. Noteworthy is the finding that those who did not know if they won or lost—because they did not have a position on the law—increased their support at a rate greater than the loss of support among those who lost on the case. Indeed, the difference in change in support for the Court between those supporting Obamacare and those without an opinion is trivial. Furthermore, as I noted above, winners increased their support for the Court more than losers decreased their support (on average). This figure is important because it is confined to those who accurately perceived the Supreme Court's ruling.

Among those misunderstanding the ruling, the results are very difficult to understand (even if the subgroup sizes are quite small). Among opponents of the law who thought they *won* on the case, support for the Court decreased significantly. Among supporters of the legislation who thought they *lost* on the case (a very small number), support for the Court increased significantly. Among those not sure of their position on the law, support increased the most. The only way to make sense of these data is to conclude that the respondents were confused about what constitutes a constitutional or unconstitutional decision by the Court (and perhaps about what their own preferences were on the matter).

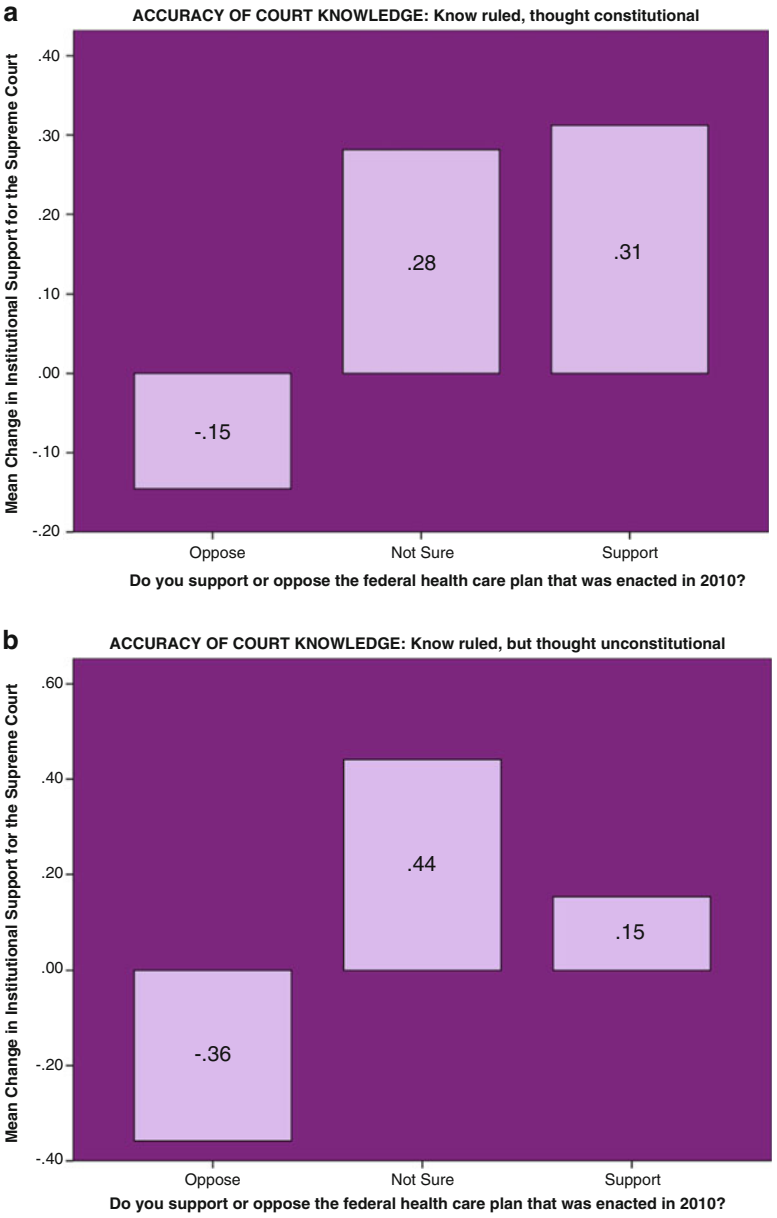


Fig. 5.4 Change in Court support as a function of one's policy preference on Obamacare, controlling for the respondent's knowledge of the Supreme Court's ruling
(a) *Note*: The numbers of cases across the four categories of court knowledge are 339, 121, and 308. The difference of mean changes in support for the Court across these categories is significant at $p < .001$, with $r = .29$ and eta = .31. *Source*: TAPS
(b) *Note*: The numbers of cases across the four categories of court knowledge are 95, 27, and 9. The difference of mean changes in support for the Court across these categories is significant at $p < .001$, with $r = .39$ and eta = .47. *Source*: TAPS

Multivariate Analysis

This sort of detailed analysis of the patterns in these data is useful because it shows just how little the data conform to the expectation that winners increased their support for the Court and losers decreased their support. However, the analysis can be misleading because it is often based on small numbers of cases.

The first step in a more systematic analysis is to estimate a simple model in which change in support is predicted by one's policy preference, awareness of whether the Supreme Court ruled, and, if aware, knowing whether the Court ruled the law unconstitutional or constitutional. For this analysis, those who did not know how the Court ruled were scored halfway between unconstitutional and constitutional. This scoring system, of course, inflates the relationship between the two knowledge variables, but their correlation is still only .48.

