SUPREME COURT SUPPORT AND THE LEGACY OF BUSH V. GORE

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ABSTRACT

Justice John Paul Stevens wrote that Bush v. Gore *would damage the U.S. Supreme Court's reputation by making it appear to be partisan. Twenty-five years later it is questionable whether the nation's confidence in the Court did indeed suffer. Also unclear is whether any single decision can shake the nation's confidence in the Court. We are concerned with the broader theoretical foundation of Supreme Court support. From where does Court support originate? Is it vulnerable? Does Court support derive from something deeper, such as concerns over fairness? Our goal here is to answer at least some of these questions. More specifically, our goal is to examine whether Court support is a function of policy agreement with the Court's decisions, the perceived fairness of the decision, or both.*

To address these questions, we employed a survey experiment that incorporated a conjoint experiment. We collected a nationally representative sample of over 2,000 adult respondents and asked them questions about their support for the Court under various conditions.

On one hand, the results confirm much recent research on specific support—that people support the Court, in part, based on whether they agree with its decisions on policy grounds. On the other hand, the results reveal something else that is relatively new and surprising—that perceived-fairness-through-process also influences Court support. In other words, at least a portion of Court support comes from the idea that the Court is fair and somehow above the nastiness of politics and the messy residue it leaves behind.

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INTRODUCTION

In Justice John Paul Stevens's *Bush v. Gore* dissent, he wrote: "Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law."[1] Stevens believed that by appearing partisan, the Court would damage its reputation. Twenty-five years later, and despite Justice Stevens's protestations, it remains unclear whether the nation's confidence in the Court did indeed suffer. (Nor, for that matter, is it settled just how much any single decision can influence Court support.) Some empirical studies suggest that *Bush v. Gore* soured public opinion on the Court; other studies find a minor effect only; and still others find no damage at all.[2]

For us, the important feature of Stevens's dissent is not whether *Bush v. Gore* itself decreased the Court's support—though that question is an important one. Rather, we are concerned with the broader question of Supreme Court support. Do single decisions affect Court support? If so, are people's responses due to their (dis)agreement with the policy consequences of those decisions, the process the Court employs to render them, or both?

This article unfolds as follows. In Part I, we discuss what scholars know about public support for the Court. We examine three different theories: what scholars have called the "positivity bias" theory; a second theory that Court support is driven by people's support for the policy the Court adopts; and a third theory that we test and call the

1. Bush v. Gore, 531 U.S. 98, 128-29 (2000) (Stevens, J., dissenting).

2. James L. Gibson, Gregory A. Caldeira & Lester Kenyatta Spence, *Measuring Attitudes Toward the United States Supreme Court*, 47 AM. J. POL. SCI. 354, 354 (2003) (stating that the Court's store of institutional legitimacy was sufficient to persuade people to accept the *Bush v. Gore* decision); Stephen P. Nicholson & Robert M. Howard, *Framing Support for the Supreme Court in the Aftermath of* Bush v. Gore, 65 J. POL. 676, 676 (2003) (finding that the effect of *Bush v. Gore* on support for the Court depended on how the decision was framed).

"perceived-fairness-through-process theory." We believe the public will evaluate the Court, at least in part, on whether it follows its standard procedures, and thereby appears "fair," or whether it deviates from normal procedures and looks unfair. While prior research has explored procedural justice and the effects of legal symbolism, our theory builds on and refines this work by isolating the public's perception of procedural regularity as a distinct factor in Court support. Rather than treating fairness as a vague or secondary concern, we explicitly test whether adherence to normal procedures—independent of ideological agreement—shapes public views of the Court.

In Part II, we describe the survey we conducted to examine how the public evaluates the Court and discuss the variables we employed to test the three theories. We also collected data to analyze whether the public holds Congress to the same standards, thus offering us an interesting institutional comparator. In Part III, we present the results of our findings. Finally, Part IV concludes.

So there is no confusion about our results, we provide them here: People do support the Court, in part, based on whether they agree with its decisions on policy grounds. At the same time, though, perceived-fairness-through-process also influences Court support. In other words, at least a portion of Court support comes from the idea that the Court is somehow above the nastiness of politics and the messy residue it leaves behind.

These findings address academic debates as well as current policy disputes. Legal academics hotly contest whether courts gather support because people agree with their decisions or because people have an underlying belief that courts are uniquely fair institutions.[3] Our results speak directly to that debate: both features matter. When the Court rules in ways that large majorities dislike, its support will take a hit.[4] Further, when it deviates from its normal procedures, it will incur setbacks.[5] And so, increased reliance on unusual procedures—particularly when the Court rules in ways that large majorities dislike—will seriously undermine Court support.

I. COURT SUPPORT

The United States Supreme Court must concern itself with public support. Most governing institutions in democratic republics rest on the foundation of popular sovereignty.[6] But the Court does not. The

3. *See infra* Part I (discussing the scholarly debate between Positivity Bias Theory and Policy Congruence Theory).

4. *See infra* Part III (presenting experimental results showing that policy incongruence significantly reduces both perceived fairness and Court favorability).

5. *Id.*

6. *See* THE FEDERALIST NO. 39, at 241 (James Madison) (Clinton Rossiter ed., 1961) (defining a republic as "a government which derives all its powers directly or indirectly from the great body of the people").

people select Supreme Court Justices indirectly through the nomination and confirmation process.[7] That indirect connection to the people could lead them to question whether to follow its decisions—and even to question its legitimacy. What's more, the Court cannot implement its decisions. It must rely on executive and legislative officials to perform that task—and those actors (who are elected) may not be eager to lend a hand.[8] Further, while Congress and the President often find themselves in front of cameras or on social media, where they explain their positions and decisions to the public, the Court renders its decisions in relative secrecy. Justices do not campaign on their opinions. So, few people actually read those opinions, which allows other actors (Congress, the President, interest groups, the media) to "define" the Court and influence its support.[9] Taking all this together means that if Justices wish to accomplish their goals, they must take seriously how they can acquire and maintain public support.

Scholars have examined the relationship between the Court and public support; indeed, this area of scholarship is vibrant and changing regularly as new experimental methods evolve and public opinion scholarship improves. At this point in time, the literature has coalesced around a couple different scholarly approaches (though, as we say, this is evolving). We address them here.

A. Positivity Bias Theory

Diffuse support refers to the public's reservoir of goodwill or loyalty toward the institution. It is not tied to any particular decision or outcome.[10] Rather, it is a deep-seated trust in the Court as an institution. Diffuse support leads people to accept or tolerate decisions with which they disagree because of a fundamental esteem for the Court's role and

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7. *See* U.S. CONST. art. II, § 2, cl. 2 (empowering the President to nominate, and with the advice and consent of the Senate, appoint Judges of the Supreme Court).

8. *See* THE FEDERALIST NO. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (noting that the judiciary "has no influence over either the sword or the purse" and "must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments").

9. *See* JAMES L. GIBSON & GREGORY A. CALDEIRA, CITIZENS, COURTS, AND CONFIRMATIONS: POSITIVITY THEORY AND THE JUDGMENTS OF THE AMERICAN PEOPLE 119-20 (2009) (demonstrating how interest group advertisements and media framing during the Alito confirmation affected public support); Gregory A. Caldeira, *Public Opinion and the U.S. Supreme Court: FDR's Court-Packing Plan*, 81 AM. POL. SCI. REV. 1139, 1139 (1987) (analyzing President Roosevelt's attempt to reframe the Court as obstructionist); Charles H. Franklin & Liane C. Kosaki, *Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion*, 83 AM. POL. SCI. REV. 751, 768-69 (1989) (showing how media and political elites interpreted *Roe v. Wade* for the public, polarizing opinion).

