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Politicized Nominations and Public Attitudes toward the Supreme Court in the Polarization Era

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ABSTRACT

The death of Supreme Court Justice Antonin Scalia provides the opportunity to study the effects of an unexpected Supreme Court vacancy in an era of intense partisan and ideological divisions. Leveraging panel survey data collected shortly before and shortly after Scalia's passing, as well as an experimental design embedded within a cross-section, I examine how the vacancy differentially impacted attitudes toward the Supreme Court. Unsurprisingly, support begets support, even in a polarized environment. However, exposure to information regarding the legal importance of filling the vacancy, when coupled with exposure to legitimating judicial symbols, positively influences diffuse support; Democratic respondents were particularly susceptible to increases in support. Further, perceptions of how political the Court is decreased as a result of positivity inducing experimental manipulations. Effects do not extend to exposure to information regarding the political importance of filling the vacancy; external actors—such as the president or Congress—do not appear to make the Court appear more political. These results lend support—and provide nuance—to positivity bias, even in the face of intense politicization of the Court by the elected branches.

KEYWORDS

Supreme Court; legitimacy; nominations; positivity bias

The unexpected death of long-serving Supreme Court Justice Antonin Scalia provides a unique opportunity to study the opinions of the public regarding the unelected branch during the filling of a vacancy in an era of intense ideological and partisan divisions. Understanding how such an event impacts perceptions of and attitudes toward an institution that relies on the public conferal of legitimacy can carry exceedingly important connotations (Gibson and Caldeira 1992; Gibson, Caldeira, and Spence 2003b; Gibson and Caldeira 2009a). Since the 1970s, Supreme Court justices have served for an average of 26 years; if a sudden vacancy—or the overt politicking involved in filling a vacant seat—can alter legitimacy, then these effects may have long-term implications for the Court's ability to produce enforceable decisions.

Researchers are traditionally unable to capture support attitudes directly before a Supreme Court vacancy, and certainly less able to do so directly after. The lone exception to this is Gibson and Caldeira (2009b), who were able to resample individuals *after* Justice Alito's nomination. I was able to record attitudes toward the Supreme Court just two weeks prior to Scalia's death and collect follow-up attitudes two weeks after his death but *prior* to Merrick Garland's nomination. This produces a unique set of data capable of investigating if, and how, individuals' attitudes toward the Court change following a major event not of the Court's own making. This particular court event, by being at the forefront of a political fracas, is an especially suitable place to seek alterations to public attitudes about the Court. Legitimacy or diffuse support—the belief that the

an institution is just and proper (Tyler 2006)—is essential for the Court as it relies on the elected branches to execute its decisions (Gibson and Caldeira 1992). Without public support, the elected branches are unlikely to act. By utilizing several priming vignettes in the second survey wave, I probe how exposure to various conceptions of the importance of finding Scalia’s replacement (i.e., legal versus political importance), as well as exposure to legitimating judicial symbols, may have altered these orientations toward the Supreme Court.

My results indicate the following: first and foremost, a vacancy, on its own—even one that has been politicized by the elected branches—fails to induce movement in support attitudes. This is an important and noteworthy finding as it speaks to the stability of support. Exposure to legitimating judicial symbols, when coupled with information regarding the legal importance of filling a vacancy, has a profound effect on diffuse support and perceptions of how political the Court is. Viewing a photograph of the Supreme Court bench decorated to memorialize Scalia (i.e., judicial symbols) positively impacts attitudes toward the Court, but only for those who stand to benefit on policy grounds from the vacancy (i.e., “policy winners”). These symbols appear to enhance preexisting positive attitudes. Finally, exposure to these treatments reduces the degree to which one believes the Court is politicized or engages in political behavior. Experimentally manipulating perceptions of politicization is a unique and important finding. Altogether, these findings uncover nuance in the theory of positivity bias, whereby existing predispositions and exposure to judicial imagery predict diffuse support. Additionally, they extend to circumstances where there is a disturbance to the Court over which it had no control.

The context in which these data were collected—with overt partisan politicking characterizing the vacancy—and the changing nature of nomination and confirmation politics more generally serve to highlight the significance of these findings. First, this is a novel investigation into how a vacancy itself impacts attitudes toward the Court. More generally, it asks whether an event not of the Court’s own doing that places it in the public eye can affect its level of legitimacy. Most questions related to diffuse support focus on a case or the Court’s output more generally. Though useful, these efforts leave unanswered how extra-judicial political controversy impacts public support for the Court. Additionally, this particular vacancy produced circumstances ripe for observing change in attitudes regarding the Court. The obvious political importance of the open seat, when coupled with the exuberance and polarizing nature of the justice being replaced, would reasonably produce shifts in opinions about the institution. While historically a routine political affair, the filling of a vacancy has become a politicized event (Farganis and Wedeking 2014). And not only have these proceedings become increasingly volatile, but vacancies—when they do occur—do not often occur when the Senate and president are of different parties. Indeed, the 1990 nomination of David Souter and the 1991 nomination of Clarence Thomas mark the two confirmations nearest 2016 during which the Senate had been of a different party than the nominating president. More concisely, the confluence of factors—the death of a polarizing justice, the ability of the nominating president to shift the ideological tenor of the Court, and the manifest partisan opposition to this outcome that exposed the political nature of the proceedings—conceivably make the 2016 vacancy the best opportunity to witness support for the Court stagger.

Furthermore, even when nominations have occurred when there were *inter*-institutional partisan splits, *intra*-institutional divisions now exist to an unprecedented degree; the Senate in 2016 was roughly 50 percent more polarized than it was in either 1990 or 1991 (Poole and Rosenthal 2011).¹ Simply, both politics in general and the politics of nominations to the Supreme Court are more contentious now than at any point in the modern era and, seemingly, will continue to be that way into the future. How these factors may impact people’s attitudes toward the Court are highly important for an institution that relies on public support. In other words, if a contentious vacancy—such as the one to replace Scalia—can fundamentally alter the amount of legitimacy one holds toward the Court, it may impact not just acceptance of individual cases that counter an individual’s political wants, but

¹The, difference in Senate party means, as calculated by DW-NOMINATE, was 0.63 in 1991 for Clarence Thomas’s nomination; the 2016 difference was 0.94.

wholesale acceptance of the Court. Indeed, President Obama made the connection between the political nature of the vacancy and the potential for faltering public support for the Court. Lithwick (2016) writes,

“President Obama warned against exactly this form of dangerous and destructive politics. When people ‘just view the courts as an extension of our political parties—polarized political parties’ he warned, public confidence in the justice system is eroded. ‘If confidence in the courts consistently breaks down, then you see our attitudes about democracy generally start to break down, and legitimacy breaking down in ways that are very dangerous.’”

Below, I detail the ways in which the vacancy created by Scalia represents the new normal in nomination politics. That is, blatant partisan use of the nomination as a means to a political end made apparent the openly political nature of nominations. This makes possible a direct investigation of the role of outside politicizing of the Court on legitimacy attitudes. Following a description of the data collection and research design and demonstration of the effect of the treatments, I investigate heterogeneous treatment effects. Given that one group of supporters are “policy winners (losers)” in the sense that the Court may now swing in (away from) their political favor, it may be the case that winners and losers react differently to the treatments. Finally, I discuss the implications of these findings and comment on the relationship between the Court, the public, and the other political branches in the new system of confirmation politics.

A Political Vacancy and Salient Non-Case Events

The diffuse public support on which the Court relies is generally not impacted by immediate performance satisfaction (Gibson and Caldeira 1992; Gibson, Caldeira, and Baird 1998). The theory of positivity bias—which suggests that “preexisting institutional loyalty shapes perceptions of and judgments about court decisions and events” (Gibson and Caldeira 2009a)—may undergird the relative individual-level stability of these assessments. This theory also holds that judicial or legal symbols reinforce the good will the public holds toward the Court (Gibson, Lodge, and Woodson 2014; Gibson and Nelson 2016). There are three important ways in which these data are uniquely suited to test and extend aspects of the theory of positivity bias: (1) they are collected pre-nomination, (2) they were collected during a highly salient Court event that the Court itself did not produce, and (3) they describe the new normal in confirmation politics. I detail each in turn below.