When change in support is regressed on these three variables, 8 % of its variance can be explained. Only a single variable—the respondent's policy preference—achieves statistical significance, although the coefficient for knowing *how* the Court ruled is significant at .082 (the coefficient for knowing *that* the Court had ruled is entirely insignificant). The coefficient for policy preferences is .44, which is the amount of change in support between those opposing the law and those supporting the law (0 versus 1). (Recall that change in support varies from −3.0 to +3.0, with a standard deviation of .70.) By comparison, the insignificant coefficient for knowing how the Court ruled is much smaller: $b = .11$. It seems that knowing something about the Supreme Court's ruling is largely irrelevant to changes in support for the institution.

It is useful to incorporate in the model information about whether the respondent thought that the Court had ruled in the respondent's favor. I therefore have modeled the relationships within a multivariate equation comprised of three variables:

1. R's own policy preferences (scored as 0, .5, 1).
2. Whether R knew that the Court has ruled on the matter (0, 1).
3. Whether R perceived the outcome as congruent with her or his preferences (−1, 0, 1).

The latter variable is scored as −1, incongruent; 0, not congruent because of no preference or because of no knowledge of how the Court had ruled; and 1, congruent. Change in support is positively correlated with all three variables: for policy preferences, $r = .27$; for knowledge that the Court had ruled, $r = .04$; and for whether the respondent perceived the outcome to be favorable or unfavorable (winner or loser), $r = .15$. The multivariate results are shown in Table 5.4.

As the table reports, the respondent's own policy preferences are moderately related to the change in support, with supporters of the legislation becoming more supportive of the Court. However, the other coefficients raise some important questions. First, whether the respondent knew that the Court had ruled on the matter is only very weakly and insignificantly ($p = .123$) related to change in support (with the aware people becoming more supportive). Moreover, whether one was a winner or not—whether one perceived the Court's ruling to be in agreement with one's policy preferences—has little or no independent impact on change in support (the coefficient is entirely indistinguishable from zero). Indeed, in a hierarchical regression in

Table 5.4 The predictors of changing support for the U.S. Supreme Court, TAPS 2012 data

	OLS regression results	
Predictor	*b*	s.e.
R's own policy preference	.51***	.06
Whether aware that the Supreme Court had ruled	.06	.04
Whether perceived outcome was preferred (winner v. loser)	−.05	.03
Equation		
Intercept	−.21***	.05
Standard deviation – Dependent variable	.70	
Standard error of estimate	.68	
R^2	.08***	
N	1,357	

