

CHANGE IN INSTITUTIONAL SUPPORT FOR THE U.S. SUPREME COURT: IS THE COURT'S LEGITIMACY IMPERILED BY THE DECISIONS IT MAKES?*

Abstract Political pundits and scholars alike have recently noticed that public judgments of how well the U.S. Supreme Court is doing its job have plummeted. Yet, the meaning of this drop for the larger legitimacy of the Court is not as clear as the poll data themselves. Some believe that dissatisfaction with the Court's rulings threatens the institution's legitimacy. Conventional Legitimacy Theory, on the other hand, posits a "reservoir of goodwill" through which the translation of dissatisfaction into lowered legitimacy is blocked. Positivity Theory, with its focus on the legitimizing role of the symbols of judicial authority, provides at least a partial explanation of how legitimacy is maintained in the face of rising disappointment in the Court's rulings. Here, we focus specifically on the relationship between specific and diffuse support and the role judicial symbols play in undermining that connection, concluding that the Court's legitimacy is more secure than many imagine.

6483 Words

Those studying public opinion toward the U.S. Supreme Court have of late noted that the legitimacy of the institution may be on the retreat. Spurred by highly salient and unpopular Court decisions such as *Kelo*, *Citizens United*, and the Obamacare ruling, 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 and 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 (2013).

Whether the Court’s legitimacy is stable is a matter of practical as well as theoretical import. A fragile Court is likely to act differently from a secure Court; or, more precisely, justices with heightened concerns about institutional legitimacy might even shape their votes in highly salient cases so as to protect their institution.¹ 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 the institution’s legitimacy. Court attitudes are typically thought of as obdurate because they are grounded in slow-moving attributes of citizens: more general and basic 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 and Caldeira 2009). Moreover, according to the theory of “value-based

¹ Crawford (2012) reports that Chief Justice Roberts acted strategically to protect the Court’s legitimacy in *National Federation of Independent Business v. Sebelius*, changing his vote from striking down Obamacare to one preserving the legislation’s constitutionality.

regeneration” – the process by which performance dissatisfaction recedes and Court attitudes revert to their grounding in support for democratic institutions and processes (Mondak and 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 (e.g., Gibson and Caldeira 2009). Still, a puzzle exists: How can the recent decline in satisfaction with the performance of the Supreme Court be reconciled with theoretical and empirical work suggesting that such support is resistant to short-term dissatisfaction with the rulings of the institution?

Answering this question requires an understanding the connection between performance evaluations and institutional support. The conventional wisdom is that the relationship is “sticky,” with diffuse support only diminishing after a *sustained* series of performance disappointments (e.g., Baird 2001; Gibson and Caldeira 1992).

However, some recent papers question 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 Malhotra and Jessee (2014; see also Jessee and Malhotra 2013), and Christenson and Glick (2014), this view posits a far stronger relationship between specific and diffuse support than heretofore thought (for one of the first studies arguing this point, see Grosskopf and Mondak 1998). For example, Bartels and Johnston (2013, 196, emphasis in original) 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.” It is one thing to argue that *accumulated grievances* can undermine judicial legitimacy, or that blockbuster rulings, like *Bush v. Gore*, could have consequences for

the Court's diffuse support. It is quite another to claim that *each unpopular ruling*—particularly each run-of-the-mill decision—is potentially dangerous to the institution's health. If legitimacy cannot protect the institution when it makes unpopular decisions, then the Court's independence is compromised.

Despite concerns about the Court's weakening support, some research indicates that the institution enjoys a fairly deep reservoir of goodwill (Gibson, Caldeira, and Baird 1998), and that, most importantly, loyalty toward the institution mitigates the negative consequences of making highly controversial and politicized rulings (e.g., Gibson and Caldeira 2009). So, the literature now reports a direct empirical and theoretical conflict: diffuse support either is or is not highly responsive to changes in specific support.

The purpose of this paper is therefore to provide a new test of the hypothesis that institutional support for the Supreme Court is diminished by disappointment in its decisions. We introduce several important innovations to the study of this relationship. First, our research design acknowledges that *legitimacy is for losers* – that is, legitimacy is most relevant to those who hold views contrary to the Court's ruling. Second, we employ a nationally representative, survey-based design that includes both a true experiment and a quasi-experiment. Finally, tipping our hat to verisimilitude, and addressing Positivity Theory, we incorporate the symbols of judicial authority into our analysis. Thus, our test of the dissatisfaction/legitimacy hypothesis is a demanding, but a nonetheless important and realistic, one.

Our findings run strongly counter to recent scholarship. Even when faced with an objectionable decision on legal issues of some importance to the respondents – by design, all respondents “lost” on the policy issue – support for the Supreme Court actually *grew* over the

course of the survey. Moreover, our analysis identifies an important moderating role of the symbols of judicial authority through which the Court's legitimacy is protected. When people are simultaneously exposed to an unwanted decision and legitimacy-reinforcing symbols, the effects of disappointment with the unwanted decision are *eliminated*, just as the Positivity Theory of Gibson and Caldeira (2009) predicts. These empirical findings lead us 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 requires further revision.