10. *See* DAVID EASTON, A SYSTEMS ANALYSIS OF POLITICAL LIFE 278-79 (1965) [hereinafter EASTON, SYSTEMS ANALYSIS]; David Easton, *A Re-Assessment of the Concept of Political Support*, 5 BRIT. J. POL. SCI. 435, 444-45 (1975) [hereinafter Easton, *Re-Assessment of Political Support*]. Easton introduced the distinction between diffuse and specific support, with diffuse support referring to generalized attachment to an institution beyond immediate outputs.

authority.[11] This is the case because diffuse support develops from long-term factors such as political socialization, ingrained democratic norms, and the Court's symbolic position as guardian of the rule of law.[12] Crucially, diffuse support tends to be durable and resilient: It does not evaporate after one or two unpopular rulings. As Easton famously explained, diffuse support forms a " 'reservoir of favorable attitudes or good will' " that helps people tolerate outputs (court decisions) to which they are opposed.[13] Indeed, decades of research find that most Americans continue to support the Supreme Court as an institution (the underlying reservoir of legitimacy remains intact) even when it hands down decisions they strongly dislike.[14] This high baseline of goodwill means that short-term controversies or unpopular cases typically do not damage public faith in the Court.

Diffuse support appears to exist because of what some scholars have referred to as "Positivity Bias."[15] Americans support the Supreme Court because they are taught that it maintains the rule of law. As a legal institution, its job is to enforce the law rather than to implement policy preferences or to represent constituents.[16] These underlying beliefs are activated later by legal symbolism. When people are exposed to information about the Court, the legal symbolism that saturates Court coverage activates positive associations and assumptions about how courts work.[17]

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11. *See* GIBSON & CALDEIRA, *supra* note 9, at 4 & n.4 (describing diffuse support as institutional loyalty or legitimacy that persists despite disagreement with specific decisions).

12. Easton, *Re-Assessment of Political Support*, *supra* note 10 (introducing the distinction between diffuse and specific support and noting its development through long-term political socialization and normative commitment); *see also* James L. Gibson & Gregory A. Caldeira, *Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court*, 71 J. POL. 429, 430-32 (2009) (finding that public perceptions of the Court, shaped in part by media and symbolic authority, contribute to institutional legitimacy).

13. Easton, *Re-Assessment of Political Support*, *supra* note 10, at 444 (quoting EASTON, SYSTEMS ANALYSIS, *supra* note 10, at 273) (defining diffuse support as a " 'reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed' ").

14. *See* Gregory A. Caldeira & James L. Gibson, *The Etiology of Public Support for the Supreme Court*, 36 AM. J. POL. SCI. 635, 635-37 (1992) (documenting substantial diffuse support for the Court); *see also* James L. Gibson et al., *Losing, But Accepting: Legitimacy, Positivity Theory, and the Symbols of Judicial Authority*, 48 LAW & SOC'Y REV. 837, 839-41 (2014) (showing that judicial symbols can sustain acceptance of disagreeable rulings).

15. *See* GIBSON & CALDEIRA, *supra* note 9, at 3 (defining "positivity bias" as the phenomenon where exposure to judicial symbols reinforces institutional legitimacy).

16. *See* James L. Gibson & Gregory A. Caldeira, *Blacks and the United States Supreme Court: Models of Diffuse Support*, 54 J. POL. 1120, 1121-22 (1992) (arguing that diffuse support for the Court among black Americans follows patterns similar to whites and noting that courts, unlike elected bodies, are viewed as counter-majoritarian and law-bound institutions).

17. Gibson et al., *supra* note 14, at 839-41 (showing that exposure to judicial symbols can strengthen positive orientations toward the Court); *see also* Gibson & Caldeira, *supra* note 12, at 430-32 (finding that media and informational cues shape public perceptions of the Court and its legitimacy).

Studies have found that when the Court issues unpopular decisions, these decisions do not produce a collapse in public support for the institution.[18] As such, the Supreme Court can withstand short-term political attacks. The Court will not lose diffuse support when it renders one, two, or even a series of unpopular decisions. The Court's armor is too thick, its institutional bank account too large to be diminished severely by such minor things.[19] Only a lengthy series of wrong-headed decisions or major exemplars of judges going rogue will suffice to erode judicial support and trust.[20] This explains why media representations of the Supreme Court as just another political body caused the Court to lose support from the people during the Samuel Alito nomination but the Court's single controversial decision in *Bush v. Gore* (2000) did not.[21] The upshot of this massive institutional loyalty is that even in cases where the Court rules against popular majorities, those majorities still support it.

B. Policy Congruence Theory

Whereas diffuse support refers to the overall climate, specific support refers to the daily weather. In other words, specific support is public support for the Court that is tied directly to the Court's performance and outputs—essentially, satisfaction or dissatisfaction with the Court's decisions and actions.[22] Specific support is often measured by public approval ratings or confidence in the Court at a given point in time. It tends to fluctuate with the political winds. And so, unlike diffuse support, specific support rises or falls in response to Court rulings. For example, when the Court issues a popular decision, approval among those who favor the outcome may spike; conversely, an

18. *See, e.g.*, Gregory A. Caldeira & James L. Gibson, *The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support*, 89 AM. POL. SCI. REV. 356, 357-59 (1995) (finding that diffuse support buffers courts against dissatisfaction with specific rulings); Gibson et al., *supra* note 14, at 860-61 (showing experimentally that judicial symbols may mitigate the negative effect of displeasing decisions on acceptance of the decision).

19. *See* Easton, *Re-Assessment of Political Support*, *supra* note 10, at 441-43; James L. Gibson & Michael J. Nelson, *Change in Institutional Support for the U.S. Supreme Court: Is the Court's Legitimacy Imperiled by the Decisions It Makes?*, 80 PUB. OP. Q. 622, 633-40 (2016) (concluding that the Court's reservoir of goodwill generally shields its legitimacy from unpopular decisions).

20. *See* Gibson & Nelson, *supra* note 19, at 624-25, 633-39; Gibson et al., *supra* note 14, at 839-41 (positing that only repeated or dramatic breaches would significantly erode diffuse support); Easton, *Re-Assessment of Political Support*, *supra* note 10, at 445 (arguing that diffuse support would only be depleted by prolonged or egregious negative performance).

21. *See* GIBSON & CALDEIRA, *supra* note 9, (finding that politicized media framing of the Supreme Court during the Alito confirmation fight led to a measurable drop in institutional support for the Court); *see also id.* at 136-38.

22. Easton, *Re-Assessment of Political Support*, *supra* note 10, at 438-40 (contrasting diffuse support with "specific support," which is support for the authorities based on satisfaction with their outputs).

unpopular decision can produce an immediate downturn in approval.[23] This type of support is more volatile and is closely linked to policy alignment—whether people agree with the Court's decisions.[24]

Recent polls seem to confirm that specific support turns on policy alignment. A fall 2024 Gallup poll revealed that seventy-two percent of Republicans but fifteen percent of Democrats approved of the Roberts Court.[25] Not so long ago, the respondents flipped positions. After the Supreme Court issued major rulings upholding the Affordable Care Act and affirming same-sex marriage in 2015, fully sixty-two percent of Democrats but only thirty-three percent of Republicans held a favorable opinion of the Court.[26] These differences mirror the prevailing ideological leanings of the Court's recent decisions.[27]

Recall that according to Positivity Bias Theory, perceptions of policy alignment should affect specific support but not diffuse support. But several recent studies contradict this conventional wisdom. Bartels and Johnston found that self-identified liberals who believed the Supreme Court was conservative—and self-identified conservatives who believed the Court was liberal—supported it less than those who believed the Court was ideologically similar to them.[28] Their analysis demonstrated that subjective ideological disagreement significantly diminishes the Court's legitimacy in their eyes.[29] This effect was

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23. *See* Anke Grosskopf & Jeffery J. Mondak, *Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of* Webster *and* Texas v. Johnson *on Public Confidence in the Supreme Court*, 51 POL. RSCH. Q. 633, 651 (1998) (finding that disagreement with specific Supreme Court decisions causes short-term declines in public confidence in the Court); Charles H. Franklin & Liane C. Kosaki, *Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion*, 83 AM. POL. SCI. REV. 751, 768-69 (1989) (observing shifts in opinion on abortion following Court decisions perceived as aligned or misaligned with public preferences).