Note: *b* = unstandardized regression coefficient; s.e. = standard error of unstandardized regression coefficient; R^2 = coefficient of determination
Significance of regression coefficients: ***$p < .001$, **$p < .01$, *$p < .05$

Table 5.5 The predictors of changing support for the U.S. Supreme Court, TAPS 2012 data, interactive effects

	OLS regression results	
Predictor	*b*	s.e.
R's own policy preference	.22*	.10
Whether aware that the Supreme Court had ruled	−.12	.07
Whether perceived outcome was preferred (winner v. loser)	−.08*	.04
Preference × Awareness interaction	.52***	.14
Preference × Perceived outcome interaction	−.12	.09
Equation		
Intercept	−.08	.05
Standard deviation – Dependent variable	.70	
Standard error of estimate	.67	
R^2	.09***	
N	1,362	

Note: *b* = unstandardized regression coefficient; s.e. = standard error of unstandardized regression coefficient; R^2 = coefficient of determination
Significance of regression coefficients: ***$p < .001$, **$p < .01$, *$p < .05$

which policy preferences are entered into the equation first, followed by the two Court-related variables, the latter as a set fails to produce a statistically significant change in the amount of variance explained in the change dependent variable (the change in $R^2 = .003$; $p = .130$).

However, an interactive effect is present in these data (see Table 5.5). When the two-way interaction terms drawn from the preference variable and the two awareness variables are added to the equation in Table 5.4, the increase in R^2 is significant at $p = .004$. Only one of the interaction terms has a statistically significant coefficient: the interaction between policy preferences and knowledge that the Court had ruled. The

effect of knowing that the Court had ruled on the matter is to add to the effect of policy preferences on attitude change (.22 + .52). No interaction exists between policy preferences and knowing whether one had won or lost in the litigation. One of the more interesting findings of this table is that knowing that the Court had ruled matters for legitimacy, and that knowing *how* the Court ruled—more precisely, knowing whether one won or lost by the Court's ruling—has few consequences for legitimacy.

The predicted values from the interaction equation, however, are not especially well behaved. The greatest expected gain in support for the Court is among those who supported the legislation, knew that the Court had ruled, and thought they had *lost* ($\hat{Y} = .73$, s.e. = .15, $n = 9$). Even those who did not know how the Court ruled are expected to become more supportive of the Court than those who thought the Court had declared the law constitutional ($\hat{Y} = .53$, s.e. = .08, $n = 11$ versus $\hat{Y} = .33$, s.e. = .04, $n = 308$). Contrariwise, the group expected to withdraw support the most is those who opposed the law, knew the Court had ruled, and who thought the Court declared the law unconstitutional ($\hat{Y} = -.29$, s.e. = .07, $n = 95$). Similar respondents who did not know how the Court ruled are expected to change just about as much ($\hat{Y} = -.21$, s.e. = .04, $n = 5$). The most sensical finding from this analysis is that change in support was least among those without an opinion on the law who were oblivious to the Court's ruling ($\hat{Y} = .02$; s.e. = .03, $n = 231$).

These findings suggest that change in support for the Court had very little to do with the Court's ruling on Obamacare. Supporters and opponents of the law certainly differed in how they altered their support for the Court, but that change was not dependent upon knowing that the Court had ruled on the matter or understanding that one's position had or had not been adopted by the Court. Between the two measurements of support for the Court, the Court did indeed rule on the constitutionality of Obamacare. Perceptions of that ruling, however, had practically no impact on evaluations of the Court as an institution.

The finding that knowing the Court's ruling had more of an impact than knowing whether the Court ruled favorably or unfavorably (from the viewpoint of the respondent's policy preference)—and that the impact was one of increasing support for Court—seems compatible with the predictions of Positivity Theory. Boosts to support for the Court come not so much from learning that the Court had issued a favorable ruling, but rather from simply paying attention to the Court—to the extent that one is able to discover that the Court had issued a ruling. The data do not allow exploration of the mechanics of this relationship, but the findings are at a minimum, not incompatible with Positivity Theory.