The Theory of Institutional Legitimacy

By now, the theory of institutional legitimacy upon which this and an extraordinary body of recent research relies is well known (see Tyler 2006 for a review). Scholars distinguish between performance evaluations (“specific support”) and institutional support (“diffuse support”), and argue that institutional support provides a “reservoir of goodwill” (institutional loyalty) that allows the institution to rule against the preferences of the majority, at least in the short-term. If citizens are willing to stand by the institution even when dissatisfied with its decisions, then the institution is free to do its job as it sees fit. Measuring and understanding citizen attitudes toward the Supreme Court is therefore of considerable importance.

Bartels and Johnston (2013) have recently introduced an important finding to the literature on institutional support for the Supreme Court. They examined the effects of a single decision upon citizens' evaluations of the Court's legitimacy. Respondents in their experiment were randomly assigned to read a vignette stating that the Court had recently decided a government surveillance case in either a liberal or conservative direction. They discovered an

interactive effect between citizens' policy preferences and the ruling: individuals told about a decision contrary to their own policy preferences tended to have lower evaluations of the Court's legitimacy (a finding that dovetails with their observational data). In short, specific support can subtract from diffuse support.

Christenson and Glick (2014) investigated the effects of the Supreme Court's decision on Obamacare, examining the consequences of Chief Justice Roberts's vote switch (from finding the law unconstitutional to judging it constitutional). Like Bartels and Johnston, they 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" (21).

An important challenge to Legitimacy Theory arising from these scholars' work thus concerns the stability of institutional support attitudes: scholars differ on the nature of the relationship between change in performance satisfaction and institutional support.

Empirically, extant literature provides only the most limited evidence of change in legitimacy attitudes, mainly because no long-term panel data including such measures exist. Still, using cohort analysis on cross-sectional data, Gibson and Caldeira (1992) show that the attitudes of African Americans toward the Court changed over time, most likely owing to the slow accumulation of dissatisfactions with Court decisions that turned against the interests of blacks. In addition, Gibson and Caldeira (2009) report panel data revealing that the confirmation battle over Samuel Alito took a swipe out of the Court's legitimacy. Furthermore, the mere fact that specific support and diffuse support are typically moderately correlated (Caldeira and Gibson 1992) indicates that change in one attitude is to some degree associated with change in the other attitude. Furthermore, repeated disappointments can cause loyalty to dissolve, reinstating an

instrumental, quid-pro-quo calculus.

JUSTIFYING THE RESEARCH HYPOTHESIS

Our overarching hypothesis is that diffuse support for the Supreme Court is *not* undermined when the Court makes a decision with which people disagree. We ground this hypothesis in several fragments of theory and extant research findings.

First, specific and diffuse support for the Court are not inordinately interconnected. In their analysis of the legitimacy of high courts worldwide, Gibson, Caldeira, and Baird (1998) report an average correlation of diffuse and specific support of .33. Indeed, in his seminal exposition of the two concepts, Easton (1975, 442, n. 21) suggests that the relationship between the two types of support should not be too strong.

Second, research indicates that the most important predictor of diffuse support is general attitudes toward democratic institutions and processes, a set of attitudes thought to change little over time (Caldeira and Gibson 1992). The magnitude of the effects of democratic values typically dwarfs the predictive power of all other explanatory factors (e.g., Gibson and Nelson 2015), which is important because some argue that, even when diffuse support is depressed by an unpopular decision, support bounces back in fairly short order (Mondak and Smithey 1997; Durr, Martin, and Wolbrecht 2000). Even if an unpopular decision does have some deleterious effects on judicial legitimacy, those effects should be short lived.

Third, case studies of important decisions such as *Bush v. Gore* do not indicate significant losses to Supreme Court legitimacy. The empirical evidence on the topic (e.g., Gibson and Caldeira 2009; Yates and Whitford 2002) strongly suggests that even the most controversial

decisions produce little identifiable shift in aggregate-level diffuse support.

Fourth, some believe that the threats to the Court's legitimacy come from *how* the Court makes its decisions rather than their content. For instance, some hypothesize that divided opinions undermine legitimacy, although support for this contention is limited (see Zink, Spriggs, and Scott 2009; Salamone 2014). Scholars have also looked more broadly to the consequences of perceptions of judicial decisionmaking for support for the Court. Baird and Gangl's (2006) experimental evidence suggests that citizens react more positively to press reports suggesting a legally-motivated decision than they do to judicial decisionmaking described as politically motivated (see also Ramirez 2008). Similarly, Simon and Scurich (2011) argue that the public's attitudes toward modes of decisionmaking may be conditional on satisfaction: views of legal reasoning may only matter when individuals object to a ruling. Finally, Christenson and Glick (2014) hypothesize that what affected public support for the Court in the Obamacare litigation was not necessarily disagreement with the Court's policy, but rather the strategic nature of Justice Roberts' behavior. In sum, perceptions of procedural fairness may cushion the consequences of disappointment in an unwanted Court decision.