24. *See* Kathryn Haglin et al., *Reevaluating Ideological Asymmetries in Specific Support for the Supreme Court*, RSCH. & POL., July-Sept. 2025, at 1, 1-2 (finding that citizens are less likely to approve of specific Supreme Court decisions when they perceive ideological distance); Joshua Boston & Christopher N. Krewson, *Public Approval of the Supreme Court and Its Implications for Legitimacy*, 77 POL. RSCH. Q. 835, 836-37 (2024) (suggesting that disagreement with Court decisions erodes specific support for the Court).

25. Jeffrey M. Jones, *Party Divisions in Views of Supreme Court Keep Ratings Low*, GALLUP (Oct. 3, 2024), https://news.gallup.com/poll/651527/party-divisions-views-supreme-court-keep-ratings-low.aspx [https://perma.cc/AME6-D5LD].

26. *Negative Views of Supreme Court at Record High, Driven by Republican Dissatisfaction*, PEW RSCH. CTR. (July 29, 2015), https://www.pewresearch.org/politics/2015/07/29/negative-views-of-supreme-court-at-record-high-driven-by-republican-dissatisfaction/ [https://perma.cc/87XM-YVRC] (reporting that shortly after the Court upheld the Affordable Care Act in *King v. Burwell* and affirmed same-sex marriage in *Obergefell v. Hodges*, Democratic approval of the Court rose to sixty-two percent, while Republican approval fell to thirty-three percent).

27. *Id.*

28. BRANDON L. BARTELS & CHRISTOPHER D. JOHNSTON, CURBING THE COURT: WHY THE PUBLIC CONSTRAINS JUDICIAL INDEPENDENCE 196-98 (2020) (finding that subjective ideological mismatch—when respondents perceive the Court's ideological stance as incongruent with their own—significantly undermines institutional support).

29. *Id.*

consistent across the political spectrum, showing that perceived ideological distance leads to reduced institutional support.[30] Additionally, their findings indicated that ideological perceptions were a more potent predictor of legitimacy judgments than traditional factors such as political knowledge or generalized trust in government.[31]

Similarly, examining the public's reaction to *National Federation of Independent Business v. Sebelius*,[32] Christenson and Glick discovered that people who learned from the decision that the Court was ideologically distant from them "saw it as less legitimate than before the decision."[33] For instance, conservatives surprised by Chief Justice Roberts's vote to uphold the ACA came to view the Court as less legitimate than they did before the decision was announced.[34] In the same study, Christenson and Glick observed that strategic behavior by the Justices—specifically, that Chief Justice Roberts may have switched his vote (from striking the Affordable Care Act to upholding it) to avoid political attacks from President Obama—also undermined perceptions of the Court's distinctiveness and legitimacy.[35] In a related study, Christenson and Glick examined respondents' support for the Supreme Court before and after its decisions in *Shelby County v. Holder*[36] and *United States v. Windsor*.[37] They found that people who held liberal views on voting rights supported the Court less after *Shelby County* (where the Court struck down a portion of the Voting Rights Act).[38] Those who held liberal views on same-sex marriage supported the Court more after *Windsor* (where the Court struck down the federal Defense of Marriage Act).[39] The opposite was true among those who held conservative positions.[40]

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30. *Id.*

31. *Id.*

32. 567 U.S. 519 (2012).

33. Dino P. Christenson & David M. Glick, *Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy*, 59 AM. J. POL. SCI. 403, 410 (2015) (finding that conservatives who updated their view of the Court to be more liberal after the ACA decision showed reduced legitimacy attitudes).

34. *Id.* at 409 (finding that fifty percent of Republicans dropped their legitimacy evaluations after the decision).

35. *Id.* at 404, 414-15 (observing that learning of Chief Justice Roberts's alleged strategic vote-switching to uphold the ACA reduced perceptions of the Court as a principled, nonpolitical institution).

36. 570 U.S. 529 (2013).

37. 570 U.S. 744 (2013).

38. *See* Dino P. Christenson & David M. Glick, *Reassessing the Supreme Court: How Decisions and Negativity Bias Affect Legitimacy*, 72 POL. RSCH. Q. 637, 641-43 (2019) (finding that people who held liberal views on voting rights supported the Court less after *Shelby County*); *Shelby County*, 570 U.S. at 556-57.

39. *See* Christenson & Glick, *supra* note 38 (finding that liberals supported the Court more after *Windsor*); *Windsor*, 570 U.S. at 775.

40. *See, e.g.*, Neil Malhotra & Stephen A. Jessee, *Ideological Proximity and Support for the Supreme Court*, 36 POL. BEHAV. 817, 834-36 (2014) (finding that as the perceived ideological distance between a citizen and the Court increases, support for the Court decreases);

Taken together, the traditional literature on Court support finds that overall institutional loyalty is deep and resistant to sudden changes. Although people may find the Court disagreeable at times, they do not find it illegitimate. On the other hand, recent studies find changes in *both* specific short-term support and diffuse long-term support for the Court based on agreement with its decisions. What is clear, though, is that diffuse support is not absolute. Repeated unpopular decisions could damage the Court's institutional loyalty. As one study suggests: "judicial carelessness with public opinion might diminish the Court's legitimacy."[41] Even the most cited scholars of diffuse support admit: "A few rainless months do not seriously deplete a reservoir. A sustained drought, however, can exhaust the supply of water."[42] It is even possible that a significant ruling could harm the Court's diffuse support.

If policy agreement with specific decisions can influence short-term (and perhaps even longer-term) Court support, it seems reasonable to believe that other factors attached to specific decisions might also influence short-term (and perhaps even longer-term) Court support. Indeed, if the Court ignores some of its core legalistic features in specific cases, we suspect its support will decline. This line of thinking leads us to wonder whether people also support the Court based on *how it arrives at its decisions*. It is to this topic that we now turn.

C. Support from Perceived Fairness Through Process

In addition to *what* the Court decides, people likely also care about *how* the Court decides it. One study argues that procedural theories predict people will focus on how decisions are made, not just on the decisions themselves, when making evaluations of fairness.[43] After all, most people expect decisionmakers to be honest and to reach their decisions based on objective information.[44] These concerns surely influence how people evaluate courts. People are led to believe that courts "are different" from the political branches because they operate by a

see also VALERIE J. HOEKSTRA, PUBLIC REACTION TO SUPREME COURT DECISIONS 6-8 (2003) (summarizing evidence that people's approval of the Court can shift in response to agreement or disagreement with specific rulings).

41. Ryan C. Black, Ryan J. Owens, Justin Wedeking, & Patrick C. Wohlfarth, *The Influence of Public Sentiment on Supreme Court Opinion Clarity*, 50 LAW & SOC'Y REV. 703, 708 (2016).

42. Gibson et al., *supra* note 2, at 365.

43. *See* Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 26-27 (2007) (arguing that people evaluate legal authorities more on the fairness of their decisionmaking process than on whether they win or lose, consistent with procedural justice theory).