Pre-Nomination

Although there is evidence regarding public perceptions before and after a Court vacancy (Gibson and Caldeira 2009b), those data only cover the period *following* a nomination; in this article I explore other contexts, specifically between a vacancy and nomination. Gibson and Caldeira (2009b) study public attitudes regarding the 2005 nomination and 2006 confirmation of Justice Alito. As is true here, they utilize a panel design to discover that long standing attitudes toward the Court predict one’s beliefs about the rightfulness of Alito’s confirmation. Individuals who have high levels of diffuse support rely more on “judiciousness,” which refers to “judicial qualifications, temperament, and role orientations (e.g., judicial restraintism), typically making extensive use of potent symbols of judicial legitimacy” (Gibson and Caldeira 2009b, 140). They comment, “in a contentious confirmation, the American people confront two competing frames for evaluating nominees: the frame of judiciousness and that of ideology and partisanship.” However, focusing on the “political theater” aspect of the nominations process—as opposed to on the nominee herself—is a fundamentally different question and may yield different results. Indeed, the frames Gibson and Caldeira reference are those that only appear *after* a nominee has been introduced to the public. Yet, in the aftermath of the death of Scalia, the public was inundated with two frames that *preceded* a nomination: (1) the legal importance of filling Scalia’s seat and (2) the political importance of the appointment.

What is more, the pre-nomination nature of these data may invoke long-, as opposed to short-, term considerations regarding the outputs of the Court. As noted, Supreme Court justices now sit on the

bench for an average of 26 years; filling a vacancy can produce a sea change in policy outputs. When considering how a vacancy, as opposed to a specific nominee, will impact future Court decisions, individuals may think more abstractly about the long-term effects of a change in Court demographics. And while previous research has found the mechanisms by which policy losers accept disagreeable decisions (e.g., Gibson, Lodge, and Woodson 2014), untested is whether those who expect long-term policy losses—such as those supportive of policy outcomes pre-vacancy that will be opposed to policy outcomes post-confirmation—alter support for the Court.² More simply, I argue that pre-nomination data are the only time during a vacancy when individuals may be contemplating the future of the Court, as opposed to the future of the Court with a given nominee. Indeed, individuals do value hypothetical versus actual outcomes differently (e.g., Kang, Rangel, Camus, and Camerer 2011).

Non-Case Events

Recent evidence has demonstrated that highly salient cases can impact views toward the Court (Christenson and Glick 2015). But in the same way that a highly salient case causes individuals to check into the Supreme Court, so, too, do vacancies on the bench, particularly given the changing media environment surrounding nominations proceedings (Epstein, Lindstadt, Segal, and Westerland 2006; Farganis and Wedeking 2014). However, the influence of cases and the influence of vacancies are decidedly different questions. Vacancies provide a novel opportunity to study effects that may be absent or more difficult to discover following salient cases. And although there is evidence regarding stability in diffuse support following a politicized Court decision (e.g., *Bush v. Gore*; see Gibson, Caldeira, and Spence 2003b), less clear is what happens when the Court itself is politicized by external actors.³

In this way, this study differs greatly from those that come before it. Many studies record a person's response when informed that *the Court*, *a Justice*, or *the Justices* had behaved in a political manner or that a particular decision (political or not) may compromise the Court's ability to dispense justice evenhandedly and legally (e.g., Baird and Gangl 2006; Zink, Spriggs, and Scott 2009; Salamone 2013; Nicholson and Hansford 2014; Christenson and Glick 2015). Less studied are the attitudes of the public when the Court is being politicized, as opposed to behaving politically. For instance, individuals may differentiate between the Court making decisions using political motivations versus presidents nominating an under-qualified ideologue to the bench. As I detail below, I expose people to the view that the Court can be a pawn in the political game or that the decisions (or non-decisions) of the elected branches can impact the Court's ability to distribute justice.

The "New Normal"

Dahl (1957) remarked, "Americans are not quite willing to accept the fact that the Court is a political institution and not quite capable of denying it" (279). The conspicuous partisan politicking that characterized the 2016 Supreme Court vacancy may have left far less doubt on the matter. The obstructionist actions of Senate Republicans in refusing to consider any President Obama nominee exposed the openly political nature of Supreme Court nominations. As political commentator Paul Krugman (2016) writes, "Once upon a time, the death of a Supreme Court justice wouldn't have brought America to the edge of constitutional crisis...In principle, losing a justice should cause at most a mild

²Of course, when these data were collected, it was expected that, despite what was considered Republican posturing, President Obama would successfully nominate a judge to the Supreme Court. That this did not occur has no bearing on the results here presented. As such, Republicans are still "policy losers" in this context.

³When the Supreme Court is being politicized, it is almost always by extra-judicial actors. For instance, as Ted Cruz penned in the *National Review*, "This week, we have twice seen Supreme Court justices violating their judicial oaths...the justices rewrote Obamacare...in order to force this failed law on the American people." While Senator Cruz is indeed an extra-judicial source of the politicizing, he can point to a Supreme Court action that led him to do so. The difference in the context of a vacancy is that there is no Court action for a politicizing actor to point to. The American public may view these two events differently.

disturbance in the national scene.” Instead, this once-routine political exercise was at the forefront of partisan politics.

This style of confirmation politics, called by some “political paralysis,” is the “new normal” (O’Hehir 2016; Perr 2016). In light of the elite polarization evidence presented above, the stagnation of confirmations at all levels of the judicial hierarchy (Perr 2016), and the changing nature of nominations themselves (Farganis and Wedeking 2014), a return to a more congenial confirmations process seems unlikely.

There are very serious repercussions to this shift. One commentator remarked “How the Senate responds to Scalia’s vacancy...could decide whether the Supreme Court remains a viable player in our constitutional system. Why, after all, should a future president feel bound by the Court’s decisions if they know that every member of its bench was appointed via a partisan knife fight?” (Millhisser 2016). Indeed, the precarious nature of the Supreme Court’s authority makes necessary support from other institutions. If we suspect that overtly political nominations can alter the views of other institutional actors, they may also affect public attitudes. Thus it is important to test whether this “new normal” does indeed change the way the public views the Court.

Succinctly, the “genie is out of the bottle” with regard to the openly political nature of Supreme Court nominations and confirmations. It is unlikely to go back to a harmonious political procedure. It is important to determine whether this new status quo will harm the Court and its ability to make decisions that are enforced.

Policy Losers and Political Perceptions

Rarely is a president presented with the opportunity to shift the ideological tenor of the Court. Indeed, not since 1969 have Democratic appointees comprised a majority of the seats on the Supreme Court. The particulars of the 2016 vacancy—a Democratic president provided the opportunity to replace a Republican appointee and staunch conservative—made it so the Court may have suddenly been closer to one group’s political policy preferences. That is, (at the time of data collection) there were anticipated “policy losers” as a result of the vacancy. Explicitly, as macabre as it may be following a death, Democrats (Republicans) were expected policy winners (losers).⁴ Although there is evidence that judicial symbols help individuals accept decisions on which they lose on policy grounds (Gibson, Lodge, and Woodson 2014), decisions are short-term considerations. That is, while an individual may disagree with a decision, it does not affect their view of the Court altogether. And although there is evidence that ideological disagreement decreases support (Bartels and Johnston 2013; but see Gibson and Nelson 2015), nominations have long-term implications for continued policy outputs. That is, immediate past dissatisfaction is distinct from expected future dissatisfaction. Those who are set to realize continued policy loss may alter their view of the Supreme Court. I am able to test this prospect by exploring changes for policy losers (Republicans) and policy winners (Democrats). The expectation is that only policy winners will be positively affected by news about the changing demographics of the Court and that policy losers will either decrease their level of support or display no changes.