In general, quite a number of impediments exists that block the effects of a ruling on a single decision on the institutional legitimacy of the U.S. Supreme Court. Respondents must learn of the decision, understand what the Court ruled, fit that understanding with their own preferences, and draw conclusions about the institution. It is noteworthy that, out of 1,357 respondents, 607 (44.7 %) failed to have an opinion on the legislation and knew that the Court had ruled on the case and knew how the Court had ruled. In some sense, *nearly one-half of the sample could not have been influenced by the Supreme Court's decision on Obamacare*. At least some respondents may also think about how the Court reached its decision, whether its decision-making processes were procedurally fair. Moreover, elites are continuously

attempting to get their constituents to misunderstand Court decisions, or at least to frame understandings. Much can go wrong in learning about the Court, rendering the connection between the Court's actual ruling and changes in institutional support quite tenuous. Communications processes seem to be the Achilles' heel for the specific-support revisionists.

The Role of Symbols in Mitigating the Impact of Policy Disappointment

It remains to consider why the relationship between specific and diffuse supports is sticky—that is, why performance disappointment does not more readily translate into the withdrawal of support from the institution of the Supreme Court. In two papers, Gibson and his colleagues have explored the ways in which the symbols of judicial authority figure into the information-processing streams of ordinary citizens.

The Supreme Court is an institution thoroughly enveloped in symbols. The most obvious example is the dress of the judges (black robes), but in addition the building itself resembles a temple, the judges (justices) are addressed in honorific terms ("your honor"), and everything about courtroom proceedings is awash in the symbols of judicial authority (e.g., Lady Justice, "oyez, oyez"). It should not be surprising, therefore, that these symbols influence how people perceive and evaluate courts. As Nicholson and Hansford (2014) observe: "Since the Court dresses itself in legal symbols, both literally (i.e., the wearing of black robes by the justices) and figuratively (by emphasizing reliance on the Constitution, precedent, and legal norms), its image is decidedly positive relative to the elected branches of government" (p. 2).

Gibson, Lodge, and Woodson (2014) suggest that judicial symbols can play an important role in conditioning the relationship between the two forms of support. Specifically, they argue that the effects of disappointment with a Supreme Court ruling can be blocked when people are exposed to legitimizing judicial symbols at the same time at which they learn of an unwanted ruling by the Court. Gibson, Lodge, and Woodson have shown an effect of judicial symbols on the willingness to accept a Supreme Court decision with which people disagree, and Gibson and Nelson (2014b) have shown a similar effect on change in Court support as a function of being exposed to an unwanted ruling. Since both of these analyses rely upon the same data set, and many of the concepts and their measures are the same, I will discuss both studies together.

The beginning point of these analyses is the assumption that people do not approve of decisions with which they disagree. However, for some people, an unwanted decision generates disappointment; these are individuals who generally expect the Court to make the "right" decisions on cases. For others, there is no disappointment because the Court is merely acting in an unwanted but predictable fashion. These people do disagree with the Court, but their disagreement is not charged with disappointment.

Those who are disappointed with the institution are hypothesized to withdraw some support from it. In fact, these studies find that policy disappointment makes

people less likely to accept a decision to which they object, and makes them more likely to withdraw some support from the institution. None of these effects is large, but each is statistically significant.

The most interesting finding from their analysis has to do with the blocking effect of judicial symbols. Specifically, when the symbols are present, this normal process of converting disappointment into lessened support for the institution is impeded. Indeed, for both dependent variables—acquiescence to the Court ruling and change in support for the institution—the presence of symbols takes a fairly healthy coefficient and reduces it to zero. For example, Gibson, Lodge, and Nelson found that, with exposure to only the abstract symbols, the effect of decisional disappointment on willingness to accept an unwanted Court decision is significantly negative: −.13. However, for those respondents shown the judicial symbols, the coefficient is .01, which is obviously statistically indistinguishable from zero, but which also is significantly different from −.13. In the absence of judicial symbols, disappointment translates into resistance to the Court's decision, with those more disappointed being less likely to accept it. In the presence of judicial symbols, disappointment is overridden, eliminating its consequences for resistance. Similarly, Gibson and Nelson (2014b) found that, in the absence of judicial symbols, the regression coefficient connecting policy disappointment and change in institutional support is −.30; in the presence of these symbols, the coefficient declines to the trivial level of −.05 (and, of course, the difference between these two coefficients is statistically significant).