Fifth, the Positivity Theory of Gibson and Caldeira (e.g., 2009) offers an understanding of the process by which the impact of unpopular decisions is dulled. Beginning with the well-documented empirical finding that heightened awareness of the Court results in heightened support for the institution, these authors hypothesize that exposure to the symbols of judicial authority is the mechanism through which positivity occurs. As citizens observe those symbols (e.g., temple-like courtrooms) that make courts unique, their institutional support increases.

Finally, were institutional legitimacy dependent upon placating the Court's constituents

with its decisions, then the value of legitimacy would diminish greatly. If judges believed that unpopular decisions would cost their institution its public support in a meaningful and permanent way, then judges who cared about the acceptance and implementation of their decisions would become increasingly unlikely to make rulings that run counter to the preferences of the majority of the American people. Rather than providing a “reservoir of goodwill” that protects the Court against reprisal for its policy decisions, institutional legitimacy would collapse into a nearly vacuous and impotent concept.

Thus, there are many good reasons for hypothesizing that the connection between disappointment in a Supreme Court ruling and institutional support is not overly strong. Consequently, our analysis assesses the consequences that flow when the Court makes an important decision running counter to its constituents’ preferences.

Research Design

THE SURVEY

This research is based on a survey conducted for us by a grant from TESS (Time-sharing Experiments in the Social Sciences). Appendix A provides details about the survey.

Because Knowledge Networks panelists respond to questionnaires made available to them on the internet, limited control over the administration of the survey is possible. In this survey experiment, one of these factors is crucial: the length of the interview. The average length of interview was *246 minutes*. Obviously, this means that some respondents completed the interview in more than a single session on their computer. This is important because some may have answered the “dependent variable” questions – change in institutional support for the

Supreme Court – several days or even weeks after the initial measurement of institutional support. To control for this, we have confined our analysis to those respondents (85.3% of the total) who completed the interview in 30 minutes or less.²

THE SURVEY INTERVENTION

The overall design of this study is fairly simple. After assessing the respondents' institutional support for the Supreme Court, we informed them that the Court had ruled contrary to their preferences on an issue of some importance to the respondents. The announcement of the decision was accompanied by an experimental manipulation (with random assignment to treatment condition): exposure to the symbols of judicial authority. Finally, we re-measured institutional support, thereby providing an index of change in support over the course of the interview.

In order to provide a realistic and meaningful test of the change-in-support hypothesis, we structured the experiment around a substantive issue of some importance to the respondents. We did so by asking them to select from three possibilities the issue they considered most important. The choices were: (1) whether the government should be allowed to monitor citizens' internet searches; (2) whether the state governments should be allowed to require consumers to pay sales tax on items they buy on the internet; and (3) whether children of foreigners and illegal immigrants who just happened to be born in the U.S should automatically receive American

² Respondents taking more than 30 minutes to complete the interview and those taking 30 minutes or less do not differ significantly on any of the key variables in this analysis.

citizenship.³ This is a classic “content-controlled” measurement approach (see Sullivan, Piereson, and Marcus 1982) in which all respondents are confronted with a court case of some importance to them, even if it is not the same case.

After the respondents selected an issue, we measured their substantive preferences on the policy. Even though we designed the issue set from which the respondents selected, a total of 41.1% indicated that their position was strongly held. In the analysis below, we control for the intensity of the respondent’s position. Note that the three issues *do not* differ according to the intensity of the respondents’ position.

The purpose of this design was to set up the symbols intervention by presenting *all* respondents with a Court decision contrary to their preferred position. Thus, everyone satisfied the “objection precondition” requirement – all were asked to judge the Court after hearing about a ruling with which they disagreed, and on an issue of some importance to them. If “legitimacy is for losers,” then this is an entirely appropriate, indeed essential, research design.⁴

³ The issues we presented to the respondents were not drawn from earlier Supreme Court decisions (and, indeed, no prior decisions are specifically on point). Instead, we sought legal issues for which polls indicated a roughly equal division of opinion on the issue. We did so because we anticipated the need to control for the respondent’s issue position, a need the data revealed was not necessary.

⁴ As pointed out by one of the referees on this paper, if the Court ruling changed the respondents’ policy preferences, then the ruling would not then be inconsistent with those modified preferences, and the respondents would not be “losers.” We recognize this possibility, but have

This portion of our research set-up represents a “one-group pretest-posttest” design. Because the design does not itself control for potentially confounding variables, the effect of the treatment cannot be specified with the causal certainty of a true experiment. Consequently, we must control for extraneous variables, as one would in a typical observational study.