Finally, given the explicitly political nature of the 2016 vacancy, individuals may alter how political they believe the Court to be. Given that political perceptions of the Court have been shown to be related to diffuse support (Scheb and Lyons 2001; Christenson and Glick 2015), of import is to determine whether the elected branches can delegitimize the Court by making it appear political. Both survey waves collected data on perceptions of how political the Court is that can test this proposition

⁴As noted, the Republican Senate announced shortly after the vacancy opened that they would not consider any Obama nominee. However, many believed that to be mere grandstanding. Even as Garland was nominated, some spoke of obstructionism as a hypothetical. The LA Times Editorial Board wrote, “The stubborn refusal of Senate Republicans to consider any Supreme Court nominee offered by President Obama *would* be outrageous...” (emphasis added). Additionally, even Republican officials were suggesting Garland would be confirmed if Hillary Clinton won the 2016 election, which was seven months after his nomination (Terkel 2016). Therefore, even in light of Republican obstructionism, it is likely that many Democrats still believed Garland—or perhaps a more liberal justice following a Clinton victory—would be confirmed and flip the ideology of the Supreme Court.

empirically. Again, the particularities of the 2016 vacancy (e.g., unprecedented politicking) should make manipulating respondents to perceive the vacancy on political grounds relatively simple, as that belief was primed in nature. Individuals exposed to different experimental treatments may alter their perceptions of how political the Court is.

Research Design

This research is based on a sample of 238 undergraduates at a large, public university and was conducted January 2016 - March 2016. The first wave took place from January 20–January 31 2016. Justice Antonin Scalia died on February 13, only thirteen days after the completion of the first wave. The second wave began on March 3 and responses were collected until the nomination of Merrick Garland on March 16. Undergraduate samples can provide a conservative test of a treatment relative to a representative sample (Baird and Gangl 2006). While undergraduate samples are less than ideal, there is some reason for optimism. As Druckman and Kam (2011) argue, “In assessing external validity of the sample, experimental realism (as opposed to mundane realism) is critical, and there is nothing inherent to the use of student subjects that reduces experimental realism.” The high salience of the issue in question makes for high experimental realism, and thus provides some confidence regarding the generalizability of the data. Regardless, these data are, to the best of my knowledge, the only source of information regarding orientations toward the Court before and after a vacancy but before a nomination. While findings are interpreted with caution, I believe the data are sufficiently unique and the experimental realism sufficiently high to offer a first look at this phenomenon. Limitations to the findings here presented as a result of the sample are considered in the Discussion section.

In the first wave, respondents completed a survey with several political items. Importantly, subjects were asked the traditional battery of questions used to measure diffuse support popularized by Gibson, Caldeira, and Spence (2003a). In the second wave, experimental treatments—which are detailed below—were embedded within the survey. In order to determine if the competing treatments differentially impact diffuse support, the treatments used here prime attitudes regarding the filling of the Supreme Court vacancy in a way that mimics stories persistently disseminated in the media following the death of Scalia. That is, this research design allows for the isolation of effects that rivaled each other in nature. It is likely that respondents were exposed to myriad information in “real time”; these treatments prime the various considerations to which respondents may have been exposed prior to treatment.

Treatments

In this 2×2 experiment with a control group, participants were randomly assigned to one of three groups: (1) a control group that received no prime (88 respondents); (2) a legal group that read a vignette on the problematic nature of 4-4 ties on the Supreme Court, their failure to create precedent, and the potential unequal application of the law that can result (88 respondents; 41 in subgroup described below); or (3) a political group that read a vignette describing the relative ideological balance of the Court before Scalia’s death, his conservative voting behavior, Obama’s ability to shift the Court from conservative to liberal, conservative fear of this outcome, obstructionist behavior of Senate Republicans, and an explicit reference of using the vacancy as a means to achieve a political end (62 respondents; 30 in subgroup described below).

Within both the legal and political groups, I embedded a judicial symbols condition that displayed a photograph of the Supreme Court bench with Justice Scalia’s chair and the area in front of his bench adorned with black cloth; no additional text accompanied this photograph.⁵ While the purposes of the legal and political treatments are straightforward (i.e., they explicitly mention the importance of filling the vacancy), the symbols treatment is less clear. As Gibson, Lodge, and Woodson (2014) note, viewing

⁵The language of each treatment, as well as the photograph for the symbols treatment, can be found in the supplemental materials.

such images can unconsciously trigger positive affect before conscious information processing takes over. They state,

“...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...Whenever a person sees a judicial symbol [their subconscious information processing] automatically triggers learned associated thoughts, which for most people in the United States have become connected with these symbols...[these thoughts] are typically ones of legitimacy and positivity. This activation leads to more conscious legitimating and positive thoughts in [conscious information processing]”. (842)

Here, judicial symbols may prime more permanent—and positive—attitudes toward the Court that precede any affect caused by the political fight to fill the vacancy.

Still, the symbols treatment used here is, perhaps, an unusual one. Generally, the symbols that invoke positive attitudes are of the justices in their robes, gavels, constitutions, and other images that remind individuals of the things they like about the legalistic Court. Indeed, an image of a memorial may invoke various psychological reactions—such as sympathy—that are *not* positivity toward the Court. I believe that there are two points that assuage this concern. First, this should bias the results *against* significant findings. That is, if this image alters one’s level of, say, sympathy, it is not immediately clear how a sympathetic response would alter the degree to which one believes the institution to be just and independent from political meddling. Second, to learn that an image unlike others that prime positivity toward the Court has the same effect would be an interesting discovery. That is, a stimulus that is not overtly positive still invoking positivity would be a unique finding.

Given the “in real time” nature of this experiment, participants may have been exposed to many external factors. First, randomization assuages the concern that different groups were exposed to different stimuli outside of the experiment. Second, the panel nature of the surveys allows for the examination of within-effects, meaning the treatments detailed above were intended to prime particular pieces of information to which individuals were likely exposed before treatment. Finally, the enormous amount of media content that spoke to both the legal and political importance of the vacancy helps increase the external validity of these treatments. For instance, similar to the political treatment, there were several articles detailing the potential for a swing in Court ideology following an appointment by President Obama (Hirshman 2016), as well as the political nature of the obstructionist behavior of the Senate (Shear and Steinhauer 2016; Parlapiano and Sanger-Katz 2016). Consistent with the legal treatment, news snippets appeared only hours after Scalia’s death regarding the legal implications of a 4-4 tie on the Supreme Court (Victor 2016). Finally, even the judicial symbols photograph that some respondents viewed appeared in a major news outlet (de Vogue and Scott 2016). What is more, a representative sample of Americans indicated above-average exposure to the vacancy.⁶

After exposure to the treatment, subjects were asked to complete the Gibson, Caldeira, and Spence (2003a) diffuse support battery. These questions ask respondents to indicate their level of agreement on a 5-point scale with statements such as “The U.S. Supreme Court gets too mixed up in politics” and “We ought to have a stronger means of controlling for actions of the U.S. Supreme Court.” The variable of interest—diffuse support or legitimacy—is a multi-item additive index of these questions.⁷

The hypotheses stemming from these treatments are as follows:

- Exposure to the legal vignette will *increase* wave 2 legitimacy relative to wave 1.
- Exposure to the political vignette will *decrease* wave 2 legitimacy relative to wave 1.
- Exposure to judicial symbols will *increase* wave 2 legitimacy relative to wave 1.

Of course, the legal and judicial symbols hypotheses are intended to prime positive attitudes consistent with positivity theory (Gibson and Caldeira 2011; Gibson, Lodge, and Woodson 2014). Additionally, given that both the legal and symbols treatments are expected to increase legitimacy, there is an expectation that exposure to both will produce a larger effect than exposure to only one. Again, these relate directly to the arguments above regarding the pre-nomination and non-case event nature of these data. In other words, there is evidence that individuals behave in the ways described in the legal importance

⁶See <http://www.people-press.org/2016/02/22/majority-of-public-wants-senate-to-act-on-obamas-court-nominee/>.