From the two papers, we also learn that symbols do not create attitudes—the direct effect of the symbols on attitude change is negligible, for instance—but instead the symbols seem to bring latent Supreme Court attitudes into working memory, thereby affecting the response variables. Without the symbols, the information-processing processes differ.

Exactly how do symbols play this role? These two papers are woefully short when it comes to investigating the mechanisms underlying the empirical findings. However, the findings are compatible with a substantial body of literature in social and political psychology, and, generally, with the Positivity Theory of Gibson and Caldeira.

Positivity Theory begins by noting an asymmetry between pleasing and displeasing decisions. When citizens are confronted with a decision with which they agree, they rarely seek an explanation; instead, they simply credit the institution for acting wisely (Lodge & Taber, 2013).[28] However, when confronted with a displeasing decision, they do not punish the institution to the same extent as they reward it for a pleasing one. Gibson and Caldeira dub this unusual asymmetry "Positivity Theory."[29]

[28] Simon and Scurich (2011) report some interesting findings relevant to the difference between those who are disappointed in a decision of the Court and those who are not (i.e., winners and losers). Their focus is on judicial reasoning, a process variable. They conclude (2011, p. 719): "Participants were indifferent toward the modes of reasoning when they agreed with the outcome of the judges' decision, but were differentially sensitive to the judicial reasoning when the judge's decision frustrated their outcome." This finding seems compatible with my claim that legitimacy is for losers.

[29] Confusion always exists about how Positivity Theory and the ubiquitous negativity bias are related. Negativity bias—the tendency to give negative stimuli greater psychological weight than

This positivity bias is reinforced by exposure to powerful symbols of judicial authority. When citizens pay attention to judicial proceedings, they are bombarded with a host of specialized judicial symbols, typically beginning with the court building itself (often resembling a temple—see Resnik, 2012), and proceeding through special dress for judges (robes), and honorific forms of address and deference ("your honor"), directed at a judge typically sitting on an elevated bench, surrounded by a panoply of buttressing symbols (a gavel, the blind-folded Lady Justice, balancing the scales of justice, etc.). These judicial symbols frame[30] the context of court decisions and seem to convey the message that courts are different from ordinary political institutions; that a crucial part of that difference is that courts are especially concerned about fairness, particularly procedural fairness; that, because decisions are fairly made, they are legitimate and deserving of respect and deference; and consequently that a presumption of acquiescence attaches to the decisions.[31] Thus, the Supreme Court's legitimacy is sustained, reinforced, and empowered by expo-

positive stimuli—is a general phenomenon that many see as the product of evolutionary psychology (but see Norris, Larsen, Crawford, & Cacioppo, 2011). A bias toward negativity seems commonplace, even if negativity, obviously, does not always trump positivity (i.e., mixed stimuli can still be judged positively). Moreover, some basic "positivity theory" exists. "According to Zajonc's (1968) mere exposure effect, familiarity (or 'perceptual fluency') with a stimulus, induced by mere exposure to it, leads to warmer feelings toward it… Kunst-Wilson and Zajonc found that exposure delivered via subliminal presentation also increased liking for a variety of novel objects, concluding that 'individuals can apparently develop preferences for objects in the absence of conscious recognition and with access to information so scanty that they cannot ascertain whether anything at all was shown' (1980, 558). Zajonc (2001) suggests such an effect may occur because increases in familiarity, in the absence of negative information, signal something about the benign, safe nature of the stimulus" (Kam and Zechmeister, 2013, 973).