44. *See* Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCH. 375, 378-80 (2006) (identifying neutrality, objectivity, and lack of bias as central components of perceived procedural justice, and noting that people expect decisionmakers to act honestly and base their decisions on objective information).

series of fair rules and processes.[45] The public tends to "extend legitimacy to the Supreme Court . . . under the belief that judges exercise their discretion in a principled and sincere fashion."[46]

Empirical research confirms the argument that public support increases when decisions appear to be products of extant rules or procedures rather than personal predilections. For example, Baird and Gangl find that "the presence of legal guidelines driving the outcome . . . is the source of the perception of fairness."[47] Research indicates that public support increases when decisions appear to be grounded in precedent rather than in the Justices' personal preferences.[48] Another study examined Court support as a function of the judicial philosophy employed in a case as well as its outcome. It found that even when the Court renders an agreeable decision, people are less supportive when the Court arrives at that decision using a judicial philosophy—such as originalism or living constitutionalism—that respondents dislike.[49] Ramirez finds that under some conditions, the effects of procedural justice are greater on those who agree with a Court decision than those who disagree with it.[50] Ramirez examines public approval of the Supreme Court as a function of respondents' policy agreement with the Court's decision, whether the respondents received a treatment via a newspaper story which called the Court's opinion fair or unfair, and the respondents' perceptions of procedural justice in the case.[51] He finds that the Court takes a hit from winners who disliked its procedures and from losers who disliked its procedures.[52]

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45. *See* James L. Gibson et al., *supra* note 14, at 840.

46. *See* James L. Gibson & Gregory A. Caldeira, *Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?*, 45 LAW & SOC'Y REV. 195, 195 (2011).

47. *See* Vanessa A. Baird & Amy Gangl, *Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness*, 27 POL. PSYCH. 597, 597 (2006).

48. *See* James R. Zink et al., *Courting the Public: The Influence of Decision Attributes on Individuals' Views of Court Opinions*, 71 J. POL. 909, 923 (2009) (finding that decisions grounded in precedent increase perceived legitimacy relative to decisions based on personal preferences).

49. *See* Christopher N. Krewson & Ryan J. Owens, *Judicial Philosophy and the Public's Support for Courts*, 76 POL. RSCH. Q. 944, 952, 957 (2023); *see also* Albert H. Rivero & Andrew R. Stone, *The American Public's Attitudes Over How Judges Use Legal Principles to Make Decisions*, 13 POL. SCI. RSCH. & METHODS 167, 168 (2023) (showing that even when people agree with a ruling's outcome, disagreement with the Court's legal reasoning reduces support for the decision).

50. *See* Mark D. Ramirez, *Procedural Perceptions and Support for the U.S. Supreme Court*, 29 POL. PSYCH. 675, 691-92 (2008) (finding that support for the Court decreases more sharply among people who agree with the decision but disapprove of its procedures).

51. *See id.* at 678-84 (describing the experimental design measuring policy agreement, media framing, and procedural fairness).

52. *See id.* at 686 (finding that fair–unfair media framing did not directly alter Court support, but instead shaped perceptions of procedural justice, which then influenced support).

To be sure, some scholars find that people care about means—that is, process—in limited circumstances only, such as when procedures are clear versus ambiguous, or when people are on the losing versus the winning side of a case. When procedures are either clearly fair or clearly unfair, people evaluate courts by focusing on procedural fairness.[53] But when the fairness of a process is ambiguous, people's evaluations turn on their substantive preferences: "When there is no obvious correct answer to characterizing a procedure as fair or unfair," people are "more likely to incorporate their feelings about the policy into their assessments of the process that produced it."[54] As we stated above, Christenson and Glick found that Chief Justice Roberts's strategic behavior in *NFIB v. Sebelius*[55] strained the public's perception of the Court as a "different" kind of institution.[56] Another study examines whether people "set aside fairness" concerns when they win.[57] On one hand, the study finds that people who benefited from a judicial decision which employed unfair procedures were just as supportive of the Court as people who were told nothing about the fairness of the Court's procedures. On the other hand, the study also finds that people view the Court less favorably when (1) they cannot determine whether its unfair procedures benefited or harmed their group; and (2) when they believe the Court's unfair procedures harmed their group. In other words, people valued things like procedure when they lost but were happy to overlook procedural flaws when they won. Here, one could return to Justice Stevens's dissent in *Bush v. Gore*.[58] He made, in essence, a procedural argument against the Court's decision.

There is further reason to believe the public cares about process at the Supreme Court: the public actually appears to care about process *in Congress*, where fair procedures presumably are even less fundamental to the institution's identity. Recent work shows that the way in which Congress makes a law can indeed affect public approval of that law. Curry finds that when Congress uses unorthodox or

53. *See* David Doherty & Jennifer Wolak, *When Do the Ends Justify the Means? Evaluating Procedural Fairness*, 34 POL. BEHAV. 301, 309-12 (2012) (finding that people evaluate procedures more strongly when clearly fair or unfair and especially when they are on the losing side of a decision).

54. *Id.* at 305.

55. *See generally NFIB*, 567 U.S. 519.

56. *See* Christenson & Glick, *supra* note 33, at 415 (reporting that learning of Chief Justice Roberts's alleged strategic vote-switching to uphold the ACA reduced perceptions of the Court as a principled, non-political institution).

57. *See* Miles T. Armaly, *Loyalty Over Fairness: Acceptance of Unfair Supreme Court Procedures*, 74 POL. RSCH. Q. 927, 928, 936-37 (2021) (finding that "winners" largely overlook procedural unfairness, while "losers" react more strongly to it).

58. 531 U.S. 98, 128-29 (2000) (Stevens, J., dissenting) ("Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.").

procedurally suspect methods—such as bypassing committees or limiting debate—to pass legislation, the public approves of the resulting law less than if Congress uses " 'regular order' processes."[59]

But, why?

The answer may lie in the concept of "stealth democracy."[60] Hibbing and Theiss-Morse argue that citizens are averse to overt political conflict, prefer decisionmaking to occur out of sight, and still hold an idealized vision of governance with decisions made by non-self-interested actors following fair procedures.[61] Americans are more supportive of laws enacted through transparent and deliberative processes, even if they disagree with the substance of those laws.[62] When Congress holds open hearings, allows robust debate, and incorporates bipartisan amendments, the resulting legislation tends to enjoy higher public approval.[63] Conversely, when Congress resorts to rushed, closed-door negotiations or procedural maneuvers that bypass normal procedures—such as using "reconciliation" to avoid a filibuster—public support for the law and for Congress itself declines.[64] This phenomenon reveals a deeper truth about American attitudes toward governance: while citizens may view Congress as inherently partisan, they still expect it to operate with a veneer of procedural integrity. If procedures influence the public's views of Congress, it seems reasonable to believe they also influence their views of the Court.

Accordingly, we expect that people will evaluate their support for the Supreme Court as a function of the means by which it decides cases as well as the ends. More specifically, we hypothesize that people's support for the Court will increase when it employs normal procedures and will decrease when it employs abnormal procedures. We also expect that a respondent's support will increase as the perceived ideological distance decreases between the respondent and the Court's decisions. And because procedure may be particularly important to people's evaluations of the Court, we expect the means to matter more for judicial decisions than for congressional decisions.

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59. James M. Curry, *Congressional Processes and Public Approval of New Laws*, 72 POL. RSCH. Q. 878, 890 (2019).

60. JOHN R. HIBBING & ELIZABETH THEISS-MORSE, STEALTH DEMOCRACY: AMERICANS' BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK 134-35 (2002).

61. *Id.* at 32-34, 139-40.

62. *Id.* at 139-40 (finding that citizens want government to function without overt conflict but still value fairness).

63. Curry, *supra* note 59, at 886-89.

64. *Id.* at 881, 886-89.

II. TESTING THE THEORY: DATA AND METHODS

A. The Survey

We employed a pre-registered[65] survey experiment that incorporated a conjoint experiment. We collected a nationally representative sample of 2,121 adult respondents, using Lucid, an online survey platform that scholars frequently employ in top political science journals.[66] Coppock and McClellan demonstrate the external validity of Lucid samples, both demographically and experimentally.[67] To retain sample representativeness, we followed best practices and removed people who failed attention checks. We replaced them with demographically similar respondents.

We began the survey by asking respondents to indicate their level of support for:

- "Laws requiring strict sentencing for people convicted of serious felonies."
- "Procedures which make it easier for people to file for bankruptcy."
- "Allowing transgender women in women's sports leagues."

Respondents could report that they strongly opposed, somewhat opposed, neither opposed nor supported, somewhat supported, or strongly supported each policy.