⁷The full complement of questions and the scale’s psychometric properties can be found in the supplemental materials.

and judicial symbols hypotheses for very specific circumstances. It is important to determine whether members of the public react differently in the context of the abnormal 2016 vacancy.

In converse to the legal and judicial treatments, the political vignette is intended to conjure negative attitudes about a political Court and the perceived lack of procedural justice (Baird and Gangl 2006; Christenson and Glick 2015). Indeed, Americans have a distaste for partisan politics (Harbridge, Malhotra, and Harrison 2014). Therefore, because the partisan politicking was greater than normal—even considering the increasing hostility and reliance on political predispositions during these events (Epstein, Lindstadt, Segal, and Westerland 2006; Farganis and Wedeking 2014)—and the understanding that this may be the “new normal” in confirmation politics, the distaste may have been particularly pronounced, and therefore reflect on institutional support, during the 2016 vacancy.

Furthermore, regarding potential heterogeneity of treatment effects, there is a clear expectation of differences across party lines. Again, this stems from evidence that winners and losers react to Court outcomes in different ways (Gibson, Lodge, and Woodson 2014). Where previous research investigates the degree to which one will accept a decision in a single case—a tangible outcome—here, I adopt these hypotheses to determine the degree to which one alters how supportive she is of the institution that is expected to undergo a first-in-a-generation shift. While I do not necessarily argue that the psychological reactions to a single case versus a fundamental political alteration are the same, the expected outcomes are similar. The hypotheses are as follows:

- Those expecting to lose on policy grounds (i.e., Republican identifiers) will *decrease* wave 2 legitimacy relative to wave 1.
- Those expecting to win on policy grounds (i.e., Democratic identifiers) will *increase* wave 2 legitimacy relative to wave 1.

Finally, regarding political perceptions, the same arguments that underlie the initial hypotheses presented above apply here. That is, the circumstances of the 2106 vacancy offer a unique context in which to test prevailing theories of public attitudes toward the Supreme Court. Furthermore, examining whether positivity-inducing or negativity-inducing sentiments can alter how political—as opposed to legalistic—the institution is can offer useful insights into the stability and meaning of that belief. Hypotheses are as follows:

- Exposure to the legal vignette will *decrease* wave 2 politicization relative to wave 1.
- Exposure to the political vignette will *increase* wave 2 politicization relative to wave 1.
- Exposure to judicial symbols will *decrease* wave 2 politicization relative to wave 1.

Much like for the diffuse support hypotheses above, the interaction of legal and symbolic treatments is expected to impact the degree to which respondents perceive the Court to be political in a synergistic manner, meaning those exposed to both are expected to reduce perceived politicization to a greater degree than those exposed to just the legal vignette.

Experimental Evidence

Because the experimental treatments appear in a single cross-section of a panel study, and because a major Court event occurred naturally in between two waves, I am able to exploit both the cross-sectional and longitudinal nature of these data and determine if individuals differ in their assessments of the Court before and after Justice Scalia’s death (i.e., before and after a sudden vacancy). Figure 1 displays within-subjects difference in means tests for each of the experimental treatment conditions.⁸ Within each column, the closed circle to the left represents the value for the first survey wave, and the closed square to the right represents the value for the second survey wave; vertical bars are 95 percent confidence intervals around those values, and annotations at the bottom refer to significance values for the relationship above. Note that an overlap in confidence intervals does *not* necessarily denote the lack of a statistically significant relationship (see Bolsen and Thornton 2014).

I begin with a brief discussion of across-treatment effects (i.e., a comparison of the square plotting symbols against each other). There are no systematic differences between those in the control group

⁸Shapiro-Wilk tests place normality into question. However, as is shown in the supplemental materials, nonparametric testing yields similar statistical and identical substantive results. As such, parametric *t*-tests are presented due to ease of interpretation.

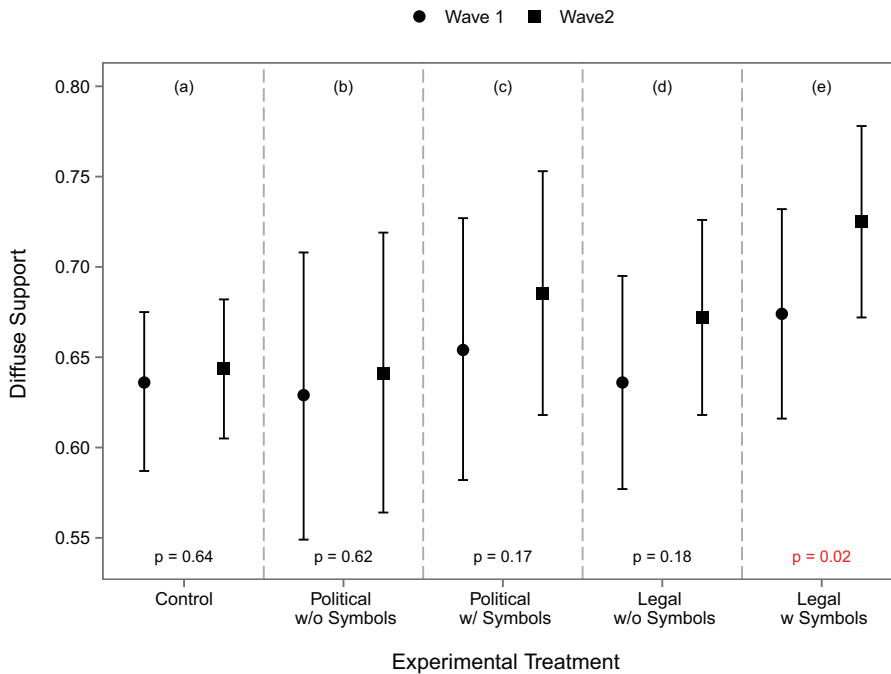


Figure 1. Dotplot of paired difference in means tests across experimental treatment. Each column, separated by vertical dotted line, contains a pair of plotting symbols which represent mean diffuse support response (0-1 scale) for those who received the treatment listed on the x-axis; within each column, closed circle represents mean support for wave 1 & closed square represents mean support for wave 2. Vertical bars are 95 percent confidence intervals around mean estimates. Annotations at the bottom of each column are p -values for those relationships. Red annotation denotes $p < 0.05$ with respect to a two-tailed test.

(column a) and those in either the political without symbols group (column b) or political with symbols group (column c). One speculative reason for such a finding may be a media environment rich in both legal and political stories regarding the vacancy producing counterpoising effects. Regardless, this null relationship between the political treatment and diffuse support is consistent with previous findings (e.g., Nicholson and Howard 2003). There is suggestive evidence (i.e., $p < 0.10$) that the average response for legal with symbols is greater than the average response for legal without symbols. But most importantly, there is a statistically significant and substantively large difference between legal symbols and the control group. This indicates a very powerful effect of symbols. Viewing the image of the Supreme Court bench draped in cloth moved the average response from 0.65 to 0.72 on the diffuse support scale, about a 12 percent increase. Diffuse support should proliferate when information regarding the importance of the Court in providing procedural justice is disseminated; this should also hold true for viewing judicial imagery that invokes psychological attachments to the Court. This is precisely what is borne out in the data. The size of the effect is a propitious normative finding. Judicial symbols may be indispensably connected to perceptions of procedural justice and, thus, legitimacy.