Positivity Theory, on the other hand, is a theory about the context within which ordinary people encounter Supreme Court rulings, and therefore does not necessarily stand in opposition to negativity bias. The empirical underpinning of Positivity Theory is the well-established relationship between attentiveness to the Court and willingness to extend legitimacy to the institution. The theory explains this relationship by suggesting that exposure to the institution is simultaneously accompanied by exposure to the symbols of judicial authority. When people pay attention to the Court, they typically see judges in robes, working in temple-like buildings, surrounded by symbols of deference and respect (e.g., honorific titles, depictions of Lady Justice). When people pay attention to the Court, they often are disappointed in the decisions the justices make, but that disappointment is cushioned by legitimizing symbols attached to the context of the decision. The theory acknowledges that the positivity of symbols does not necessarily trump the negativity of losing on legal policy—with high-stakes' cases like abortion perhaps being a primary example. But the theory suggests that episodes of attention to the Court are associated with *both* evaluations of the decisions the Court makes and the institutional context of those decisions. Finally, Positivity Theory holds that the Court's decision in *Bush v. Gore* is a perfect exemplar of the process, especially since the losers in the litigation—Democrats and African Americans in particular—did not withdraw support from the Court as an institution (e.g., Gibson et al., 2003b; Price & Romantan, 2004).

[30] The literature on framing is voluminous—for a useful review see Chong and Druckman (2007).

[31] See Baird and Gangl (2006). In a similar vein, Ramirez (2008) finds that the support Texas college students extend to the Supreme Court is based on perceptions of procedural fairness, which in turn are influenced by how the mass media depicts decision making on the Court.

sure to the strong and pervasive symbols of the authority of law and courts, according to Positivity Theory.

As I have noted, some empirical evidence has been adduced in support of Positivity Theory. More important, a theory by which symbols communicate with citizens can be cobbled together from existing theory concerning how citizens process information.

An initial attempt to look inside the black box of Positivity Theory can be derived from the work of Lodge and Taber (2000, 2005, 2013), Taber, Cann, and Kucsova (2009), and Taber and Lodge (2006). Building on three decades of cognitive science research, their Theory of Motivated Political Reasoning posits *dual processing on a bicameral structure of memory*. Central to the theory is a distinction between subconscious ("System 1") and conscious ("System 2") information processing for judgments, preferences, and decision-making (see Kahneman, 2012). System 1 processes operate outside conscious awareness, are relatively spontaneous, fast, unreflective, and effortless, whereas System 2 processes are conscious, slow, deliberative, and effortful, bounded by the small capacity and serial processing limitations of conscious working memory (Miller, 1956).

It is important to recognize that subconscious processes underlie *all* conscious processing (Bargh, 2007), and, most important, the operations of System 1 affect how System 2 operates. Memory retrieval and storage processes of System 1 occur outside of awareness and are therefore subconscious, but these subconscious processes provide the concepts and ideas that become the conscious thoughts in System 2. Thus, undergirding Positivity Theory are two interdependent processes—conscious and subconscious—which interact continually in the stream of information processing. Any explicit expression of an attitude requires the contributions of both System 1 and System 2.

In System 1, affective and cognitive reactions to a stimulus are triggered unconsciously and spread activation through associative pathways (Collins & Loftus, 1975; Neely, 1977). Environmental events trigger these automatic mental processes within a few hundred milliseconds of registration, beginning with a subconscious appraisal process that matches the stimulus to memory objects. Shortly thereafter, positive and/or negative feelings associated with these memory objects are aroused (Fazio, Sanbonmatusu, Powell, & Kardes, 1986; Zajonc, 1980). Based on the automatic activation of objects and their affective and cognitive associations, processing goals are established by these associations (Bargh, Gollwitzer, Lee-Chai, Barndollar, & Trotschel, 2001; Kay, Wheeler, Bargh, & Ross, 2004), and these goals motivate the depth and "direction" of downstream deliberative processing (Lodge & Taber, 2013). Through previously learned mental associations, the first subconscious steps down the stream of processing establish the rudimentary meaning of the event, positive or negative affect, and motivational goals. The associations, rudimentary meanings, and goals activated by this stimulus then enter conscious processing and the operations of System 2 begin. Thus, only at the tail-end of the decision stream does one become consciously aware of the associated thoughts and feelings unconsciously generated moments earlier in response to an external stimulus.