THE DEPENDENT VARIABLE: CHANGE IN INSTITUTIONAL SUPPORT

We measured support for the Supreme Court at the very beginning (t_1) and very end of the survey (t_2). In each case, we used four measures.⁵ Appendix B reports the frequencies on these various indicators. On these items, support for the Supreme Court varies fairly substantially, from less than one-third of the respondents who would not subject the Court to greater political control to a substantial majority who do not want to abolish the Court even if it made a string of counter-majoritarian decisions. Both the first and second measurements of Court support result in highly reliable indicator sets: at t_1 , Cronbach’s alpha = .85 and at t_2 , alpha = .87. In terms of dimensionality and validity, both the t_1 and t_2 item sets are strongly unidimensional, and all

no means of addressing it empirically given the available measures. Gibson, Caldeira, and Spence (2005) examine opinion change in an experimental setup not-too-different to ours, and find that only 14.2% of their respondents changed their preferences to align with the Court’s position.

⁵ Our measures follow closely the recommendations of Gibson, Caldeira, and Spence (2003) and other recent investigations of Supreme Court support (e.g., Bartels and Johnston 2013; Gibson and Nelson 2015; Christenson and Glick 2014).

factors load strongly on the first extracted factor. The psychometric properties of our operationalizations are thus quite strong. We use as the measure of support summated indices of responses to the four indicators.

Responses to the Court at both time points are strongly intercorrelated: $r = .87$. In terms of the number of items on which the respondent expressed support for the Court, 59.2% of the sample did not change from t_1 to t_2 .

At the same time, meaningful change in attitudes over the course of the interview occurred. The mean of the difference in index scores is $+.10$, indicating an overall increase in Court support. Additionally, most of the individual-level change is also *positive*. Based on the number of items endorsed, only 10.9% of the sample became less supportive of the Court, while 29.9% became more supportive. Using a continuous index taking attitude intensity into account, 21.7% of the respondents became less supportive of the Court, 35.4% did not change in their level of support, and 43.0% became more supportive (an increase that is statistically significant at $p = .003$). As reported in Appendix B, on every item in the four-item sets, support for the Court increased over the course of the interview. This by itself is a remarkable finding inasmuch as *all respondents were told that the Court made a decision on a salient and important issue that was contrary to their preferences*. Discovering this amount of change runs counter to the conventional assumption that diffuse support is largely invariant.

As we have noted, the respondents were allowed to select from three legal issues the one they judged to be the most important. It turns out that change in institutional support is independent of the issue selected. We do observe a slight relationship between the strength of one's views on the issue selected and change in support, with those holding strong issue opinions

not increasing support as much as those not holding strong opinions ($p = .069$). We therefore include opinion intensity as a control variable.

THE EXPERIMENTAL MANIPULATION

This survey included an experiment with a simple 2x2 manipulation (with independent random assignment to each condition): (1) judicial versus abstract symbols present on the computer screen, and (2) a legal commentator's criticism of the Court's decision versus no commentary. Because the check on the second manipulation showed that it largely failed,⁶ we focus only on the first manipulation;⁷ doing so produces no error because the two manipulations were orthogonal.

After the respondents declared their positions on their chosen issue, we presented a headline on the screen that read: "The U.S. Supreme Court decides an important case on [R'S ISSUE]." At that point, the direction of the decision was not revealed. The screen proclaiming the ruling was rimmed with either judicial or abstract symbols. The use of the symbols of judicial authority was designed to represent Positivity Theory: when people pay attention to the Supreme Court, they are simultaneously exposed to legitimizing symbols, irrespective of whether they are

⁶ Only 38.7% of those shown the comments fully passed this manipulation check. Bartels and Johnston (2013) similarly ignore an orthogonal manipulation.

⁷ A very large percentage of the respondents – 87.7% – identified the image to which they were in fact exposed. The accuracy of the replies varied insignificantly ($p > .05$, two-tailed) according to whether the abstract shapes or the judicial symbols were shown.

learning of a favored or disfavored ruling. Figure 1 reports both the symbols condition and the abstract symbols screens (for examples of a comparable approach to creating “control” symbols see Weisbuch-Remington, et al. 2005, and Panagopoulos 2014).

[PLACE FIGURE 1 ABOUT HERE]

Before revealing the Court’s decision, we measured generalized affect toward the Court (see below). The next screen then announced the decision, keeping the symbols in place. Recall that, in every instance, the decision was contrary to the respondent’s preference.

THE DIRECT EFFECT OF THE EXPERIMENTAL MANIPULATION

Something happened during the interview to increase support for the Supreme Court. A t-test of the difference of means for change in support, however, shows that the explanation has nothing *directly* to do with being exposed to the symbols of judicial authority ($p = .688$). This finding is compatible with the theoretical and empirical positions adopted by Gibson, Lodge, and Woodson (2014). They argue that symbols do not *change* pre-existing levels of institutional support; rather, symbols *activate* dormant connections among considerations *that already exist*. This suggests that the symbols may have a conditional effect on change in support (which is what the authors found).

NON-EXPERIMENTAL DETERMINANTS OF CHANGE IN COURT SUPPORT

We next consider a handful of measures of the respondents’ pre-existing attributes as possible explanations of change in institutional support.