B. The Method

We employed a conjoint analysis to evaluate support for the Court. We also evaluated support for Congress using the same conjoint design. For each institution, we asked respondents questions about (1) the Court or Congress reviewing or enacting a "three strikes and you're out" policy; (2) a law on bankruptcy; and (3) a law regarding the participation of transgender women in women's sports leagues. We randomized the order in which respondents observed the issues presented and we randomized whether they dealt first with Congress or Supreme Court profiles. Each profile contained five attributes. The first always

65. *See Process v. Substance*, WHARTON CREDIBILITY LAB (Oct. 19, 2023), https://aspredicted.org/VFR_JFS.

66. Miles T. Armaly & Adam M. Enders, *Who Supports Political Violence?*, 22 PERSPS. ON POL. 427, 430 (2024) (noting that the February 2021 survey, fielded via Lucid and comprising 1,100 U.S. adults, was not a probability sample but matched the broader population across key demographics).

67. *See* Alexander Coppock & Oliver A. McClellan, *Validating the Demographic, Political, Psychological, and Experimental Results Obtained from a New Source of Online Survey Respondents*, RSCH. & POL., Jan.-Mar. 2019, at 1, 1 (demonstrating the external validity of Lucid samples, both demographically and experimentally).

described the profile issue (three strikes, bankruptcy, or transgender law). We randomized the order of the remaining four profile attributes. Respondents evaluated each profile one at a time—that is, they did not compare one profile against another on the screen at the same time.

C. The Perceived-Fairness-Through-Process Questions

One profile attribute in which we are interested described whether the Court held oral arguments in the case and whether those arguments seemed one-sided. The available levels, or descriptions, for this profile attribute were:

- The Court decided the case without holding oral argument.
- During oral argument, Republican-appointed Justices and Democratic-appointed Justices challenged the liberal position as much as they challenged the conservative position.
- During oral argument, Republican-appointed Justices challenged the liberal position but did not challenge the conservative position.
- During oral argument, Democratic-appointed Justices challenged the conservative position but did not challenge the liberal position.

The profile attribute in which we are most interested focused on the Court employing normal procedures and consistency. Among the following, we told respondents that:

- The Court followed its normal procedures for resolving a case.
- The Court used its emergency powers to decide the case much quicker than usual.
- The Justices' votes were largely consistent with their previous voting patterns.
- The Justices' votes were not consistent with their previous voting patterns.
- The Court's decision followed past judicial decisions.
- The Court's decision broke with past judicial decisions.

D. Policy Agreement Questions

To account for the policy arguments and the fact that respondents might reveal greater support for the Court when it decides in a liberal, neutral, or conservative direction, we offered respondents different possible ideological outcomes, stating:

- Recently, the U.S. Supreme Court [struck down/examined/upheld] a law that said if a person is convicted of three serious

felonies, he or she would receive a mandatory sentence of life in prison without the possibility of parole.

- Recently, a U.S. Supreme Court decision [examined a law that details specific procedures people must follow/made it easier for people/made it harder for people] to file for bankruptcy.
- Recently, the U.S. Supreme Court [upheld/examined/struck down] a law that required women's sports leagues to allow transgender women to participate.

We accounted for subjective policy congruence with the outcome. For the three-strikes profiles, we coded respondents as ends-congruent when they (a) opposed (supported) "laws requiring strict sentencing for people convicted of serious felonies," and (b) the Court struck down (upheld) such laws. For transgender profiles, respondents were ends-congruent when they (a) opposed (supported) "allowing transgender women in women's sports leagues," and (b) the Court struck down (upheld) such laws. For bankruptcy decisions, they were coded as ends-congruent when they (a) opposed (supported) "procedures which make it easier for people to file for bankruptcy," and (b) the Court struck down (upheld) such laws.

E. Coalition Size, Sex, and Length of Opinion Questions

We also varied the profile in terms of the Court's "Coalition Size." The majority coalition could be large ("The opinion writer's decision was joined by a large majority of his colleagues") or small ("The opinion writer's decision was joined by a bare majority of his colleagues"). To determine whether respondents differentiated between opinions written by male or female judges, we included information (if subtly) on the Sex of the judge. We altered the language above to account for judge sex by varying "his colleagues" and "her colleagues." Finally, we varied the Length of the Court's opinion in the case. Respondents saw either that "The Court issued a one-page opinion to explain its decision" or that "The Court issued a lengthy opinion to explain its decision."[68]

F. The Dependent Variables

After we provided respondents with these randomly selected statements, we asked them whether they agreed or disagreed with the following statements: "The Court used a fair process," and

68. As with most conjoint designs, the realized aspects of the substance and process features are completely and independently randomized.

"Notwithstanding this decision, I generally feel favorable toward the Court."[69] With each of these statements, respondents displayed their agreement on a sliding scale of 1-10 (strongly disagree = 1, strongly agree = 10).

III. RESULTS

A. Dependent Variable 1: The Court Used a Fair Process

We estimate marginal means for each conjoint attribute, clustering standard errors by unique respondent.[70] Figure 1 analyzes respondents' perceptions of the decision as fair. The first thing to note is the tight band in which the results lie. The mean responses range from 5.83 to 6.64. That is, the Supreme Court treatments were somewhat muted. That is not to say, however, that there are no treatment effects. The figure reveals that respondents' *Subjective Policy Congruence with the Court's Decision* was the most important factor to influence whether they believed the Supreme Court's decision was fair. Respondents' mean perceived fairness score was 6.64 when they were ideologically congruent with the Court's decision. This score was larger than any of the other treatments in the conjoint. *Subjective Policy Incongruence* made respondents least likely (5.83) to say that the decision was fair. The causal effect of moving from subjective policy incongruence to subjective policy congruence was 0.82 ($p < .001$). A shift of 0.82 on a 10-point scale represents a meaningful change in how fair the Court's decision is perceived to be—comparable in size to the difference between agreement and disagreement with major national policy positions.

Our contribution to this discussion, recall, was to examine whether means-related factors influence Court support as well. They do, though to a lesser degree. When the Court used its normal process, the absolute level of perceived fairness was higher (6.22) than for any other condition other than one in which the respondents were ideologically congruent with the case outcome. Notably, respondents' perceptions of fairness decreased by 0.34 ($p < .01$) when the Court switched from using a normal process to invoking its emergency powers to resolve the case quickly. This change is roughly forty-one percent the size of the ideological (in)congruence effect. Other departures from the normal process also harmed the perceived fairness of the Court decision.

69. We also asked respondents whether the Court's decision "should be the final word on the matter" and "I support the Court's decision" but neither question generated any significant means-related differences.

70. *See* Jens Hainmueller et al., *Causal Inference in Conjoint Analysis: Understanding Multidimensional Choices via Stated Preference Experiments*, 22 POL. ANALYSIS 1, 1-29 (2014) (introducing a methodological framework for estimating causal effects from conjoint survey experiments and demonstrating its utility for analyzing multidimensional decisionmaking).

Changing from a normal process to one in which the Court broke with its past decisions decreased perceptions of the decision as fair by 0.27 ($p < .05$). A decision where the Justices' votes were largely inconsistent with previous votes reduced fairness by 0.24 ($p < .05$). The perceived fairness of decisions described as exhibiting consistent voting patterns or following past decisions were not statistically different than the perceived fairness of one that used a "normal process" ($p \approx .08$ and $p \approx .35$, respectively).

B. Dependent Variable 2: Feelings of Favorability Toward the Court

We observe similar effects on our next dependent variable, *Feelings of Favorability Toward the Court* (Figure 2). Once again, the mean values hover within a tight band, ranging from 5.68 to 6.24. As with perceptions of fairness, moving from a policy congruent decision to a policy incongruent decision has the largest effect, causing a decrease in favorability toward the Court of 0.55 ($p < .001$). While smaller than the fairness perception effect, a 0.55 change in favorability is still notable.