Moving to examine within-subjects effects, column (a) of Figure 1 demonstrates perhaps the most noteworthy relationship: the stability of diffuse support for the control group. Succinctly, in the absence of treatment primes, a sudden and politicized vacancy *does not* appear to impact the amount of support one offers the Court. Despite ubiquitous media coverage of both the legal and political importance of the vacancy, support for the Court does indeed appear to be a diffuse, durable characteristic. More concisely, Scalia's death did not seem to influence how people felt about the Supreme Court and its ability to be a just and judicious body. Normatively, this is an encouraging finding. The Supreme Court, which relies on a bank of benevolence in order to expect compliance with its rulings, does not appear to lose purchase due to events outside of its control. This evidence, which extends previous findings in the Court decision context to the vacancy context, is decidedly consistent with positivity theory and corroborative of many previous findings (e.g., Gibson and Caldeira 2011).

This null result for the control group also provides reason to be optimistic about the remaining experimental treatments. Because the experiment is embedded in the second panel, which occurred after Scalia's death, there are two potential sources of change in diffuse support: (1) the acquisition of information in the real world or (2) the experimental treatments. The null result for the control group casts doubt on the first option, indicating that treatments are the likely cause of any movement in attitudes. This is particularly important for treatments that were present, but that rivaled one another, in nature. In such an instance, priming certain considerations may provide insight into the effects of treatments that occur in nature.

Moving to the political conditions in columns (b) and (c), there is no statistical effect of priming political considerations. Individuals who considered the Supreme Court vacancy in terms of the potential shift in Court policy outcomes following a President Obama nominee, and Senate Republicans' intense opposition to such a nomination, were steadfast in their ascriptions of legitimacy across both time points. Here, exposure to the idea that the elected branches are using the Court for political gain does not reduce individual levels of diffuse support. Countering expectations, this holds true for those who viewed judicial symbols as well, although there is a small, statistically insignificant effect. This builds on evidence that individuals are uncompromising in their attitudes toward the Court, even when told the behavior of the justices was political (Nicholson and Howard 2003; Baird and Gangl 2006). Here, politicization of the Court by the elected branches has a similarly null effect.

Finally, I turn to the legal conditions. First, countering expectations, those who were primed to contemplate the Supreme Court vacancy in terms of the legal importance of creating binding precedent and staving off unequal application of the law, but who did not view judicial symbols (column d), were staunch in their ascription of diffuse support. Again, there was a small but insignificant effect. However, the legal treatment, when coupled with judicial symbols (column e), produces a statistically significant positive change in the stated level of diffuse support. The effect of symbols on those in the legal treatment is greater than the effect of the legal treatment alone. Exposure to these treatments moves individuals, on average, from legitimacy scores of 0.67 to 0.73, nearly an 8 percent change. In other words, not only do symbols matter, they can intensify already positive feelings toward the Supreme Court. Priming these considerations can cause individuals to increase their level of diffuse support. This is consistent with extant research that shows viewing judicial imagery has a powerful positive effect on the amount of diffuse support one has for the Court (Gibson, Lodge, and Woodson 2014; Gibson and Nelson 2016).

Much like the control and political treatments evidence presented above, the legal symbols evidence extends previous findings to the vacancy context. In the event that the opportunity arises for people to reassess their support for the Court, and this opportunity is independent of the Court's own actions, judicial symbols can thwart and even overpower outside attempts to paint the Court as political. While it cannot be said with certainty that there is *no* amount of external politicizing of the Court that can reduce legitimacy, it is clear that that amount is great. More pointedly, if the political hostilities characterizing the 2016 vacancy were insufficient to politicize the Court, what would be sufficient? When the Court is being used as a means to a political end, omnipresent judicial symbols are sufficient to maintain public support.

Policy Losers and Diffuse Support

While the findings above cast a positive light on the relationship between the public and the Supreme Court, the results may not be analogous across all political demographics. That is, these treatment effects may be heterogeneous. Again, I suspect that there will be heterogeneous treatment effects because Democrats are "policy winners" in regard to the 2016 vacancy. Figure 2 examines movements in within-subject legitimacy scores for Democrats (closed circles) and Republicans (closed squares) for each experimental condition.⁹

⁹Subsetting the sample in this manner produces two points of concern. First, it may harm randomization. Information in the supplemental materials demonstrates that Democrats and Republicans in the treatment groups presented here do not differ on potentially meaningful covariates. Thus observed differences are likely due to the way counter-partisans intake the information from the experimental treatments. Second, sample sizes rapidly shrink. Here, the number of independent identifiers within each experimental group was very small. Therefore, I only look at differences among Democrats and Republicans. Even still, the samples sizes are small. Should certain assumptions hold (e.g., random sampling and normality), the t-distribution is still valid. Non-parametric tests, which do not rely on these assumptions, produce the same results. This information can also be found the supplemental materials.

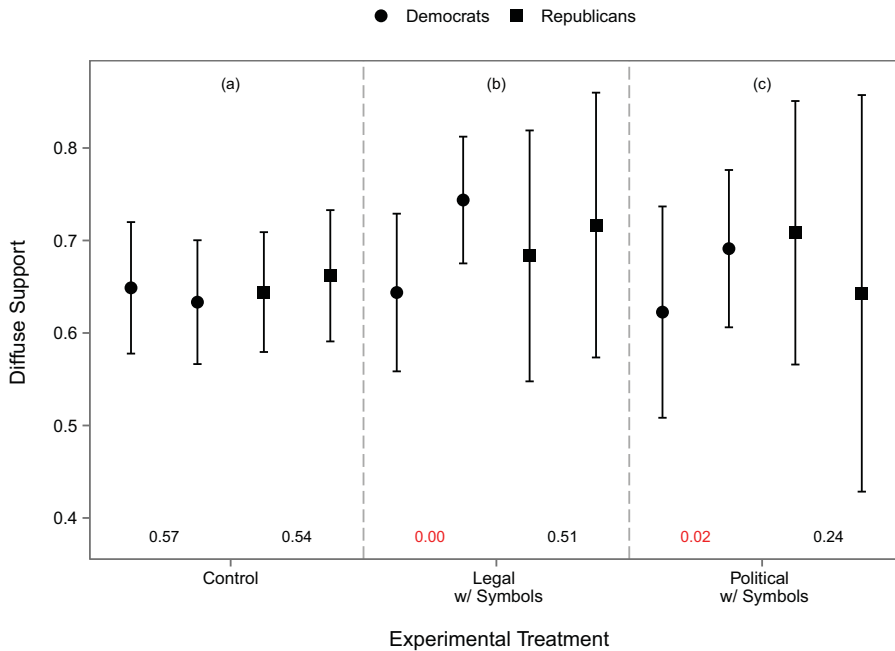


Figure 2. Dotplot of paired difference in means tests across partisan self-identification. Each column, separated by a vertical dotted line, contains mean estimates for each group; closed circles represent Democrats and closed squares represent Republicans. Within each column, for each party identification, the symbol on the left is mean support for wave 1 & symbol on the right is mean support for wave 2. Vertical bars are 95 percent confidence intervals around mean estimates. Annotations at the bottom of each column are p -values with respect to a two-tailed test for those relationships.

Many of the findings when stratifying by party identification are identical to those found above. For instance, there are no changes for the control group (column a). The results not displayed here—exposure to the legal treatment without symbols and political treatment without symbols—are equally null across party identification. This indicates that party differences do not alter diffuse support attitudes. That symbolic predispositions do not impact attitudes toward the Court, even when the contention surrounding the vacancy is partisan in nature, is encouraging evidence.

However, there are two treatment categories for which there are differences across parties. I begin with the legal treatment with symbols exposure (column b). Recall that above these treatments resulted in nearly an 8 percent change. Here, there is no effect for Republicans. However, legitimacy scores for Democrats who received both treatments move from 0.64 in the first wave to 0.74 in the second, a 15.5 percent change. This is consistent with the policy winners hypothesis presented above; there is no support for the policy losers hypothesis.