Exposure to the Supreme Court: We hypothesize that those with greater prior exposure to the Supreme Court will be less likely to be fazed by the unwanted Court decision. Earlier research has shown differences among those with varying exposure to political institutions. For instance, Doherty and Wolak (2012) found that those lower in political sophistication are more likely to be guided by heuristics and prior beliefs, whereas those with higher sophistication are more likely to engage in effortful processing of information. Similarly, Kam (2005) found that party cues have the greatest effect on the least knowledgeable, speculating that this is because those with less information rely upon heuristic information-processing processes. We posit a similar hypothesis with regard to the Supreme Court.

Intensity of policy preferences: As a simple control variable, we include a measure of whether the respondent holds strong views about the policy on which the Supreme Court ruled, under the hypothesis that strong views are associated with a decline in Court support.

Decisional disappointment: All respondents were presented with a ruling with which they disagreed. This does not necessarily mean, however, that the decision generated the same amount of disappointment. We hypothesize that those for whom the Court's ruling is a violation of standing expectations that the Court will make "good" decisions – those who are actually disappointed by the ruling – will be more likely to withdraw support from the institution.⁸

⁸ Christenson and Glick (2014) employ in their theory a similar notion of expectations and disappointment (e.g., p. 6). However, their measures emphasize empirical perceptions of

Our measure of decisional disappointment is created from the feeling thermometer question asked immediately prior to the decision's announcement. We posit that those feeling more favorable toward the Court are more disappointed with an important decision that runs directly counter to their preferences. Some comments on this measure are necessary.⁹

In an investigation of measures of support, Gibson, Caldeira, and Spence (2003) concluded that feeling thermometer responses reflect both specific and diffuse support. Consequently, when a thermometer is included in a multivariate equation that also incorporates a direct measure of institutional support as an independent variable, the direct influence of the feeling thermometer reflects specific support attitudes – the belief that the institution is performing well in deciding cases. Treating this belief as a generalized expectation that the Court will decide cases “correctly” (i.e., consonant with the individual's preferences), and juxtaposing that expectation against the announcement of an important Court decision contrary to the respondent's preferences, we have a measure of disappointment. Because everyone in the sample was told that the Court decided a legal issue contrary to her or his preferences, no variability on this “variable” exists. Thus, the role the disappointment measure plays is to introduce variability in how the respondents reacted to the adverse ruling. We hypothesize that those who were more

decision-making processes, not normative expectations.

⁹ We acknowledge that our understanding of this variable is contrary to the theoretical rationale we originally envisaged. When confronted with a bivariate correlation with a sign opposite that expected, we sought a theoretical means of interpreting the contrary relationship. Owing to this post-hoc reasoning, one might place less confidence in our conclusions about this variable.

disappointed in the ruling became less supportive of the Court as an institution.

Initial levels of court support: Positivity Theory: Positivity Theory does not predict that everyone will react similarly to an unwanted Court decision. Instead, the nuanced hypothesis of Positivity Theory is that, among those high in support for the Court, disappointment in a decision will have little or no effect on support, which is precisely a consequence of the reservoir of goodwill concept. Because institutional loyalty has developed, support is unlikely to be shaken by a single adverse event. Simply put, loyalty inoculates against disappointment.

Positivity Theory suggests something of an asymmetrical hypothesis regarding those not so high in institutional support. The theory posits that when people pay attention to the Supreme Court, they learn that the Court is not just another political institution, that there is something “special” about the institution, and that it differs from institutions such as Congress. The theory suggests that when people become attentive they learn not that justices are mechanical jurisprudes but rather that the divisions among the justices are principled, not self-interested and strategic. Gibson, Lodge, and Woodson (2014) have produced some evidence in support of this view. When exposed to the symbols of judicial authority – the robes, the cathedral-like building, honorific forms of address – citizens are more likely to accept decisions with which they disagree. Thus, the hypothesis favored by Positivity Theory is that any exposure to the institution is likely to increase support for it, especially among those initially low in support, and especially when attention to the Court provides collateral exposure to the symbols of judicial authority.

As we have noted, the data reveal that support for the Supreme Court increased significantly over the course of the interview. Yet, change is not constant across the levels of

initial support (as measured by the number of supportive answers give to the t_1 battery of support indicators). The correlation between the number of supportive replies and the magnitude of the change in institutional support is $-.19$. Those least supportive of the Court increased their support the most. Without a legitimacy cushion, disappointment in the ruling should have lowered levels of institutional support for these respondents.

Of course, one conclusion from this analysis is that it was difficult for those expressing high levels of support in the beginning to increase their support (a “ceiling” effect). For those scoring at 4 at t_1 , there was practically no possibility for change in support over the course of the interview. Conversely, for those scoring 0 at t_1 , no decline was possible (a “floor” effect).¹⁰ Whether as a statistical artifact or a consequence of positivity bias, it is useful therefore to include a measure of the level of Court support at t_1 in our analysis.