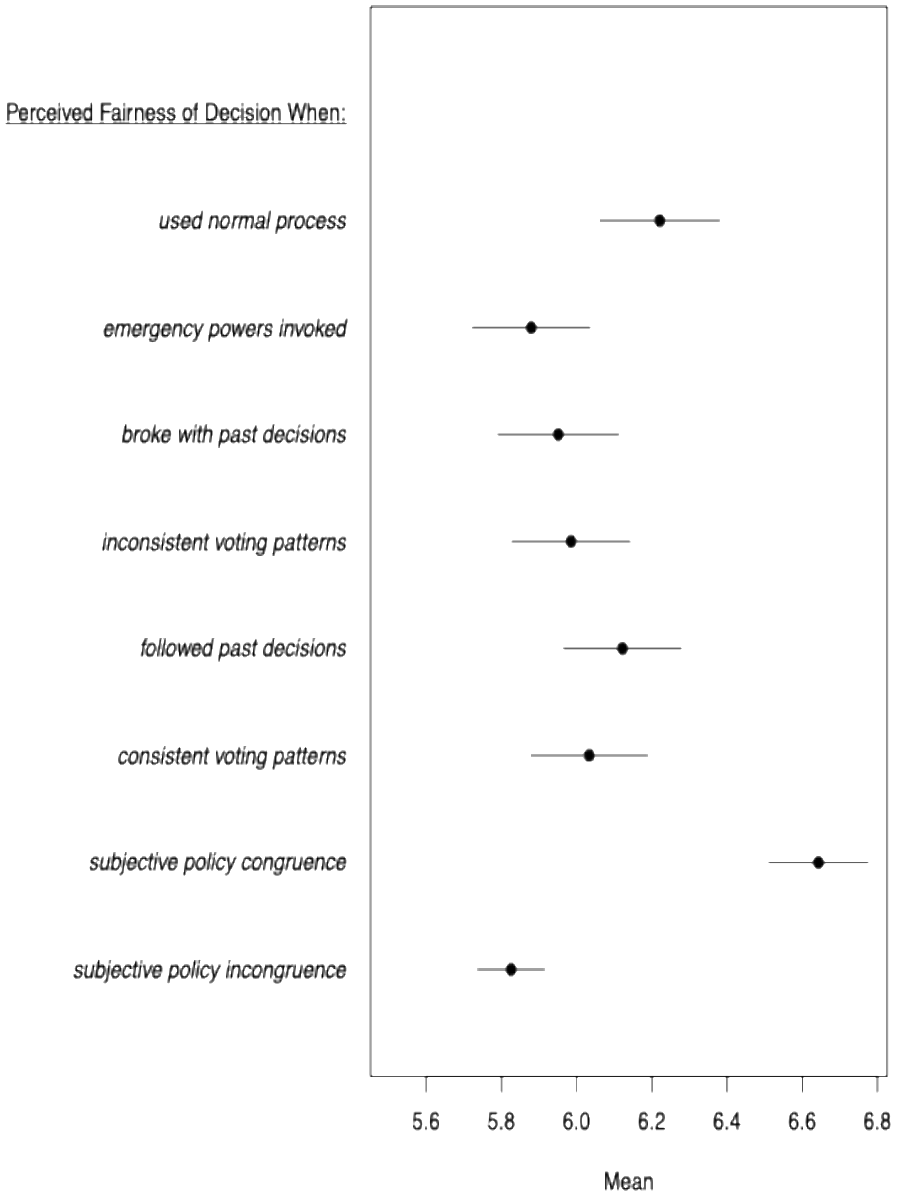


Figure 1: Mean levels of perceived fairness of Supreme Court decisions for different conditions associated with the means used to decide a case and for different conditions of subjective policy congruence with the case outcome. Horizontal lines represent 95% confidence intervals.

But deviations from its normal processes harm the Court too. The causal effect of invoking emergency powers, relative to using a normal process, is -0.22 ($p < .05$). The effects of our other key measures of an abnormal process—broke with past decisions and inconsistent voting behaviors—are even larger, with effects of -0.39 ($p < .001$) and -0.32 ($p < .01$), respectively. These latter effects are seventy-one percent and fifty-eight percent the effect size of policy congruence, respectively. Interestingly enough—but somewhat unexpected—following past decisions and employing consistent voting patterns negatively affected favorability toward the Court relative to the normal process ($p < .05$).

While the effect size of outcomes on Court favorability was larger than the effect size of process on Court favorability, the absolute levels of favorability across means and ends conditions were not very distinct. The Court exhibited similar high levels of favorability for decisions that used normal procedures (6.06) and for decisions that were policy congruent (6.24). In addition, respondents were nearly as unfavorable toward the Court when it invoked its emergency powers (5.83), broke with past decisions (5.67), and employed inconsistent voting patterns (5.74), as they were when it ruled against their preferred policy (5.67). Means matter, and means that are perceived as potentially abnormal reduce Court favorability.

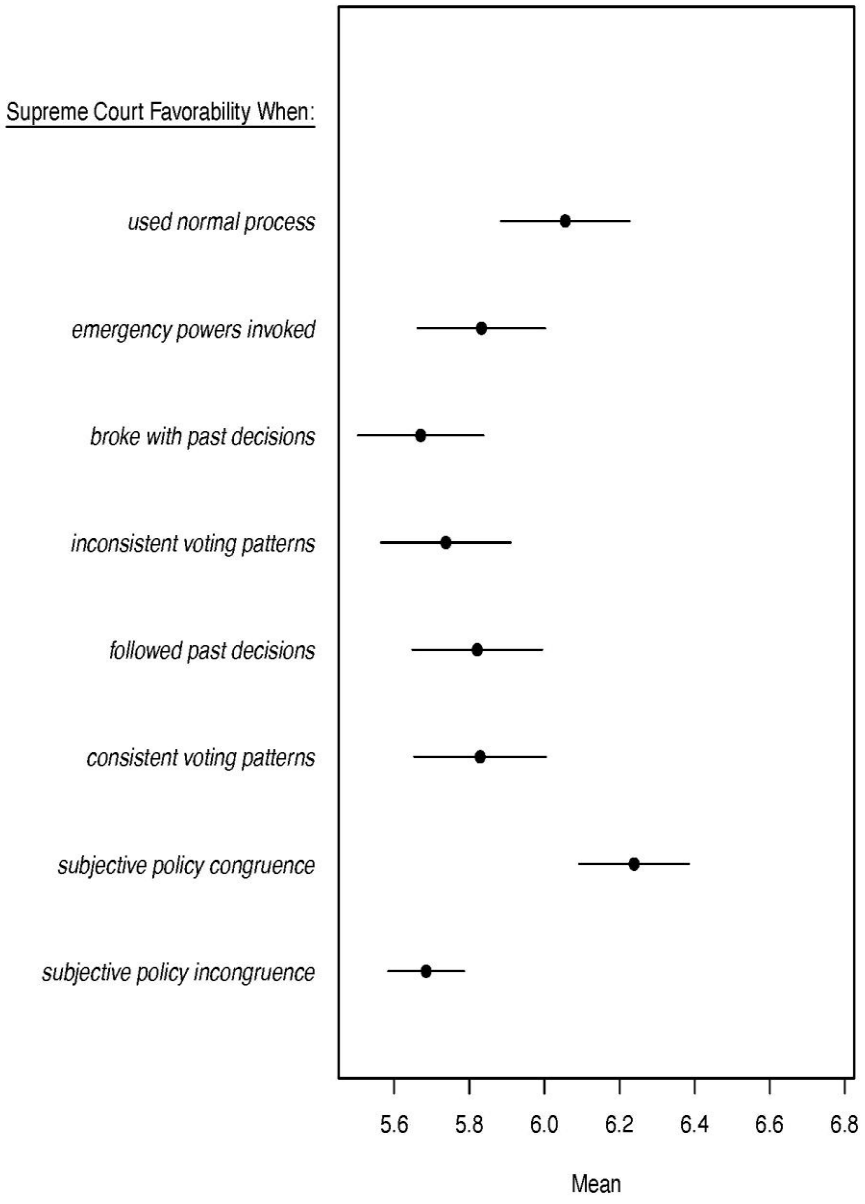


Figure 2: Mean levels of favorability toward the Court for different conditions associated with the means used to decide a case and for different conditions of subjective policy congruence with the case outcome. Horizontal lines represent 95% confidence intervals.