Next, I turn to the political treatment with symbols exposure (column c). Recall that above these treatments produced no significant changes. Here, too, there are no changes for Republicans. However, there is now significant movement for Democrats. These legitimacy scores move from 0.62 to 0.69, nearly an 11 percent change. Simply, even when people are provoked to consider a political Supreme Court—which may summon negative attitudes in regard to access to procedural justice and fair dispensation of the law—they increase their support when they recognize that the Court is (or may soon be) in their favor politically. However, much like the legal treatment, these effects are not present in the absence of judicial symbols. Again, this suggests that judicial symbols have the ability to reinforce already positive feelings or, alternatively, provide baseline positive feelings onto which other positive attitudes add on.

These are important findings. While there is evidence that judicial symbols help policy losers acquiesce to disagreeable Court outputs (Gibson, Lodge, and Woodson 2014), that evidence refers to the decisions context. This is suggestive evidence that when it comes to changing the demographics of the

Court—and possibly decades of policy outputs—symbols may comfort policy losers in that they do not decrease support and excite policy winners. While these findings are consistent with positivity bias—again, symbols do increase support and support never decreases—they offer nuance for its effects. We might expect policy losers to *decrease* their levels of support, but this is not borne out in the data. This speaks to the strong and important effect of preexisting support. What is more, given that the political treatment specifically invokes partisan cues (i.e., refers to Republican obstructionism), this evidence conforms to research identifying a relationship between partisan predispositions, explicit partisan cues, and support for the Court (Clark and Kesteliec 2015).

Beyond Support: Investigating Political Perceptions of the Court

Above, I demonstrate how—and for whom—a sudden vacancy impacts attitudes regarding diffuse support toward the Supreme Court. A theme that has run throughout the evidence is that it does not appear that the elected branches can make the Court appear more political, but such an assertion is difficult to assess based on null findings alone. Both survey waves collected data that can further examine this proposition empirically.

To measure perceptions of how political the Court is and its justices are, I ask respondents to report their level of agreement—from “strongly disagree” to “strongly agree”—with three items: (1) “Supreme Court judges are little more than politicians in robes,” (2) “The justices of the Supreme Court cannot be trusted to tell us why they actually decide the way they do, but hide some ulterior motives for their decisions,” and (3) “Judges may say that their decisions are based on the law and the Constitution, but in many cases, judges are really basing their decisions on their own personal beliefs.” The variable is an additive index recoded from 0 to 1 (1 = high belief that Court is political).¹⁰

As above, the question here asks whether a sudden vacancy—and the media portrayal thereof—can impact opinions regarding the Court. But, in this instance, it asks: can the partisan politicking of the elected branches succeed in making the Court appear more political in the minds of members of the mass public? If so, we would expect the Court politicization values for the second wave to be higher than the first. Again, the political contexts should make this outcome easily attainable. Figure 3 displays these results.¹¹

Beginning with the control group in column (a), there is no change. Much like above, this is important. It shows that these perceptions, which are generally stable, were not altered as a function of a chaotic media environment and atypical political event. And, perhaps most interestingly, no significant relationship exists for either political treatment category (columns b and c). Simply, receiving information regarding the political nature of Supreme Court vacancies does not appear to politicize the Court after a sudden vacancy, even when that vacancy was as fiercely political as the one to replace Scalia. Again, this is cause for normative optimism. If extra-judicial actors could succeed in politicizing the Court—and, perhaps, thereby decreasing perceptions of procedural justice and legitimacy—there may be no recourse by which to replenish the reservoir of goodwill. That is, if perceptions of the Court’s proper place in the political arena are not dictated by the Court itself, it is possible that it would experience difficulty in implementing public policy. It is not in question whether the vacancy was made political by the political branches, but to find no movement as a result of that politicizing speaks to the resilience of preexisting support.

Moving to the legal treatments, once again there is a statistically significant effect of the legal treatment with judicial symbols exposure (column e), although in this instance in the negative direction. Those exposed to these treatments believed the Court was *less* political, moving, on average, from 0.44 to 0.38, a -12 percent change. Considering the vacancy in terms of its legal importance, coupled with judicial symbols, can cause individuals to *reconsider* their position on whether the Court behaves politically. Once again, judicial symbols are a potent and persuasive source of Supreme Court power.

¹⁰This scale has nice psychometric properties Cronbach’s $\alpha_{t1} = 0.7524$; $\alpha_{t2} = 0.7697$.

¹¹Shapiro-Wilk tests indicate that these distributions are normal, satisfying an assumption of parametric difference in means tests. Therefore, no additional testing appears in the supplemental materials.

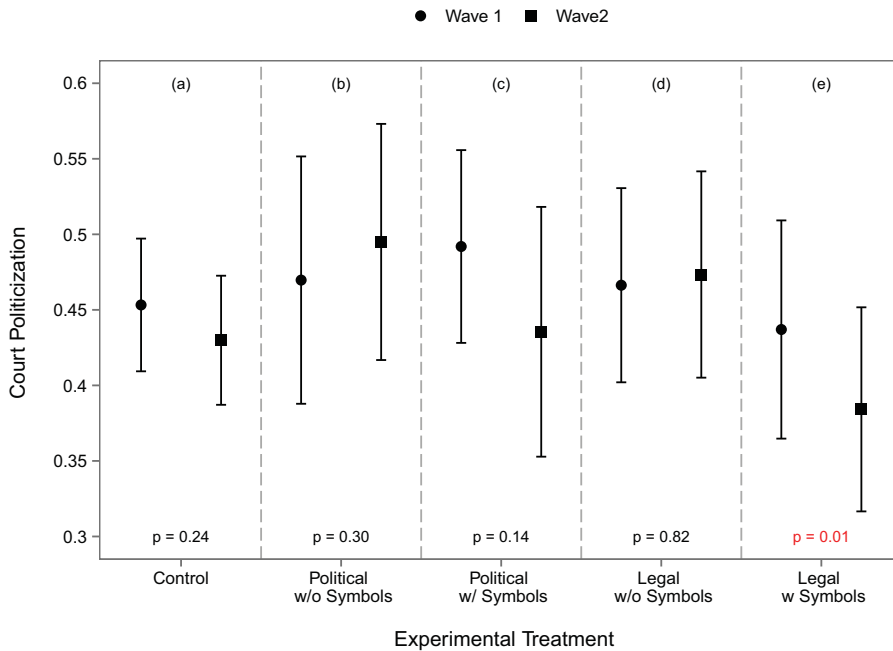


Figure 3. Dotplot of paired difference in means tests across experimental treatment. Each column, separated by a vertical dotted line, contains a pair of closed circles, which represent mean politicization response (0-1 scale) for those who received the treatment listed on the x-axis; within each column, the closed circle on the left is mean politicization for wave 1 & the closed square on the right is mean politicization for wave 2. Vertical bars are 95 percent confidence intervals around mean estimates. Annotations at the bottom of each column are *p*-values with respect to a two-tailed test for those relationships.

Support for the Court and the degree to which one believes it to be political are not two ends of a spectrum. That is, one may precede the other, or they may both be subject to alterations simultaneously. How they work in conjunction may be important, and to find that politicization can be experimentally manipulated may offer new insights into how judicial symbols and other positivity inducing stimuli work. While procedural justice is related to legitimacy (see Tyler 2006) and symbols relate to legitimacy and perceptions of legality, perhaps symbols moderate the perceptions of how political the Court is behaving, which then alter the propensity to be supportive of the institution (see Gibson, Lodge, and Woodson 2014). These data cannot say, but the manipulation of politicization should encourage continued research into the psychology of support.

Discussion

Using unique data collected via a fortuitously timed survey, I was able to answer questions regarding how a major non-case Court event—specifically, a sudden and highly political vacancy—and media portrayals thereof impacted public support for the Court. First, support begets support. Those exposed to no experimental treatments remained resolute in their apportionment of legitimacy. Those who read the legal prime—which detailed the importance of having a full complement of justices in order to avoid uneven dispensation of justice—also exhibited no changes in the allocation of legitimacy, except when also exposed to a photograph of the Supreme Court bench and the adornments honoring Justice Scalia. Individuals consistently attribute to the Court more support after exposure to the legal treatment coupled with judicial symbols than before. In other words, the effects of these treatments—particularly symbols—are persistent, powerful, and legitimating.