Analysis

Table 1 reports the results of regressing change in institutional support on these various measures. Several conclusions are supported by the coefficients in the table.¹¹

[PLACE TABLE 1 ABOUT HERE]

First, two variables stand out as reasonably strong predictors of changing support for the

¹⁰ On the continuous dependent variable used throughout this analysis, only 5.8% of the respondents scored at the highest or lowest levels of institutional support at t_1 . All other respondents could have increased or decreased their support over the course of the interview.

¹¹ All independent variables vary from 0 to 1; the outcome variable varies from -2.25 to $+2.00$.

Court: those expressing relatively low support for the institution at the beginning of the survey – on which we have already commented– and, to an even more substantial degree, those with greater prior exposure to the Supreme Court. Those with more prior exposure were higher in support for the institution at the beginning of the interview ($r = .20$; data not shown), but they also became even stronger supporters of the Court over the course of the interview.

Two other variables also contribute to increases in support for the Court, although to a considerably lesser degree. Institutional support grew among those with weaker issue preferences, as might be expected. In addition, those who were disappointed in the Court’s ruling were less likely to increase their institutional support (a finding that tends to validate our understanding of this variable).¹²

THE CONDITIONAL EFFECT OF DECISIONAL DISAPPOINTMENT

We hypothesize that the influence of disappointment is conditional upon exposure to the symbols of judicial authority. In a similar vein, Gibson, Lodge, and Woodson (2014) found that the effect of disappointment with the Court’s decision on willingness to challenge that decision was reduced to zero in the presence of the symbols of judicial authority. They speculated that the symbols activated thoughts about judicial fairness that absolved the Court of any blame for its

¹² When we added demographic variables (age, whether African American, whether Hispanic, level of education, gender, income, whether internet access, whether owns own residence, whether currently employed, party identification, ideological identification, and religiosity) to the equation reported in Table 1, the increase in R^2 for the entire set of variables was trivial.

decisions. We test this conditional logic with this analysis of change in institutional support.¹³

[PLACE TABLE 2 AND FIGURE 2 ABOUT HERE]

In fact, the data support this hypothesis.¹⁴ When we add the interaction of disappointment and exposure to judicial symbols to the equation, as shown in Table 2, the interactive term is significant at $p = .05$. Analyzing the interaction term, the effect of disappointment on change in support is $-.30$ in the absence of symbols; in the presence of these symbols, the effect declines to the trivial level of $-.05$ (and, of course, the difference between these two coefficients is statistically significant). Figure 2 reports the marginal effect of the symbols manipulation across the range of decisional disappointment. When disappointment is relatively high (roughly above $.5$ on the measure), the effect of witnessing the symbols is indistinguishable from zero. At the same time, when disappointment is low, exposure to the symbols reduces the influence of disappointment.¹⁵ As expected, judicial symbols have their greatest influence among those least disaffected by the Court's ruling.

These results indicate that the presence of the judicial symbols impedes the conversion of decisional disappointment into a diminution of institutional support. When no symbols are present, disappointment decreases institutional support to a statistically significant degree –

¹³ For a full discussion of the theoretical literature on the mechanisms by which this sort of influence takes place see Gibson, Lodge, and Woodson 2014.

¹⁴ Because none of the other two-way interactions between the symbols manipulation and the other independent variables is significant, we test only for this hypothesized interactive effect.

¹⁵ About 30% of the respondents score below $.5$ on the disappointment measure.

nothing blocks the conversion of disappointment into diminished legitimacy. In the presence of judicial symbols, however, the effect of being disappointed in the decision is essentially eliminated. This is a powerful role for judicial symbols to play.

Discussion and Concluding Comments

The most important finding of this analysis is its simplest finding: Despite being presented with a Court decision contrary to the respondents' policy preferences on an issue of some importance to them, institutional support *increased*. Our evidence runs contrary to the expectations of several scholars currently working on the specific support/diffuse support interconnection. Also contrary to conventional wisdom, we found significant change in Court attitudes over the course of the survey. Clearly, diffuse support is not as impervious to change as some have thought.

Why did the Court's adverse ruling not diminish its legitimacy? A portion of the answer to this question is that it *did*, although the effect of losing is mitigated by being bound up in expectations about the Court. The institutional support of those who generally expect the Court to make "good" decisions – those who are disappointed when the Court makes "bad" decisions – did indeed decline somewhat.

But there are some important caveats to this finding. First, we reiterate that our measure of disappointment is imperfect. Second, the effect of disappointment is statistically significant, but still not overly strong. Third, all of the respondents in our sample "lost" on the issue being litigated, but losing was associated with disappointment for only a portion of the sample. Losing, *per se*, may not undermine legitimacy; instead, it depends on one's expectations. Finally, and importantly, the effect of disappointment on changing legitimacy was eliminated when

respondents were exposed to the symbols of judicial authority, a finding that seems to provide empirical support for the claims of Positivity Theory.