Previous research is mixed regarding whether process matters more to winners or to losers—or both. To test whether the effects of means are heterogeneous in this regard, we estimate the Average Marginal Component Effects (AMCEs) associated with means-related features (deviations from the normal process) when a respondent's preferences are incongruent with the decision and when the two are congruent.[71] Figure 3 plots the effects associated with deviations from the normal process under conditions of policy incongruence (circles) and policy congruence (triangles). Statistically significant AMCEs appear in black; statistically insignificant AMCEs appear in gray. The left column examines effects on respondents' perceptions that the Court used a fair process. The right column examines effects on respondents' favorability toward the Court.

We begin with the causal effects of means-related features when the Court rendered a decision that was incongruent with respondents' preferences (circles). Respondents who "lost" on policy grounds rated the perceived fairness of the Court's decision significantly lower when it employed its emergency procedures than when it followed its normal procedures for deciding cases. The same is true for respondents who lost on policy grounds when the Court broke with past practice. They rated the perceived fairness of the decision as lower under these conditions than when the Court followed its normal procedures. (Losing respondents did not punish the Court for employing inconsistent voting patterns, however.) Yet, *these effects are statistically indistinguishable from the effects under policy congruent conditions*. That is, the negative effects of using emergency powers or breaking with past practices were not statistically different for respondents who lost on policy grounds and respondents who won on policy grounds.

71. *See* Jens Hainmueller et al., *supra* note 70, at 1-29.

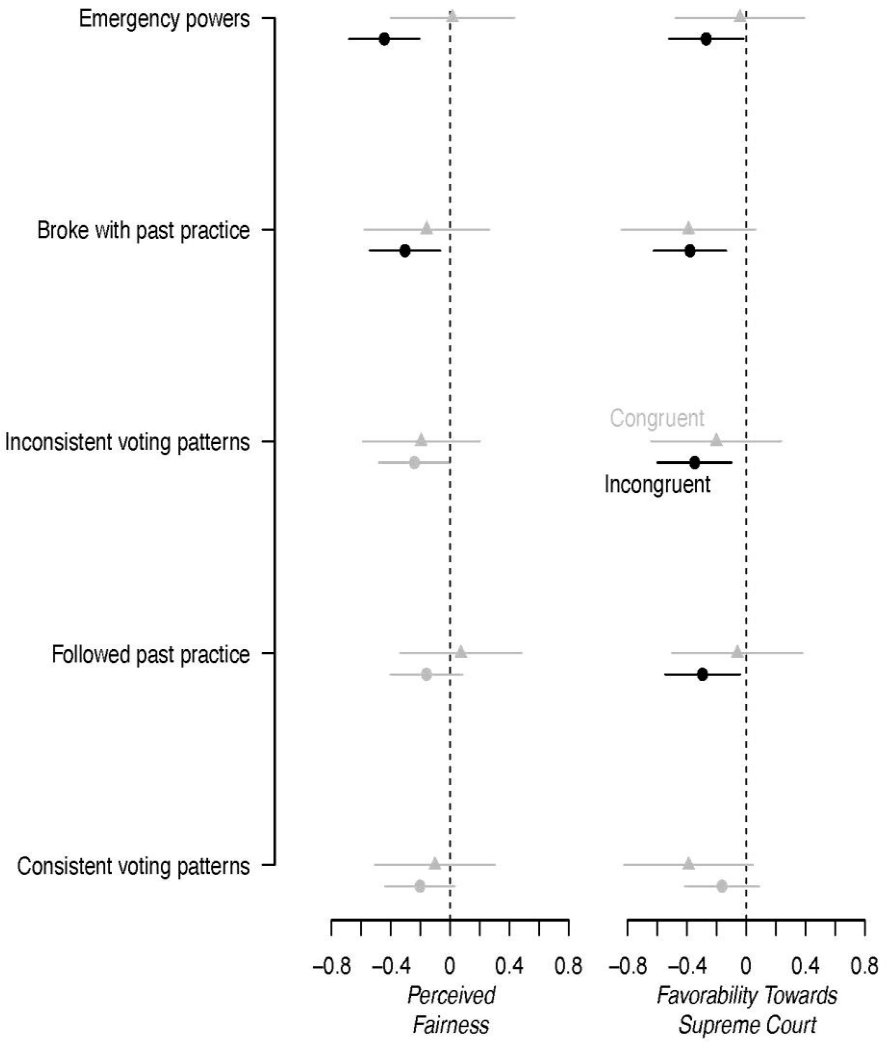


Figure 3: Estimates of the effects of deviations from a decision relying on a "normal process" on perceived fairness of the decision (left column) and Court favorability (right column). Black estimates and 95% confidence interval lines are statistically significant. Circles represent estimates when there is subjective policy incongruence with the decision. Triangles represent estimates under conditions where there is subjective policy congruence.

Respondents' favorability toward the Court also reveals means-related declines that are not dependent on winning or losing status. Respondents who lost on policy grounds rated the Court's favorability significantly lower when it used emergency proceedings, broke with past precedent, or employed inconsistent voting behavior (and, surprisingly, when it followed past practice) than when it followed its normal process for deciding cases.[72] But once again, these effects when respondents lose are statistically indistinguishable from the effects under policy congruent conditions. Simply put, the negative effects we observe for the policy losers exist in comparison to the Court following its normal process, but we cannot say that those effects are different than they are for policy winners. In short, means-related features are no more (or less) important to policy losers than to policy winners.

C. Dependent Variable 1: Congress Used a Fair Process

That the Court obtains its support based on its adherence to the expected judicial role has led scholars to emphasize the importance of means for the Court. But are means-related considerations uniquely important to the Court? As we mentioned above, we asked respondents to evaluate conjoint profiles dealing with the Supreme Court and with Congress. The Congress profiles employed the same format as the Supreme Court profiles, but we adapted them to legislation and legislative debate rather than to judicial decisions and oral argument. We asked respondents the same questions (our dependent variables), but as they related to legislation and Congress rather than to decisions and the Court.

Figure 4 plots AMCEs for deviations from "normal" process and AMCEs based on policy congruence for both the Supreme Court and Congress. The AMCEs on the left side of the figure examine respondents' views of the perceived fairness of the action. The AMCEs on the right side of the figure examine respondents' reported favorability toward the institution.

We begin with the respondents' views of whether Congress used a fair process. Policy incongruence is statistically significant and has the largest effect on people's perceptions of the fairness of the process Congress used. But people did not evaluate Congress and the Court any differently as a function of policy incongruence. They evaluated both branches as fair or unfair as a function of their agreement with their decisions.

Relative to when Congress followed its normal processes, respondents reported that Congress's process was less fair when it used emergency powers, broke with past practice to pass the laws, and members

72. It is likely that policy losers are used to losing at the Court; when it follows "past practice," that could simply mean to them that they are going to lose again.

engaged in inconsistent voting patterns. Having said that, the same findings obtain when we examine respondents' views toward the Court. The effects in the Congress scenario are never statistically different than the effects in the Court scenario for perceived fairness.

D. Dependent Variable 2: Feelings of Favorability Toward Congress

Turning to the respondents' favorability toward Congress, we see that respondents displayed less favorability toward Congress when it passed legislation with which they disagreed. But, respondents reacted the same to the Court when they "lost" there too. The effects are statistically indistinguishable. Subjective policy congruence seems to affect favorability toward Congress and the Court the same.