These effects were not uniform across all political demographics, however. Democrats alone were likely to be affected by legal symbols; they increased support when viewing symbols for both the legal and political treatment groups. These results suggest that policy winners are more highly susceptible to

the legitimating power of symbols. I argue that those who anticipate repeated policy loss are indeed comforted by judicial symbols (they do not reduce support) and that symbols multiply the positive affect of those who anticipate repeated policy victory. Finally, exposure to the legal treatment with judicial symbols reduces how political one believes the Court to be. Despite obvious and undeniable politicizing of the Court by the elected branches, people describe the Court as *less* political when encountering judicial symbols.

Again, the evidence is clear: support precipitates support, even when taking into account the hyperpolarization and political gamesmanship that characterized the vacancy. Perhaps more importantly, when confronted with the idea that the legislature and executive are using a vacancy for political gain—a circumstance that may cause individuals to perceive the Court as being unable to provide justice evenhandedly (e.g., Baird and Gangl 2006)—the results here suggest that individuals are no more or less likely to deem the Court legitimate relative to their prior assessments. Justice Scalia—who, despite some uncouth celebration following his death (Sawyer 2016), was memorialized as an “intellectual giant” (Blake 2016) with a “remarkable legacy” (*Washington Post* Editorial Board 2016)—was himself a polarizing figure. Indeed, his stature makes even more surprising that his death could not spur reductions in legitimacy. At the outset, one may have conjectured that it should have been effortless to diminish legitimacy in light of intense partisan and ideological divisions, the political one-upmanship between the Senate and President Obama, and Scalia’s noteworthiness that characterized the 2016 vacancy. Yet, despite these indictments, the evidence presented here suggests that support is indeed diffuse. More colloquially, it should have been easy to prime negative attitudes toward the Court—and subsequently reduce diffuse support—because politics in general are now so polarized, a polarizing figure died, and a game of political cat-and-mouse began immediately following the vacancy; it is remarkable to observe stability under these conditions. Not only do these circumstances speak to the resilience of diffuse support, but they also speak to the conservativeness of the tests that produced this evidence.

There are a number of interesting normative implications of these findings. The Supreme Court is frequently constrained by uncertainty regarding reception to its decisions. The justices can never be certain how the public or other governmental actors will receive their decisions or if those decisions will be respected and enforced. Although certain characteristics of case outcomes can alter legitimacy (Zink, Spriggs, and Scott 2009; Christenson and Glick 2015), the Court has little recourse when events not of its own doing place it in the spotlight. Further, the Court has precisely zero influence regarding how the media chooses to portray these events.

Taking this into consideration, the findings presented here are normatively encouraging and corroborate the tenets of positivity bias and legitimacy theory (Baird 2001; Tyler 2007; Gibson and Caldeira 2009a). What is more, they expand the province to which these theories apply; positivity bias extends beyond the Court’s outputs. Again, Gibson and Caldeira (2009a) comment, “preexisting institutional loyalty shapes perceptions of and judgments about *court decisions and events*” (emphasis added). Heretofore, the evidence showing this to be true has largely regarded court decisions; the evidence here regards Court events, particularly events unrelated to Court activities. To wit, existing predispositions toward the Supreme Court are a robust source of continuing goodwill. These results indicate that little can be done to detrimentally impact the Court’s cistern of support and that subjection to information that highlights judicial imagery and the Court’s importance in deciding consequential legal questions can prove advantageous. The way that the public perceives the Supreme Court—a perception that is manipulable—can impact the legitimacy on which the Court relies to produce enforceable decisions.

The Supreme Court and its justices tend not to engage in public relations in a manner similar to the president or members of Congress. And while certain justices are more publicly outgoing than others (Black, Owens, and Armaly 2016), the Court is not institutionally equipped to frame salient events as it so chooses. As was the case following Scalia’s death, the elected branches can politicize salient Court events. To find that politicizing of the Court does not reflect on legitimacy, but that perceptions of legal procedure and judicial symbols do, provides an auspicious view of the relationship between the Court and the public. In other words, legitimacy appears to be institution specific. Thus, if delegitimation of

the Court is a political strategy in the separation of powers exchange, citizens—and the justices—can take solace in the fact that it does not appear to be an effective tactic.

There are, of course, limitations to this study. The student sample calls into question the external validity of the results. For starters, many who participated in this survey experiment were born in the mid-1990s; they did not experience turnover on the Supreme Court for much of their youth. Thus we may only be learning new information about college students. Furthermore, in their lifetime, the Scalia vacancy was the first where the presidency and Senate were controlled by different parties. Thus, responses may be a function of (1) witnessing the first vacancy as members of the political realm or (2) witnessing the first contested vacancy in their lifetime. However, I believe these concerns can be assuaged. First and foremost, I again turn to the arguments in Druckman and Kam (2011). Specifically, there is nothing deficient about student samples *on their own*. Druckman and Kam argue, “...when it comes to a host of politically relevant variables, student sample do not significantly differ from non-student samples.”

Second, the results here are consistent with what research using nationally representative samples has shown (e.g., Gibson, Lodge, and Woodson 2014), providing some additional confidence that the results are meaningful. Finally, I again point out a practical consideration; to the best of my knowledge, these are the only data that allow researchers to examine this phenomenon untainted by evaluation of a new nominee. While the reach of the data may be somewhat limited, they provide the sole insight into this crucial time in the replacement of a Supreme Court justice.

What these data cannot say, but future scholarship should build on, is the durability of these effects in regard to the Supreme Court. Are these top of the head considerations, where the consideration most recently encountered influences support? Or is exposure to judicial symbols a running tally, where the more exposure one has to them, the greater their level of support will be? Despite uncertainty regarding the lastingness of these effects, their results are clear: the public supports the Supreme Court, and that support is exclusively in the Court’s own hands.

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References

- Baird, Vanessa A. 2001. “Building Institutional Legitimacy: The Role of Procedural Justice.” *Political Research Quarterly* 54(2):333–354.
- Baird, Vanessa, and Amy Gangl. 2006. “Shattering the Myth of Legality: The Impact of the Media’s Framing of Supreme Court Procedures on Perceptions of Fairness.” *Political Psychology* 27(4):597–613.
- Bartels, Brandon L., and Christopher D. Johnston. 2013. “On the Ideological Foundations of Supreme Court Legitimacy in the American Public.” *American Journal of Political Science* 57(1):184–199.
- Black, Ryan C., Ryan J. Owens, and Miles T. Armaly. 2016. “A Well-Traveled Lot: A Research Note on Judicial Travel by U.S. Supreme Court Justices.” *Justice System Journal* 1–18.
- Blake, Meredith. 2016. “Stephen Colbert Pays Tribute to Supreme Court Justice Antonin Scalia.” *Los Angeles Times*. 16 February 2016. <http://www.latimes.com/entertainment/tv/showtracker/la-et-st-stephen-colbert-react-to-the-death-of-justice-antonin-scalia-20160216-story.html>.