This last point is worthy of further consideration. Most Americans get most of their political news from television. We suspect that most television reports on Supreme Court decisions are accompanied by images of the justices, the Court, and the other symbolic paraphernalia of the legal system.¹⁶ Our evidence indicates that, absent these symbols, disappointment with a Court decision can harm the institution's legitimacy. However, instances where people learn about disappointing rulings *without exposure* to judicial symbols may not be particularly common. The experimental condition most closely connected to reality – the one presenting judicial symbols – is one in which the effects of decisional disappointment are nullified. Symbols therefore play a formidable role in sustaining judicial legitimacy.

According to Gibson, Lodge, and Woodson (2014), Positivity Theory does not necessarily predict a main effect of exposure to symbols. These authors argue that viewing symbols activates pre-existing associations relevant to law and courts. Our results are similar. Among those most disappointed with the Court's decision, the symbols were unable to reduce the effect of disappointment. Yet, among those who were only mildly disappointed with the ruling (and who might be thought of as "persuadable"), symbols were influential, reducing the consequences of disappointment. Thus, the symbols do not necessarily create any attitudes; instead, they make pre-existing attitudes relevant, moving them into working memory.

¹⁶ Christenson and Glick (2014, p. 7) note that when the Obamacare decision was announced in the original news story, the news was accompanied by a picture of the justices in their robes.

Exposure to the symbols of judicial authority appears not to change willingness to extend support to the institution of the Supreme Court. Change in Court attitudes was the same for those exposed to both the abstract symbols and the judicial symbols – even if being exposed to judicial symbols changed how other variables affect change in diffuse support. While this is certainly a finding requiring further inquiry, that symbols are influential because they activate pre-existing attitudes and considerations has myriad implications for both theory and research designs.

We (and others) focus on a single decision, albeit an important one. But we doubt that citizens form their attachments to institutions – their *loyalty* to institutions – based on a single ruling; few decisions, other than the rare highly salient opinion, invite individuals to revisit those attachments. Instead, citizens most likely react to the portfolio of decisions issued by the institution. Especially in the current context of a Court that makes conservative decisions in (roughly) one-half of its cases and liberal decisions in the other half, all citizens are likely to encounter many rulings that please them and many that do not. *Specific support*, as measured by Pew and other pollsters, would therefore be expected to bounce around quite a bit. Despite the findings of this paper and of others, research focusing on the effects of a single decision on Supreme Court legitimacy will never provide a complete understanding of how people update their attitudes toward institutions. More research is essential to examine whether a single decision has any lasting effect, positive or negative, on how people feel about their institutions.

Research, including ours, also errs if it assumes that citizens judge the Supreme Court only on whether they agree with its rulings in cases. “Performance satisfaction” is a construct that includes policy and ideological agreement, but that most likely also includes much more. We have already alluded to the important – perhaps even crucial – role that perceptions of procedural

fairness play in institutional assessments. But we would add as well other aspects of the Court's performance. Perhaps some citizens are affected by the unwillingness of the institution to televise its proceedings, or, more generally, the Court's lack of transparency. Perhaps others are not convinced that judges who decide so few cases should have so much time to write profit-generating books. And a final group may factor into their assessments criteria such as descriptive representation, including the dominance of the institution by those who hail from New York City and just two law schools. Students of voting have long abandoned models of choice based exclusively on policy preferences. Perhaps it is time for judicial scholars to do the same, and to redouble our efforts to understand the variability in performance satisfaction.

In the end, recent research linking decisional disappointment and legitimacy requires a great deal more evidence before it becomes part of the conventional wisdom on citizens' attitudes toward the Supreme Court. And, if the revisionist arguments are correct, then Legitimacy Theory itself may be much in need of further revisions. Thus, a great deal rides on getting the empirical evidence correct.

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Table 1. The Predictors of Changing Support for the U.S. Supreme Court

	OLS Regression Results	
	b	s.e.
Institutional Support	-.24***	.04
Symbols Manipulation	-.05	.03
Exposure to the Supreme Court	.41***	.06
Strength of Issue Position	-.07*	.03
Decisional Disappointment	-.15*	.07
<i>Equation</i>		
Intercept	.17***	.05
Standard Deviation – Dependent Variable	.45	
Standard Error of Estimate	.43	
R ²	.09***	
N	863	

Note: All independent variables are scored to vary from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

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

Table 2. The Predictors of Changing Support for the U.S. Supreme Court, with Interaction

	OLS Regression Results	
	b	s.e.
Institutional Support	-.24 ^{***}	.04
Symbols Manipulation	-.19 [*]	.08
Exposure to the Supreme Court	.41 ^{***}	.06
Strength of Issue Position	-.07 [*]	.03
Decisional Disappointment	-.30 ^{**}	.10
Decisional Disappointment X Symbols Manipulation	.25 [*]	.13
<i>Equation</i>		
Intercept	.25 ^{***}	.06
Standard Deviation – Dependent Variable	.45	
Standard Error of Estimate	.43	
R ²	.09 ^{***}	
N	863	

Note: All independent variables are scored to vary from 0 to 1.

b = unstandardized regression coefficient

s.e. = standard error of unstandardized regression coefficient

R² = coefficient of determination

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

Figure 1. The Symbols Manipulation: Judicial Versus Abstract Symbols



Please read the headline below describing the Court's decision in that case. The "Next" button will appear in a moment.