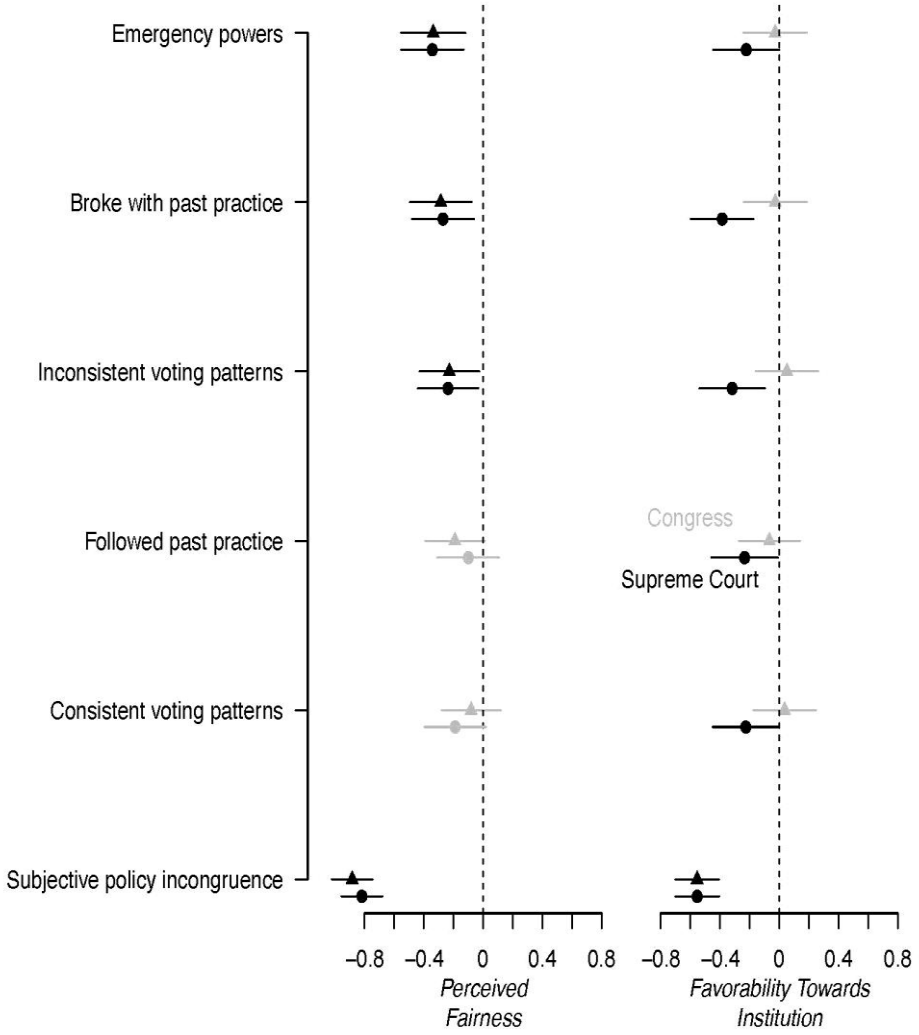


Figure 4: Estimates of the effects of deviations from a decision or legislation relying on a "normal process" and of deviations from a subjective policy congruent decision or piece of legislation on perceived fairness of the decision or legislation (left column) and favorability toward Congress or the Supreme Court (right column). Black estimates and 95% confidence interval lines are statistically significant.

The effects of process-related features, however, are more important for the Court's favorability than for Congress's favorability. Respondents did not think less favorably of Congress when it broke with past practice (relative to using its normal processes); they did think less favorably of the Court when it broke with past practice. Similarly, respondents did not think less favorably of Congress when members engaged in inconsistent voting patterns but they did think less favorably of the Court when Justices engaged in inconsistent voting patterns. And these differences between Congress and the Court are statistically significant. *In other words, whereas respondents' favorability toward the Court changed as a function of the means it used to decide the case, their favorability toward Congress did not change based on the means Congress used.* Favorability toward Congress is not a function of the means used to render an outcome. But, consistent with the literatures on the positivity bias and legal symbolism, a Court that appears principled benefits in terms of broader favorability.[73]

CONCLUSION

Just how much do Americans care about means versus ends when they evaluate courts and judges? Because people tend to believe that courts "are different" than political institutions, they may evaluate courts based on the means by which judges render their decisions.[74] Yet recent scholarship challenges positivity bias theory and argues that people's support for courts follows their support for case outcomes.[75] This policy alignment theory indicates that people care more about the ends than the means. Which is it?

We conducted a conjoint experiment and analysis to examine how the means by which Justices decide cases influence people's support for the Court. Overall, the results reveal that people care about Justices using appropriate means, and these findings did not differ when we examined policy "winners" versus "losers." We also discovered that people's concerns over means drive some of their favorability toward the Court—but not toward Congress. Their favorability toward the Court as an institution was influenced by the means Justices employed; their favorability toward Congress was not, suggesting that

73. Once again, we observe that respondents hold less favorable views toward the Court when it follows past practice relative to following normal process. That effect is not statistically distinguishable from respondents' favorability toward Congress. Respondents hold less favorable views toward the Court when the Justices follow consistent voting patterns, relative to its normal process. That finding is not statistically distinguishable from Congress.

74. *See* Gibson & Nelson, *supra* note 19, at 626; JAMES L. GIBSON, ELECTING JUDGES: THE SURPRISING EFFECTS OF CAMPAIGNING ON JUDICIAL LEGITIMACY 112-15 (2012); Gibson et al., *supra* note 14, at 839-41; Easton, *Re-Assessment of Political Support*, *supra* note 10, at 444-45.

75. *See* Christenson & Glick, *supra* note 33; BARTELS & JOHNSTON, *supra* note 28.

means-related dynamics matter at least some amount more in judicial evaluations than in legislative evaluations. This finding supports the "courts are different" perspective of positivity bias theory, at least to a degree.

While these findings contribute to the discussion over means and ends, we are appropriately circumspect about their limitations. For example, we cannot determine whether people's procedural concerns stem from a broad desire for fairness, a specific preference for strict adherence to rules, a demand for transparency, or other factors. It would be difficult to manipulate those treatments from each other, particularly in a realistic model which includes things like policy agreement and other features. Knowing whether people care more about process than fairness, or whether they lump them together in the kinds of evaluations we examined here, would be interesting. Similarly, we examined a handful of decision/bill-level variations. The effects we observe here might be greater under conditions of repeated deviations from normal processes.

Still, we suspect that our findings can illuminate a series of debates, not the least of which might include "current events." As we stated in the opening, a number of Court watchers have criticized it for relying more on its emergency docket than in previous years.[76] Without wading into that debate—there are legitimate reasons for the Court's reliance on that docket as well as more "activist" reasons—it seems clear that a continued reliance on that docket may harm the Court. People do not like it when judges break from standard procedure. And while they appear to have tolerated the Supreme Court doing so more than other courts, that tolerance may have a "best by" date.

Justice Stevens's *Bush v. Gore*[77] claim seems tested by these findings. Stevens was both right and wrong: no single case may fatally wound the Court's reputation, but legitimacy is chipped away by unpopular outcomes and decisions paired with abnormal procedures. While Americans do prioritize alignment with policy outcomes, they also react negatively when judicial decisions appear to circumvent normal rules or break with precedent. That reaction cuts across ideological lines. Our results suggest that perceptions of procedural fairness remain a vital, if often secondary, source of institutional trust—and that courts risk long-term damage when they fail to meet judicial expectations. As the Court increasingly relies on emergency decisions and departs from conventional norms, this tension between means and ends will become more consequential.

76. *See* STEPHEN VLADECK, THE SHADOW DOCKET 9-12 (2023); William Baude, *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J.L. & LIBERTY 1, 4-6 (2015) (criticizing increased reliance on the Court's emergency rulings without full briefing or explanation).

77. 531 U.S. 98, 129 (2000) (Stevens, J., dissenting).