As part of these early processing events in System 1, activation will spread to conceptually associated objects. Accordingly, exposure to judges' robes or other judicial symbols should spread activation to legal concepts and principles like legitimacy that have become associated with these symbols largely through socialization processes (Sears, 2001) and experience (Benesh & Howell, 2001; Silbey, 2005). If an expressed attitude is called for, it will be constructed from an integration of the positive and/or negative tallies linked to the activated considerations drawn from long-term memory.

Subconscious stimulus events are ubiquitous in everyday life (Bargh, 1997). They may be manipulated by advertisers who wish consumers to associate positive feelings and conducive concepts with their products (Forgas, 1995). For example, Erisen, Lodge, and Taber (2014) found that simple affective primes ("smiley" or "frowny" cartoon faces) presented outside of conscious awareness altered the affective balance of subsequent thoughts on two political issues and ultimately changed attitudes on those issues. Lodge, Taber, and Verhulst (2011) showed similar effects of affectively charged word primes such as "rainbow" and "cancer" on the evaluations of fictitious candidates (see also Westen, Blagov, Harenski, Kilts, & Hamann, 2006). What all these studies have in common is attention to subconscious processes of information processing and their subsequent influences affecting conscious attitudes.

Thus, this Theory of Motivated Political Reasoning fits well with Positivity Theory. Whenever a person sees a judicial symbol, System 1 automatically triggers learned associated thoughts, which for most people in the U.S. will be ones of legitimacy and positivity. This activation leads to more conscious legitimating and positive thoughts in System 2, causing people to be motivated to accept the court's decision. Thus, the unconscious processes of System 1 feed legitimating thoughts to System 2. The symbols fundamentally change the motivations and thoughts that people bring to the decision about whether to accept a judicial decision.

I acknowledge that connected thoughts may be activated and made available for use in subsequent processing of stimuli through processes not involving exposure to symbols. For judicial politics' scholars, for instance, the mere mention of the Supreme Court is most likely sufficient to activate a wide and deep network of thoughts about the Court. Because one can imagine nonsymbol-based processes, the most useful research design is one that allows the researcher to pinpoint the specific, independent effect of exposure to symbols—as in an experimental design such as the one Gibson and his colleagues employ in their research.

Consequently, respondents who are asked to evaluate a Supreme Court decision after being exposed to the symbols of judicial authority are hypothesized to react differently from those not exposed. This is because the symbols have activated a more expansive (or at least different) set of considerations, making such facts, figures, and values more readily accessible in working memory, and therefore more influential on downstream information processing and decision-making (see Lodge & Taber, 2013).

When people are confronted with a Supreme Court decision that they oppose, it is natural to think about what can be done in response. Simple, affect-driven, motivated processing can be pretty succinct: "I don't like the decision and I therefore

want to see what can be done to reverse it." When asked whether such a decision should be accepted and acquiesced to, many would say "no way!"

When thoughts about judicial legitimacy are readily accessible in working memory (because they have been previously activated), thought processes may become more deliberative. One common additional response[32] would be to question how the decision was made—for example, was the decision-making process fair?—and then to consider whether the decision is "legitimate" and whether it can and should be challenged. One might not like a decision, but thoughts about legitimacy are often juxtaposed against any such dissatisfaction, thereby increasing the likelihood of acquiescence and decreasing the likelihood of blaming the institution for its decision and thereby withdrawing support from it.