- Board, Washington Post Editorial. 2016. "Antonin Scalia's Remarkable Legacy." *Washington Post*. 14 February 2016. https://www.washingtonpost.com/opinions/antonin-scalias-remarkable-legacy/2016/02/14/a845dfc2-d337-11e5-be55-2cc3c1e4b76b_story.html.
- Bolsen, Toby, and Judd R. Thornton. 2014. "Overlapping Confidence Intervals and Null Hypothesis Testing." *The Experimental Political Scientist* 4(1):12–16.
- Christenson, Dino P., and David M. Glick. 2015. "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy." *American Journal of Political Science* 59(2):403–418.
- Clark, Tom S., and Jonathan P. Kastellec. 2015. "Source Cues and Public Support for the Supreme Court." *American Politics Research*.
- Dahl, Robert A. 1957. "Decision-making in a Democracy: The Supreme Court as a National Policy-maker." *Journal of Public Law* 6(2):279–295.
- de Vogue, Ariane, and Eugene Scott. 2016. "Antonin Scalia to Lie in Repose at the Supreme Court on Friday." *The New York Times*. 17 February 2016. <http://www.cnn.com/2016/02/16/politics/antonin-scalia-bench-draped/>.
- Druckman, James N., and Cindy D. Kam. 2011. *Cambridge Handbook of Experimental Political Science*. New York: Cambridge University Press. chapter Students as Experimental Participants: A Defense of the 'Narrow Data Base'.
- Epstein, Lee., Rene Lindstadt, Jeffrey A. Segal Segal, and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2):296–307.
- Farganis, Dion, and Justin Wedeking. 2014. *Supreme Court Confirmation Hearings in the US Senate: Reconsidering the Charade*. University of Michigan Press.
- Gibson, James L., and Gregory A. Caldeira. 1992. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36:635–664.
- . 2009a. *Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People*. Princeton University Press.
- . 2009b. "Confirmation Politics and the Legitimacy of the US Supreme Court: Institutional Loyalty, Positivity Bias, and the Alito Nomination." *American Journal of Political Science* 53(1):139–155.
- . 2011. "Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?" *Law and Society Review* 45(1):195–219.
- Gibson, James L., Gregory A. Caldeira, and Lester Kenyatta Spence. 2003a. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47(2):354–367.
- . 2003b. "The Supreme Court and the U.S. Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33(4):535–556.
- Gibson, James L., Gregory A. Caldeira, and Vanessa A. Baird. 1998. "On the Legitimacy of National High Courts." *American Political Science Review* 92(2):343–358.
- Gibson, James L., and Michael J. Nelson. 2015. "Is the US Supreme Court's Legitimacy Grounded in Performance Satisfaction and Ideology?" *American Journal of Political Science* 59(1):162–174.
- . 2016. "Change in Institutional Support for the SU Supreme Court: Is the Court's Legitimacy Imperiled by the Decisions It Makes?" *Public Opinion Quarterly*.
- Gibson, James L., Milton Lodge, and Benjamin Woodson. 2014. "Losing, but Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority." *Law & Society Review* 48(4):837–866.
- Harbridge, Laurel, Neil Malhotra, and Brian F. Harrison. 2014. "Public Preferences for Bipartisanship in the Policymaking Process." *Legislative Studies Quarterly* 39(3):327–355.
- Hirshman, Linda. 2016. "If Republicans Block Obama's Supreme Court Nomination, He Wins Anyway." *Washington Post*. 13 February 2016. <https://www.washingtonpost.com/posteverything/wp/2016/02/13/if-republicans-block-obamas-supreme-court-nomination-he-wins-anyway/>.
- Kang, Min Jeong, Antonio Rangel, Mickael Camus, and Colin F. Camerer. 2011. "Hypothetical and Real Choice Differentially Activate Common Valuation Areas." *Journal of Neuroscience* 31(2):461–468.
- Krugman, Paul. 2016. "How America Was Lost." *The New York Times*. 14 February 2016. <http://www.nytimes.com/2016/02/15/opinion/how-america-was-lost.html?action=click&pgtype=Homepage&clickSource=story-heading&module=span-abc-region®ion=span-abc-region&WT.nav=span-abc-region>.
- LA Times Editorial Board. 2016. "Senate Republicans' Refusal to Consider Merrick Garland's Supreme Court Nomination is Dangerous Obstructionism." *Los Angeles Times*. 16 March 2016. <http://www.latimes.com/opinion/editorials/la-ed-garland-scotus-20160317-story.html>.
- Lithwick, Dahlia. 2016. "Chuck Grassley's Supreme Court Coup." *Slate*. 7 April 2016. http://www.slate.com/articles/news_and_politics/jurisprudence/2016/04/sen_chuck_grassley_attacks_the_supreme_court_john_roberts.html.
- Millhiser, Ian. 2016. "Senate GOP Can't Play Politics in Confirming President Obama's Pick for Justice Antonin Scalia's Replacement." *New York Daily News*. 14 February 2016. <http://www.nydailynews.com/news/politics/senate-play-politics-scalia-successor-article-1.2531013>.
- Nicholson, Stephen P., and Robert M. Howard. 2003. "Framing Support for the Supreme Court in the Aftermath of Bush v. Gore." *Journal of Politics* 65(3):676–695.
- Nicholson, Stephen P., and Thomas G. Hansford. 2014. "Partisans in Robes: Party Cues and Public Acceptance of Supreme Court Decisions." *American Journal of Political Science* 58(3):620–636.

- O’Hehir, Andrew. 2016. “Political Paralysis Is the New Normal: The GOPs Scalia Gamble May Be Suicidal, but Its Not Illogical.” *Salon*. 17 February 2016. http://www.salon.com/2016/02/17/political_paralysis_is_the_new_normal_the_gops_scalia_gamble_may_be_suicidal_but_its_not_illogical/.
- Parlapiano, Alicia, and Margot Sanger-Katz. 2016. “A Supreme Court With Merrick Garland Would Be the Most Liberal in Decades.” *The New York Times*. 18 February 2016. <http://www.nytimes.com/interactive/2016/02/18/upshot/potential-for-the-most-liberal-supreme-court-in-decades.html?hp&action=click&pgtype=Homepage&clickSource=image&module=photo-spot-region®ion=top-news&WT.nav=top-news>.
- Perr, Jon. 2016. “How Republicans Turned the Unprecedented into the New Normal.” *Daily Kos*. 21 February 2016. <http://www.dailykos.com/stories/2016/2/21/1486973/-How-Republicans-turned-the-unprecedented-into-the-new-normal>.
- Poole, Keith T., and Howard L. Rosenthal. 2011. *Ideology and Congress*. Vol. 1. Transaction Publishers.
- Salamone, Michael F. 2013. “Judicial Consensus and Public Opinion: Conditional Response to Supreme Court Majority Size.” *Political Research Quarterly*. 1065912913497840.
- Sawyer, Mark. 2016. “‘Hooray! Scalia’s Dead!’ A Man Who Seriously Injured the USA, the Country He Claimed to Love, Is Gone.” <https://www.tremr.com/msawpro/hooray-scalias-dead-a-man-who-seriously>.
- Scheb, John M., and William Lyons. 2001. “Judicial Behavior and Public Opinion: Popular Expectations Regarding the Factors That Influence Supreme Court Decisions.” *Political Behavior* 23(2):181–94.
- Shear, Michael D., and Jennifer Steinhauer. 2016. “More Republicans Say They’ll Block Supreme Court Nominee.” *The New York Times*. 15 February 2016. http://www.nytimes.com/2016/02/16/us/politics/more-republicans-say-theyll-block-supreme-court-nomination.html?_r=0.
- Terkel, Amanda. 2016. “GOP Senator Predicts Merrick Garland Will Be Confirmed This Year if Hillary Clinton Wins.” *Huffington Post*. 6 November 2016. http://www.huffingtonpost.com/entry/johnny-isakson-merrick-garland_us_581f7de3e4b0e80b02cab1a9.
- Tyler, Tom R. 2006. “Psychological Perspectives on Legitimacy and Legitimation.” *Annual Review of Psychology* 57: 375–400.
- . 2007. “Procedural Justice and the Courts.” *Court Review* 44:26–164.
- Victor, Daniel. 2016. “What Happens in a 4-4 Tie?” *The New York Times*. 13 February 2016. <http://www.nytimes.com/live/supreme-court-justice-antonin-scalia-dies-at-79/what-happens-in-a-4-4-tie/>.
- Zink, James R., James F. Spriggs, II, and John T. Scott. 2009. “Courting the Public: The Influence of Decision Attributes on Individuals’ Views of Court Opinions.” *Journal of Politics* 71(3):909–925.