The United States Supreme Court has decided that the government should be allowed to monitor citizens' searches on the internet, without a warrant from a judge, including the internet searches of U.S. citizens, to watch for suspicious activities.

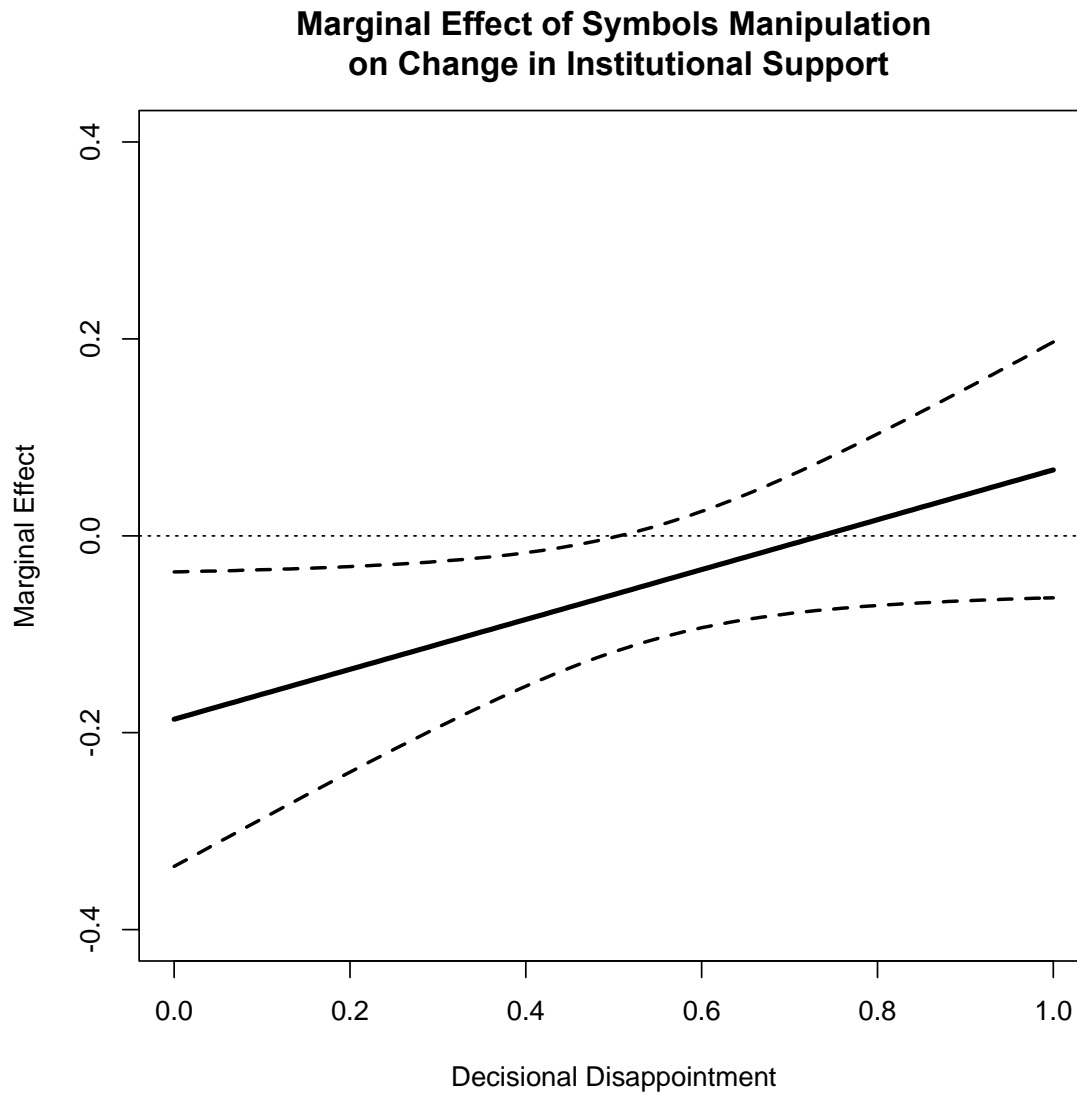


Please read the headline below describing the Court's decision in that case. The "Next" button will appear in a moment.

The United States Supreme Court has decided that the government should be allowed to monitor citizens' searches on the internet, without a warrant from a judge, including the internet searches of U.S. citizens, to watch for suspicious activities.



Figure 2. The Marginal Effect of the Symbols Manipulation Across Levels of Decisional Disappointment



Note: This figure reports the marginal effect of exposure to judicial (rather than abstract) symbols on change in institutional support across all possible values of decisional disappointment. The figure demonstrates the dampening effect of judicial symbols among individuals with low or moderate disappointment with the Court; among the most disappointed respondents, there is no effect of the manipulation on the amount of change in institutional support (the marginal effect is indistinguishable from 0).