Some psychologists have reported experimental results indicating that political symbols do indeed have the type of effect we hypothesize here.[33] For example, Butz, Plant, and Doerr (2007) showed that the U.S. flag is associated with egalitarianism, and that exposure to the flag reduces hostile nationalistic attitudes toward Muslims and Arabs by increasing the influence of egalitarianism on these judgments. Addressing a similar process, Ehrlinger et al. (2011) discovered that exposure to the Confederate flag decreases positive attitudes toward Barack Obama. The authors suggest that this may be through the flag's activation of negative attitudes toward blacks. Similarly, Hutchings, Walton, and Benjamin (2010) report an analysis of public reactions in Georgia to Confederate symbols. Hassin, Ferguson, Shidlovski, and Gross (2007) found that exposure to the Israeli flag has the effect of moving Israeli subjects to the political center on a variety of political issues and on actual voting behavior, possibly by having activated the value of political unity. In transitional justice research, attention to the importance of symbols is also commonplace (e.g., Nobles, 2008). Weisbuch-Remington, Mendes, Seery, and Blascovitch (2005) take this line of research a step further by presenting symbolic stimuli that cannot be consciously perceived (because they are presented too briefly), and by then demonstrating a physiological impact of the symbols. The common component of these studies is that they show that political symbols affect attitudes by *changing the types of considerations people use to come to their final political judgments*.

[32] The process I describe here has much in common with "sober second thought" models of deliberation. For instance, Gibson (1998) posits that decisions about whether to tolerate political activities by one's enemy are influenced by an initial "gut" reaction that is sometime tempered by further deliberation about democracy and freedom, in a two-step process.

[33] For an early analysis of the influence of symbols in law and politics see Posner (1998). Posner posits that "Symbols dominate American politics and permeate the law, but they are poorly understood" (p. 765) and then adopts a game theoretic approach in an effort to understand the influence of symbols. However, his research does not consider individual differences in reactions to the symbols of law and politics, and he offers no microlevel theory in his analysis.

Concluding Thoughts

If nothing else, this chapter has demonstrated that research on Legitimacy Theory has acquired a renewed vibrancy. Long-standing assumptions and findings are being challenged, as the theory is put through its paces. This cannot but be a positive development when it comes to understanding the power or powerlessness of courts.

In this review of some of the elements and hypotheses of the theory, I have argued three main points.

1. Diffuse and specific supports are only loosely connected. Like any form of loyalty, their interrelationship is "sticky."
2. Policy disappointment is not a major threat to the institutional legitimacy of the U.S. Supreme Court. We know this first through the examination of the effects of blockbuster cases such as *Bush v. Gore* and the Obamacare litigation. Part of the difficulty with the theory of the specific-support revisionists is that it relies on a simple and simplistic model of how citizens acquire information about Supreme Court rulings, even highly salient ones.

   We also know this through a re-analysis of the Bartels and Johnston experiment. A sizable portion of their sample did not adjust its views of the Court when confronted with an unwelcome decision. Overall, the consequences of policy disappointment for legitimacy are meager.
3. I have outlined a theory of information processing that is centered on the symbols of judicial authority and that can account for the weak relationship between policy disappointment and institutional attitudes. Basically, the symbols activate thoughts about the Court that dampen the translation of disappointment into withdrawal of support. Existing research demonstrates this effect with regard to acquiescence to an unwanted Court ruling and change in institutional support when exposed to an important decision contrary to the person's preferences. Symbols do not change attitudes; instead, they seem to change the mix of considerations available in working memory when citizens are asked to render judgments about the Supreme Court. Outcomes, it seems, are quite dependent on which mix is available.

In the end, a great deal more work on citizens' attitudes toward the Court is necessary. Positivity Theory continues to acquire bits of empirical support, but a comprehensive test of the theory has not yet been produced. Most important, many of the microlevel mechanisms associated with the influence of symbols on information processing have been neither specified nor tested empirically. Fortunately, the research community seems sufficiently engaged with these questions that the future will undoubtedly bring much more analysis and important empirical and theoretical advances.

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